

Judy Rust, Auditor

ORDINANCE 2010-017

ORIGINAL

AN ORDINANCE OF THE BOARD OF COMMISSIONERS, COUNTY OF DELAWARE, STATE OF INDIANA, ESTABLISHING THE DELAWARE COUNTY PUBLIC DEFENDER'S OFFICE

WHEREAS, I.C. 33-40-7-3 authorizes the establishment of county public defender boards and

WHEREAS, the Board of Commissioners deems it advisable that the County establish such a board with all the rights and duties that attend thereto, as per state statute,

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY, INDIANA that:

**Section 1. Board established.**

The Delaware County Public Defender Board is hereby established for the purpose of providing legal representation to indigent defendants/respondents in criminal, juvenile, probation violation, extradition, child support, civil commitments, and other proceedings where the right to counsel has been established by law.

**Section 2. Definitions.**

When used herein, the following terms shall be defined as follows:

- (1) *Board* means the Delaware County Public Defender Board created by this ordinance.
- (2) *Indigent defendant/respondent* means a person who request legal representation and is determined by the Court to be entitled to legal representation at public expense.
- (3) *Legal representation* means the services of an attorney provided to a defendant/respondent in matter originating in a state court in Delaware County involving:
  - (a) a person charged with a crime as defined in I.C. 35-41-1-6;
  - (b) an act of delinquency as defined in I.C. 31-37-1-2;
  - (c) a violation of a condition of probation established as part of a sentence in a juvenile or criminal matter;
  - (d) detention of a person subject to extradition to another jurisdiction;
  - (e) proceedings to collect unpaid child support pursuant to I.C. 31-16-17-12;
  - (f) civil commitment and contempt proceedings; or
  - (g) other proceedings where the right to counsel a public expense has been established by law.

The term *legal representation* includes services in connection with all pre-trial, trial, and appellate proceedings in which an indigent defendant/respondent has a right to counsel.

### **Section 3. Board membership and appointment.**

- (1) The Board shall consist of three (3) members; one (1) member appointed by the Delaware County Commissioners; and two (2) members jointly appointed by the judges of the Delaware Circuit Courts. The two (2) members appointed by the judges shall be from different political parties.
- (2) The initial term of the member appointed by the Delaware County Commissioners shall expire on December 31, 2011. The initial term of the first member appointed by the judges of the Delaware Circuit Courts shall expire on December 31, 2012, and the initial term of the second member appointed by the judges of the Delaware Circuit Courts shall expire on December 31, 2013.
- (3) After the initial term of each member, appointments shall be for three (3) year terms. Members of the Board shall serve until their successor is appointed. An appointment to fill a vacancy shall be made by the authority appointing the member vacating the position and shall be for the remainder of the unexpired term.
- (4) The following persons shall be ineligible to serve as members of the Board: a city, town, or county attorney, a law enforcement officer, a judge, or a court employee.
- (5) Board members shall serve without pay but may receive reimbursement for expenses incurred in connection with the member's duties, if approved by the Board.
- (6) Two members of the Board shall constitute a quorum for the purpose of conducting the business of the Board. Decisions of the Board shall be approved by a majority of the members present.
- (7) The Board shall meet at least quarterly or upon call of its chairperson or any two (2) members of the Board.
- (8) The Board shall elect its chairperson by a majority vote of the Board.

### **Section 4. Powers and duties of the Board.**

The Board shall have the following powers and duties:

- (1) The Board shall prepare a comprehensive plan to provide legal defense services to indigent persons by the continued use of the Delaware County Public Defender's Office in accordance with I.C. 33-40-7-5. The comprehensive plan, at a minimum, shall provide:

- (a) The plan shall consist of at least three (3) deputy public defenders for each circuit court and a juvenile court deputy public defender;
  - (b) Legal representation to an indigent defendant/respondent at the earliest possible point in time;
  - (c) Legal representation to an indigent defendant/respondent by the same attorney or attorneys through the pendency of a matter to the greatest extent possible, and
  - (d) Professional development, continuing legal education, and malpractice coverage for public defenders.
- (2) Establish policies and procedures for the provision of competent legal representation for indigent defendants/respondents in criminal, juvenile, probation violation, extradition, child support, and criminal contempt, and other matters pursuant to the comprehensive plan.
  - (3) Establish guidelines and procedures for the determination of indigency and for the appropriate reimbursement for legal representation provided at public expense in accordance with I.C. 33-40-7.11.
  - (4) Recommend an annual operating budget for the agency and monitor expenditures of funds.
  - (5) Prepare and submit to the Delaware County Council and the general public an annual report on the operation of the agency.
  - (6) Appointment of a County Public Defender also known as the Delaware County Managing Public Defender or Chief Public Defender. A County Public Defender / Managing Public Defender / Chief Public Defender shall be appointed for a term not to exceed four (4) years and may be reappointed. The County Public Defender / Managing Public Defender / Chief Public Defender may be removed from office only upon a showing of good cause. An attorney must be admitted to the practice of law in Indiana for at least two (2) years before the attorney is eligible for appointment as a County Public Defender / Managing Public Defender / Chief Public Defender.
  - (7) The County Public Defender shall be chosen from the existing deputy public defenders. If the Board removes/replaces the County Public Defender, that individual will automatically become a deputy public defender at the lower rate of pay.
  - (8) Duties of County Public Defender.
    - (a) Maintain an office as approved by the Board;
    - (b) Hire and supervise staff necessary to perform the services of the office after the staff positions are recommended by the Board and approved by the county executive and the fiscal body, and
    - (c) Keep and maintain records of all cases handled by the office and report at least annually to the Board and the Indiana Public Defender Commission concerning the operating of the office, costs, and projected needs.

(9) The Board shall request for payment reimbursement in accordance with I.C. 33-40-7-11.

**Section 5. Authority of judges.**

Nothing contained herein shall be deemed to abridge the authority of any judge of a state court of this county from appointing counsel for any person entitled thereto under the Constitution of the United States or the Constitution of the State of Indiana.

**Section 6. Scope of Ordinance.**

Nothing contained herein shall be deemed to create a right of reimbursement pursuant to I.C. 33-40-7-11, except to the extent that any claims for reimbursement comply with I.C. 33-40-7-11 and the Standards of the Indiana Public Defender Commission.

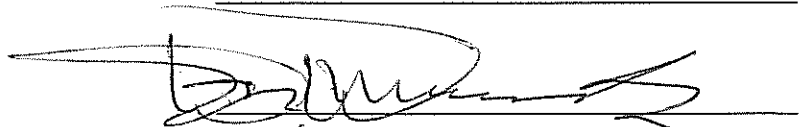
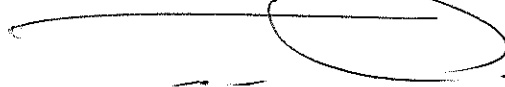
**Section 7. Limitation on authority to contract.**

This program and the authority of the Board are subject to appropriation of the Delaware County Council and the program may be terminated or canceled by ordinance of the Delaware County Commissioners at their discretion upon annual review and pursuant to the notice requirements of I.C. 33-40-7-3(f). All contracts entered by the Board to provide indigent representation shall be made subject to this provision and are subject to review and approval of the Delaware County Board of Commissioners.

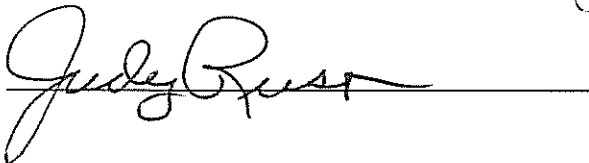
**Section 8. Effective date.**

This ordinance shall be in full force and effect upon passage, approval, and publication.

BOARD OF COMMISSIONERS  
OF DELAWARE COUNTY, INDIANA



Attest:



**Delaware County Public Defender Board**

\_\_\_\_\_, 3 year term expires 12/31/2011

\_\_\_\_\_, 3 year term expires 12/31/2012

\_\_\_\_\_, 3 year term expires 12/31/2013