

**WAYNE COUNTY CRIMINAL DEFENSE BAR ASSOCIATION GENERAL**  
**MEMBERSHIP MEETING MINUTES, FEBRUARY 7, 2007**

Christine Grand, Director-at-Large, and David Roby, Vice President, discussed the meeting that took place with Judge Mary Beth Kelly, Grand, Roby, and James Schlaff, President, and Defense Counsel Robert Mitchell on February 6, 2007 (Schlaff was delayed in court but did telephone during the General Membership meeting).

The issues that were discussed at the meeting with Judge Kelly were:

- 1.) There isn't any way to prove when an attorney turned in a voucher.
- 2.) How to get paid for events that weren't paid by the Budget Department even though properly submitted.
- 3.) Use of an out-county form so that attorneys can get paid for non-defense adjournments and for dismissals and preliminary examinations held in part.
- 4.) Low paying fee schedule (brought to the table by Mr. Mitchell).
- 5.) Consultation with defense counsel about the court issues and the proposed "Single Court Tower."
- 6.) Attorneys being paid in full for a probation violation and then fifty percent for the same client's trial.
- 7.) Voucher Fraud.
- 8.) Waiver Trials – only getting paid for half a day when trial took place all day.

**Proof of voucher submission:**

In light of the 60 day deadline for turning in vouchers, one of Grand's concerns was that there isn't any way to prove what **date** an attorney turned in a voucher. Further, she was concerned because establishing this date may be important when an attorney has to re-voucher a case for events that the budget department did not pay the first time the voucher is submitted. Grand said that Judge Kelly was receptive to providing a time stamp machine to solve this problem.

**Re-Vouchering and not getting paid for events even though properly submitted to the Budget Department:**

Grand said that re-vouchering is causing problems for attorneys. She said that the budget department wants attorneys to use the "Voucher Inquiry Form" and when she has used that form, she has never received a response from the budget department. Grand re-vouchers, instead, and she sometimes has gotten paid. Attorney Richard Cunningham, who was present at the General Membership meeting, said that he has received responses to cases where he had to re-voucher. Grand said that Judge Kelly proposed that instead of re-vouchering, attorneys should file a motion for extraordinary fees. Roby said that he thought that contradicted the current policy.

According to Grand and Roby, Judge Kelly said that WCCDBA should meet with the Presiding Criminal Judge, Edward Ewell, Jr., to discuss day-to-day matters.

**Out-county form so attorneys can get paid for adjournment not of their own making and dismissals and preliminary examinations held in part:**

Grand said that she, and other attorneys, have been having difficulty getting paperwork from some out-county courts to document non-defense adjournments of a preliminary examination, dismissals and examinations held in part so that they can be paid for having to appear at those events. Grand has met several times with Court Administrator, Sidney McBride, over the Court adopting and using a form that she developed. Grand developed the form so that lawyers can attach the form to their voucher as documentation of the events so that they will be paid. Grand said that Judge Kelly liked the form that she developed and that Judge Kelly would have to get SCAO approval of the form. Judge Kelly said that there will be an upcoming meeting.

**Low Paying Fee Schedule:**

Roby said that Schlaff and Mr. Mitchell brought up to Judge Kelly that many attorneys are not taking murder cases because of the low paying fee schedule. Judge Kelly suggested that the defense bar propose a new fee schedule, indicating where fees should be raised and where fees might be reduced. Judge Kelly also proposed a flat fee for each case. Judge Kelly was opposed to tacking on \$25.00 to every event. Roby was concerned that the Court and/or administrators would disregard any proposed increase by the defense bar and use the proposal as a way of reducing fees.

**Defense Bar Input on Court Issues:**

Grand asked Kelly for more defense input on Court issues. Roby said that Judge Kelly mentioned that there is consideration for a single court tower. Rock said that in every new court building developed, there is never a place where defense counsel can confidentially talk to his or her client. Per Grand and Roby, Schlaff mentioned to Judge Kelly that defense counsel is never consulted about the lock up situation and what slows down defense counsel ends up slowing down the courtrooms. Judge Kelly thought that defense counsel should be consulted about the design of the proposed single court tower. Schlaff brought up that defense counsel was not consulted on the change of the writ policy. Judge Kelly did not think this was an example of when defense counsel should have been consulted.

**Clarification on when attorneys get paid fifty percent:**

When a defendant has two (2) cases, the attorney is only paid for fifty percent of the fee schedule for the second case even if events for the second case take place on a separate day or days. And, worse, even if the second case goes to trial. Even more problematic is when a defendant has an outstanding probation violation and the attorney handles the probation violation, vouchers it and then proceeds to trial on the main case. It turns out that the budget department will pay the first vouchered case in full, even if it's only a probation violation, and then pay the attorney only fifty percent of the fee schedule on the second case, even if it's a trial. Grand and Roby felt that Judge Kelly did not fully appreciate the problem because she doesn't have a criminal trial background. Roby said that Judge Kelly felt that the solution was simple – don't take the probation violation.

However, Rock pointed out that the attorney should get both because, oftentimes, the probation violation should be held in abeyance until the conclusion of the new case because the client may be acquitted. Grand and Roby said that Judge Ewell, Jr. should be approached about this matter and how to resolve it.

### **Voucher Fraud:**

Judge Kelly said that there were a lot of attorneys vouchering for the same events.

### **Waiver Trials – only getting paid for 1/2 day:**

Grand said that they brought up to Judge Kelly that attorneys are only getting paid a half day when, in fact, the trial took place in the a.m. and p.m. Judge Kelly said that problem will be fixed. Schlaff proposed to Judge Kelly that there should be a CAP meeting about how to voucher cases, about what won't be paid and how not to be penalized.

### **The discussion at the General Membership meeting then turned to matters outside of the meeting with Judge Kelly:**

Grand said that she and Schlaff will be meeting with Judge Kenny at the end of the month to discuss funding for the WCCDBA and how people will be removed from the list for failing to attend the required number of CAP seminars. Roby said that Judge Drake's secretary, Yolanda, will be working on CAP stuff. He said that the Court doesn't want to pay for CAP stuff. Jane Kuhn, Director-at-Large, wanted to know what happened with Matt Evans' lawsuit. Grand said "we lost." Roby said "that died." Cunningham said that Elliott Hall said that there is going to be a lawsuit over the low paying fees to defense counsel. Cunningham said that he will follow up with Hall on the status of the lawsuit.

Roby said that there has to be a discussion of the budget for Wayne County Criminal Defense Bar Association with Judge Kenny. It was Roby's position that WCCDBA needs money so it has independence from the Court and CAP. Roby wanted to know what happened to the \$35,000.00 that WCCDBA had last year. Rock said, according to the Treasurer and President, that money went for Westlaw, to pay for Research Attorneys, books, printer cartridges, copy paper and any other incidental office supplies. Per Grand, CAP paid for the additional printers. Grand said that she and Schlaff will raise the issue of funding for WCCDBA with Judge Kenny.

Roby said that it was appropriate to publish the budget, at least to the WCCDBA Board, to evaluate the expenditures of the last several years and to consider the future of the organization since the WCCDBA no longer has a funding source separate from the CAP program budget. Roby said that the WCCDBA members were not consulted nor did they vote on this budgetary change and Roby felt it was important to find out how the WCCDBA members' money was being spent.

Roby discussed having a combination lock on the library similar to the attorney lounge so that members could use the services that they've paid for without having to track down the person holding the key. Grand said that several books have come up missing, such as major sections

from the Criminal Jury Instructions, so someone is needed to be present. Grand said someone recently made off with the stapler in the attorney lounge (Note: If you have the stapler, please return it – no questions asked). Rock proposed hiring law students to keep the library open when the research attorneys aren't there. Roby thought this was a good idea but questioned where the money would come from. Rock said that this would be an example as to why WCCDBA needs its own operating funds so it can hire law students to keep the library open.

Kuhn brought up that there are attorneys who are downloading non-attorney stuff from the computer in the attorney lounge. Cunningham brought up that some attorneys who are using the computer for personal use are monopolizing the computers while there are attorneys that need to use the computer to check the docket or draft pleadings. Roby said he noticed that much of the non-law related downloading and printing appeared to be related to real estate listings and other business activities unrelated to criminal defense. Grand motioned that WCCDBA adopt a resolution that the computers are for business purposes, not for personal use, and the computers are to be relinquished to attorneys who need to use the computers for business purposes and for attorneys who have a current caseload in Frank Murphy Hall of Justice. Roby seconded Grand's motion. Resolution was adopted unanimously. Grand said that a sign will be posted in the attorney lounge regarding this resolution.

The nomination election meeting was scheduled for March 7, 2007 at 12:30 p.m. at FMHJ attorney lounge.

Meeting was adjourned.

Minutes prepared by Susan Rock, Secretary, WCCDBA