

February 2, 2006

Mr. Keith Norman
Executive Director
Alabama State Bar
P.O. Box 4156
Montgomery, Al. 36101-4156

Via Email/Fax

RE: Bar Commissioners' Consideration of the Indigent Defense Commission Bill

Keith:

We are writing on behalf of the Alabama Criminal Defense Lawyers Association to state our position on the current Indigent Defense Commission Bill. We ask that you present this letter to the Commissioners prior to the vote on this bill scheduled for tomorrow, February 3, 2006.

As you know, the Bar, along with other interested parties, including ACDLA, worked in good faith on the Chief Justice's Indigent Defense Study Committee to write a bill that would create a centralized body that would serve as an effective advocate for indigent services in our state. The stated purpose of the Chief Justice's committee was to improve the quality and effectiveness of indigent defense representation in our state. This issue is of the utmost importance to us. Most of our members are lawyers who have devoted their careers and their lives to the representation of the indigent.

In the late fall, the Bar and ACDLA put on our respective websites what we all believed to be the final version of the bill recommended by the Chief Justice's committee. That version of the bill created an Indigent Defense Commission and a department of Indigent Defense Services. It also called for appointed counsel to be compensated at a flat rate commiserate with the rate the state pays attorneys it hires for condemnations and an increase in the statutory caps for each class of felony, juvenile dependency and delinquency and appellate work. ACDLA stood ready to fully support that bill until it was eviscerated on December 16, 2005.

The current version of the Indigent Defense Bill introduced in the House as HB490 and the Senate as SB328 fails to achieve the stated goal of insuring quality indigent representation. All involved recognize that a driving force behind the forming of the Chief Justice's committee was the desire to provide fiscal and budgetary accountability for the indigent defense system. It is often cited that the costs of indigent defense has risen dramatically over the past several years. There is no question that is true. However, to understand what the raw data means, there must be a close examination.

In FY 1997, the cost of indigent defense was \$14.6 million. However, in 1997, the rate being paid to attorneys representing the indigent was \$10 per hour out of Court and \$20 per hour in court and overhead was just beginning to be reimbursed. When the costs reached \$45.1 million in 2004, the rates were \$40 per hour out of Court and \$60 per hour in court and overhead reimbursement was a standard component of indigent defense services. Clearly this increase in rates contributed to the increase expenditures. However, none of us would think returning to \$10/\$20 would increase the quality of indigent defense services.

Another contributing factor in the increase in expenditures is the increase in the number of cases prosecuted. There were 67,731 crimes in Alabama in 2003 ranging from murder to car theft occurred in Alabama (FBI 2003). I believe that number was over 75,000 for 2004. Comparing the expenditures to the number of cases handled creates a different picture of the fiscal concerns. **In 2004, attorneys doing indigent work were paid an average of \$596 per case. In 2003, the average was only \$560.**

ACDLA supports the desire to provide fiscal and budgetary responsibility, however, rather than those concerns being a secondary goal to the stated purpose of insuring quality representation, the bill in its current form paves the way to provide for the representation of indigent persons in the cheapest manner without regard to the quality of that representation.

This bill (HB490 and SB328) eliminates the current hourly payment to attorneys representing indigent persons of \$40.00 dollars per hour for out-of-court and \$60.00 per hour in court, does not address the overhead matter, and removes all fee caps (currently ranging from \$1500 to \$3500). Instead, this bill would vest in the Indigent Defense Commission the power to determine what hourly rates would be paid, if that rate would or would not incorporate overhead reimbursement, and set all fee caps.


Conceivably, the Commission could implement a higher flat rate while doing away with overhead reimbursement as was contained in this bill prior to December 16, 2005 and set higher fee caps. However, Commission could also revert back to the days of \$10 per hour out of Court and \$20 per hour in court. Our concern is that without the protections that were in this bill prior to December 16, 2005, the Commission will seek to provide indigent defense as inexpensively as possible and in turn, sacrifice the quality of representation.


I think it important to note that the version of this bill that the Bar Commissioners voted not to support at this time last year preserved the \$40.00 dollars per hour for out-of-court and \$60.00 per hour in court, the current fee caps, and provided that overhead reimbursement was a necessary component of quality indigent defense representation. This bill is only a shell of last year's bill.

A final concern of our association is that this bill provides absolutely no local control over indigent defense services. The Commission would not only determine what method of indigent defense is used in each circuit, but also which persons are either appointed to serve as public defenders or are awarded indigent defense contracts. The effect of this provision is that the Indigent Defense Commission could decide to close the Tuscaloosa County Public Defender's Office in favor of contract counsel. If the Commission decided to keep that office open, the Commission could still decide to replace the current Public Defender with not only another attorney, but with an attorney from any other area of the state.

Again, ACDLA does not oppose the creation of a centralized body that would serve as an effective advocate for indigent services in our state while providing some fiscal responsibility and we hope to have the opportunity to work towards these goals with the State Bar. But this bill is bad law and it is better to have no bill than a bad bill.

We respectfully encourage the Bar Commissioners to vote to not support this bill.

Sincerely,

Jim Roberts
Immediate Past President


Joe Van Heest
President

cc: Bobby Segall, State Bar President
Alyce Spruell, Commissioner
Cooper Shattuck, Commissioner