

The Virginia Indigent Defense Commission
Commission Meeting
1604 Santa Rosa Road, Suite 200
Richmond VA 23229
September 19, 2013

Judge Alan Rosenblatt (ret.) welcomed everyone and called the meeting to order at 11:05 am. Other Commission members in attendance were Steve Benjamin, Tom Chaffe, Kristen Howard, David Lett, Karl Hade, John Douglass, Judge Hanson, Senator Richard Stuart, David Walker, and Kristi Wooten. Administrative staff included Executive Director, David Johnson; Deputy Director, DJ Geiger; and Administrative Assistant, Diane Pearson.

Due to a prior commitment, Delegate Minchew is unable to attend the meeting today.

Quorum requirements have been met.

The first order of business is to approve the agenda.

Judge Hanson made a motion approving the agenda. Senator Stuart seconded the motion. The motion carried.

The next order of business is approval of minutes.

Judge Hanson made a motion to waive the reading of and approve the June meeting minutes. Senator Stuart seconded the motion. The motion carried.

The next order of business is to set the meeting dates for 2014. The following dates were determined.

March 20th June 5th September 18th December 11th

Mr. Johnson said that there are a couple of pieces of information in the side pocket of the meeting materials. He said that Mr. Benjamin was able to give a talk at our annual conference about Bonnie Hoffman who is our Deputy Public Defender in Leesburg. There is an article in the Champion that he wrote about Bonnie who received the Robert C. Heeney Memorial Award. This is the NACDL's most prestigious award and is given annually to the criminal defense attorney who best exemplifies the goals and values of the association. This is the first time a public defender has ever received this award. The article not only explains what a great job Bonnie does in our system, but also what she is doing in the community.

Also earlier this year, one of our assistants in our Franklin Office, Toni Tucker, was highlighted in the Champion Magazine. They highlight different attorneys in every issue.

Jim Hingeley, the Public Defender in Charlottesville has been named one of the Leaders in Law by Virginia Lawyers Weekly Magazine for the coming year. Jim has done a fantastic job in Charlottesville for many years. He is very involved in the local community and in the legal community throughout the state. He is our fifth public defender to be recognized as a leader of the law.

There is also in the meeting materials, a copy of a very well written editorial from the Richmond Times Dispatch by John Douglass.

Mr. Johnson said that a couple Commission members will remember Judge Smith, a former Commission member, who passed away in August.

The next item on the agenda is the budget update.

Ms. Geiger said that in the meeting materials behind the budget update tab is a sheet for FY2013. There are four charts set up by service areas. The largest service area covers all of the public defender offices; this is Criminal Defense Services (32701). The second is the capital defender offices, which is Capital Indigent Defense Services (32702). The third is legal defense regulatory services and is the Standards of Practice Enforcement (32703). The last service area is Administrative Services (32722). This is the final expenditure report for fiscal year 2013, which ended June 30, 2013.

Judge Rosenblatt welcomed and introduced Tom Chaffe. Mr. Chaffe is a new member of the Commission. Mr. Johnson added a few comments about Mr. Chaffe and welcomed him as well.

Ms. Geiger continued with the budget update.

The object code number series used by our agency to record expenditures are as follows:

- 1100 – Personnel Services – (includes salaries and benefits),
- 1200 – Contractual Services – (includes travel, phone bills, postage, other operational costs),
- 1300 – Supplies and Materials – (includes office supplies, gasoline for state cars),
- 1400 – Transfer Payments – (includes premium payments and unemployment compensation payments),
- 1500 – Continuous Payments – (includes building rent, file storage, and workmen’s compensation premiums),
- 2200 – Equipment – (includes IT equipment and software, other office machines, and telephones).

The remaining budget amount is the total funds we ended fiscal year 2013 with on June 30th. Almost every Service Area had some funds remaining. The end balances included our turnover and vacancy savings. Whenever there is a gap of time between the day a position is vacated and the day the position is filled, the salary and benefits not being paid out is calculated as turnover and vacancy savings.

In the 1200 series there was \$167,936 remaining. This is probably higher because the offices are sending fewer people than anticipated to outside training programs. The cost of our internal training programs is a lower because we are requiring carpooling, and rentals under the state contract for rental cars. This could also be a result of requiring the individual public defender offices to offer in-house training. Many are taking advantage of it and getting CLE credits. All of that results in less travel and less training money.

In the 1500 series there was a negative balance. The reason is that initially we projected that we were not going to be able to pre-pay rent, but when it came down to paying the last of the bills through June 30th, we found that two of our IT projects would not be completed timely. As a result, we had more money remaining than anticipated and ended up pre-paying four months of FY14 rent. So for FY13, there is a negative balance, but it will result in a savings in FY2014 expenditures.

In the 2200 series, as mentioned previously, a few IT projects were not completed and therefore were not paid in FY13. When the new computers came in there was a glitch with the encryption software. This meant that we couldn't install the computers, but we could take delivery. We were able to pay the bulk of the costs of the operating system and the equipment. We only pushed a few of the other expenditures to FY2014.

The positive balances were in personnel and contractual services and the negative balances were in rent and IT.

On the last page of the chart, at the very bottom, the remaining amount in the budget column is \$123,029. This was the amount of funds remaining at the end of the year. Under the Appropriations Act, we are a mandatory re-appropriation agency. In theory, that should all come back to us. We are waiting for the official word on that.

Mr. Johnson added, out of \$43 million, and ending balance of this amount was really great. He thanked Jewell Hudson, our Budget and Finance Director.

There was discussion regarding the payment of the state bar dues for the attorneys in the agency.

Ms. Geiger said that the next portion of the budget update is a review of the FY2013 projected vs. actual expenses. In the 1500 series, the difference of \$377,500 is close to the costs of the extra two months of rent that were paid. In the 2200 series, specifically software maintenance services, the difference of \$83,000, a portion was the cost of the encryption software. The software included on the computers was incompatible with some of the other security tools we use. We went with different encryption software, but it was too late to install it on the computers and pay for it in FY13, so a portion of that cost will be paid in FY2014.

The \$51,000 for installation of the computers in the field offices could not be done in FY2013 because we did not have the encryption software. Those two items will be paid in FY14

instead of FY13. The cost is \$96,325, and if our remaining FY13 balance of \$123,029 is re-appropriated to us, the \$96,325 will come out of that.

There was discussion regarding the budget.

Ms. Geiger reported that in FY2014 there are only two months of expenditures available for review so far. Personnel costs are running high for two reasons. 1) there were three paychecks in the month of July, there will be only one in June, and 2) we have not yet received an adjustment to our budget to pay the two percent raise and the \$65 per year for service over five years, compression payments. The central appropriations adjustment is done by the Department of Planning and Budget (DPB). They will make an adjustment and add the funds.

Rent expenditures are very low due to the prepayments made in FY13.

All other expenditures are running pretty much on track right now.

On the last page of the chart for FY2014, we are calculating our appropriation and adjustments to it. The appropriation totals \$42,961,831. There will be a central appropriation adjustment. We do not have the amount yet so there is a question mark as to how much we will receive for that adjustment. Next, we anticipate the \$123,029 in carryforward funds from FY13 to be returned to us. We are showing that we prepaid four months of rent in FY2013, for FY2014 that will be savings in FY2014 of \$794,550. We have a judicial reversion under the 2013 Appropriations Act, with regard to our capital offices. The reversion requires us to return \$200,000 at the end of this fiscal year. After calculating each of these, we projecting about a \$700,000 balance at the end of FY14, if all goes as planned and we do not spend anything that we were not planning to spend. It is early in the year, so this could change as we work through the year.

The reason the projected balance seems high is that we do not have a major IT project, or telephone systems, or copiers that need to be purchased this year. There are no big projects that would require a lot of money.

The next document is the Turnover and Vacancy Savings calculation. The amount we generated last year was about \$340,000. This was a lot lower than the year before, which was over \$700,000 and the year before that which was in the millions. We lowered our projection this year to \$393,000. This is about \$32,821 per month. We are running about \$51,000 behind, but it is early, and that is only a couple of payrolls.

As you will see in our Annual Report later in the meeting, the turnover rate was pretty steady at 13 or 14% for several years. That was low for our agency. The rate had been around 20% before the economy tanked. More recently, we had been running between 13-14%. However, last year it jumped to 19.2% for attorneys and 20% for staff. There were a lot more people moving in and out of the system. Either because we were given notice early enough to recruit, or because those leaving had no annual leave accrued, there was no real impact to our turnover and vacancy savings amount. We had an uptick in the actual turnover but a decrease in the turnover and vacancy savings.

We looked at the last three to four years of fiscal data, including the economy, the judicial reversions we were previously required to pay, all of the cost savings measures we had to take in the last few years, and where we are right now in order to try to develop a plan that makes sense and does not leave funds unspent at the end of the year. We want to ensure we are using the money appropriated to the best benefit we can for our clients and our offices. Our budget analyst, Amber Brown, pulled together a lot of information for us to analyze.

By way of review for the newer members and as a refresher for the longer term members, the first judicial reversion was adopted by the General Assembly in 2009, after the economic meltdown. Our portion for the first year was \$544,000. In 2010 there was an additional reversion amount added of \$450,000 so we were then giving back \$944,000 each year. At the same time our turnover started to dip, and we went from over a million dollars to about \$700,000.

Some things we did to generate that \$944,000 included restricting expenditures, mandating carpooling for conferences and trainings, eliminating pre-printed letterhead, and eliminating out-of-state travel. More substantive changes included the thirty and ninety day hiring delays, frozen positions in offices with the lowest caseloads, the elimination of a part time attorney position in an office. The biggest and most devastating step was the closure of the Appellate Office. The Appellate Office budget was about \$610,000 per year. It was not statutorily created, and was funded purely from turnover and vacancy savings.

In 2011 we made new adjustments; we eased the hiring delay, and reallocated the previously frozen positions back to the offices with the highest caseloads. The reallocation actually worked as a positive for some of the offices with higher caseloads.

Our portion of the judicial reversion was eliminated in 2012. We had one year where we did not have to return any money.

In the last year and a half we have had leases come due for renewal in three offices. In two of those offices, we managed to reduce the rent, get better space, and save about \$65,000. One was the Norfolk office, which was reduced by about \$40,000; the other was the Newport News office, for which we saved about \$25,000 because we had been paying the utilities and the new lease was all inclusive. We also were able to terminate the Appellate office lease. We could not terminate it prior to this because of the way the lease was written. The savings on that lease will be \$30,000.

We decommissioned our financial accounting system, IDSS, which required maintenance and was going to need a major upgrade. We moved to CARS which is the free system provided by the state.

There was discussion regarding leases.

Ms. Geiger said that we have a few items that we would like to propose to the Commission that we are confident we can do within this fiscal year.

During the June Commission meeting you approved the budget and some items were approved contingently based on funding.

The contingent items were: (1) revisions to our new case management system. We decommissioned the old case management system, PDCIS. The new case management system is up and running, and already we have a list of requested items from the offices to change or improve. The costs of these fixes and upgrades were already conditionally approved.

(2) A new phone system for the Alexandria office. The IT security requirements were the impetus for us to move the Alexandria office from city phones and computers to our systems. They are still using the city phone system, but if it breaks, we will have funds to replace it.

(3) IT operational expenditures. This got pared down during the initial budget process when funds ran out. There is now sufficient funding for it.

All of these items were contingently approved and the funding is available and will be added to the budget.

We have two additional IT items. One is Cloud File Storage. We are pursuing Google Drive and trying to make sure it meets all of the IT security requirements. The estimated cost for file storage is \$45,000 per year.

The cost for new servers is \$210,000 compared to Google at \$45,000.

Cloud storage would answer some continuity of operations planning issues, some IT security issues, and makes things a lot easier. It is also less staff intensive. We would be managing the contract and the services provided rather than actually physically maintaining and fixing things.

There was discussion regarding the usage of Cloud storage for electronic documents.

Our authentication portal would need to be updated and that has a maintenance fee of \$30,000. These two IT projects would be \$75,000.

There was discussion regarding Mr. Johnson's authority to approve certain expenses.

The second item for consideration is sentencing advocate positions.

Not all of our offices have sentencing advocates. There are five offices that do not have a sentencing advocate. This position is a non-attorney position.

There was discussion regarding sentencing advocates and how they help the attorneys and are great liaisons who work with clients and their families. Some agreed that the attorneys could do the work of sentencing advocates.

The proposal is for 5.5 sentencing advocate positions. The breakdown would be one full time position each for Pulaski, Martinsville, Petersburg, and Staunton. One part time position each for Franklin and Bedford, and modifying the part time position in Winchester to full time. The total cost for salary and benefits would be \$39,558 for full time. This could vary depending on health care plans. The cost is \$19,779 for each part time position.

An APD I salary is \$49,100 plus benefits.

The total for 5.5 sentencing advocate positions, if they started in January would be \$152,641 this year with an ongoing cost of \$305,282 annually.

It was proposed that the creation of new Sentencing Advocate positions be tabled and deferred to the Personnel Committee. The Committee will make a recommendation to the full Commission at the next meeting after getting more information, including a full job description, information on how much a sentencing advocate would help to reduce the caseloads of the attorneys, and getting input from the public defenders.

Discussion continued regarding the sentencing advocate positions with questions regarding the necessity of having a sentencing advocate in each public defender office.

Ms. Geiger continued with the budget update.

The next item is a proposal for a one-time retention bonus. We believe that because we do not have any big IT projects this year that we could fund up to a three percent retention bonus. We would like to make it contingent on funding available as of November 29, 2013. That would provide us with three additional months of expenditures to make sure our projections are on track, the central appropriation adjustment is received, and we know where we are going to be and what is affordable.

The cost of a retention bonus fluctuates, depending on the percentage. Assuming every employee gets a bonus, a 1% bonus would cost \$292,278. A 3% bonus would cost \$876,835.

In the past we required employees to have been employed continuously for one year, to have received at least a "meets expectations" on their most recent evaluation, and to sign an agreement to remain employed for six months, or pay the full amount back. All of these contingencies make many people ineligible.

There was discussion regarding stipulations for the employee bonus.

It was proposed to defer this to the Personnel Committee.

Mr. Walker made a motion approving \$75,000 for the two additional IT projects. Ms. Howard seconded the motion. The motion carried.

Mr. Chaffe moved that the Virginia Indigent Defense Commission convene in closed session to discuss personnel issues pursuant to the personnel exemption contained in §2.2-3711(A) (1) of the Code of Virginia.

This meeting will be attended only by members of the Commission, however, pursuant to §2.2-3712 (F) of the Code of Virginia, the Commission also requests the attendance of the Executive Director and the Deputy Director because it is reasonable to believe that their presence will aid the Commission in its consideration of the matters which are the subject of the closed session.

Judge Hanson seconded the motion. The motion carried.

After reconvening into open session, Mr. Chaffe moved for a roll-call vote asking that each member certify that to the best of his or her knowledge, during closed session, the Commission heard, discussed, or considered only public business matters that were lawfully exempted from open meeting requirements under the Freedom of Information Act.

Each member so certified.

The next item on the agenda is the Annual Report.

Ms. Geiger reviewed the major changes. On Page 3 we changed the Commission membership based on the fiscal year. We added Delegate Minchew and Senator Stuart. Next year Tom Chaffe will be added and Kent Smith will be removed.

On Page 10 we updated the number of certified attorneys by category. There was an uptick in most of the numbers of certified attorneys by case type. There was almost a seven percent drop in juvenile.

Mr. Johnson said that is one of the things we are trying to address because we have gotten a lot of concern about how difficult it is for attorneys to get their juvenile training hours to be certified. We are adding at least two hours of juvenile training to our Annual Conference as break-out options. We are recording some of those sessions to help other attorneys get the required training hours.

Ms. Geiger continued.

Page 10, Paragraph 4, this is the first year we have had Standards of Practice complaints that were found to be qualified by the Standards of Practice Enforcement Attorney. Those were referred to the Informal Resolution Panel. Generally, we have complaints but they were not found to be qualified.

All of the training materials and programs were updated with the new session topics.

Page 13, relating to caseload numbers, because we were retiring our old case management system (PDCIS) and moving to the new one, offices were converted at different times. The old system was much more fluid and data could be entered in many different formats. The new system is more rigid. When we were cleaning up the data and converting FY2012 to FY2013, there was concern it was not captured on an apples to apples basis. FY2013 caseload information is from the new system.

The new system also did not pull appeal cases in the Supreme Court and Court of Appeals separately. Rather it continued them as a matter from the original case. We are looking for ways to count the number of appeals to the higher courts. The number of cases reported this year is not inclusive of the number of appeals to the higher courts.

Looking at the number of misdemeanors and felonies, exclusive of appeals to higher courts, there was about a 1.5% decrease in total cases system wide. The number of misdemeanors the system handled went down; the number of felonies the system handled went up nearly the same percentage.

Mr. Johnson added that a reason misdemeanors were going down might have something to do with prosecutors waiving jail time resulting in an attorney not being appointed as a cost savings. Mr. Johnson is on the study committee created by a provision in the Appropriations Act to look at ways of reducing costs of court appointed counsel in misdemeanor cases. He said it was found that there were significantly fewer misdemeanors, but more felonies and felonies take more time.

There was discussion regarding the number of open cases. Open cases are new clients.

Ms. Geiger said she will clarify the language in the report.

Page 15, the turnover shows we had an increase from 13.44% to 19.24%. This is a fairly remarkable uptick.

Page 16, Paragraph e provides a synopsis of what occurred during the 2013 General Assembly Session and the budget amendment that was proposed that would have cut \$500,000 and twelve positions from our capital offices. It walks through that, what the end result was, and indicates that we are going to make recommendations to the Commission before the end of the calendar year.

Page 18 is the chart containing the caseloads by office. Previously we had misdemeanors, felonies, and appeals by adult and juvenile cases. We have expanded the categories this year to include murder, violent felonies, non-violent felonies, felony and misdemeanor probation violations, and infractions for both adults and juveniles. We will adjust the data captured in the report as the new case management system is utilized more and we see what reports are available to us.

The last column of the caseload chart contains the average caseload per attorney for each office. The lowest per attorney caseload this year was Alexandria with 210, and the high was Danville with 426 per attorney. Arlington and Fairfax have historically carried the lowest caseloads in the system. At one point Arlington had 141 cases per attorney. They are up to 213. Matt Foley has made some strong efforts in getting the courts to give them more cases. Fairfax has jumped up to the top third. Todd Petit has made some inroads as well in getting some of those cases appointed to his office.

The workload study we did about six years ago put the range of cases per attorney between 255-355 depending on the nature and complexity of the caseloads.

There was discussion regarding the varying caseloads in the different offices. For instance Fairfax tries more jury trials than any other office. Their caseloads are lower, but the number of jury trials is higher. The Franklin Public Defender office is small, but covers several courts every day.

Page 19 is a key that describes the abbreviations.

Pages 20 through 31 contain information on the systems of and fees paid to court appointed counsel. We are required to report on where Virginia ranks among the fifty states for payment of private court appointed counsel. There is almost no way to indicate definitively where we rank. We came up with a comparison chart in which we tried to capture the funding sources, whether state, local, or a mix, whether there is a public defender system, if contract attorneys are used, the fees paid, etc. This chart was difficult and time consuming to update and may not be complete depending on how much information was available from the statutes and websites of the courts and indigent defense bodies in other jurisdictions.

Ms. Geiger said that she will make the adjustment to the Annual Report reflecting that each case included in the case number count is a new case, and that one case is one client regardless of the number of charges. The Report has to be filed with the General Assembly.

Mr. Benjamin made a motion approving the Annual Report. Judge Hanson seconded the motion. The motion carried.

The next item on the agenda is the legislative update.

Ms. Geiger said that she contacted Trish Harrington at the Court and there was no news on the proposed amendments to the discovery rules. There had been a request for public comment.

We have three legislative proposals for the Commission to consider today.

We would like to have the Commission recommend whether we have them drafted and seek a legislative patron to try to get the bills approved by the General Assembly.

Ms. Geiger said that Catherine Zagurskie, our Senior Appellate Coordinator, is watching the appeals court opinions very closely. She has come up with a few ideas for us to propose for legislation that we think will be helpful to the clients.

The first proposal would expand the ability to enter a conditional plea on misdemeanor cases. Right now the statutory authority only allows conditional pleas on felony charges. For example, if a client is illegally searched and the cops find cocaine and marijuana, the client gets charged with possession of cocaine as a felony and possession of marijuana as a misdemeanor. The motion to suppress the evidence found in the search gets denied. Currently, you could enter into a conditional plea and appeal the felony, but not the misdemeanor.

There are two options of drafting it. One would be if there is a misdemeanor connected to your felony you get to appeal all of them. The other would be that you can appeal anything with conditional plea. The Commonwealth has to agree. Unless they agree, it does not happen.

Mr. Johnson welcomed a guest who arrived.

Ms. Geiger said we drafted this and sent it to the legislative team. The legislative team consists of volunteers who are senior attorneys in the public defender offices. The recommendation was to draft it allowing the conditional plea in any case without the approval of the Commonwealth Attorney. However, they felt that either would be helpful.

Mr. Benjamin said if you want Option 1 submit Option 2.

He suggested Option 2 because the law advances through appellate jurisprudence. If an issue is raised and is decided adversely at the trial level and then there is a guilty plea to the charges, that issue is never submitted to the appellate courts so it does not get resolved. By permitting a mechanism whereby an issue that someone feels strongly enough about that they are going to go to the time and effort to appeal, to advance to the appellate courts is giving the law breathing room, an opportunity to evolve and change and that is a good thing. It is also another mechanism for the resolution of a case. Many times a case can be resolved with a plea agreement.

Mr. Benjamin sees this as a very good tool for the criminal justice system.

Mr. Benjamin made a motion supporting Option 2 which is "Expand to Include All Misdemeanors" § 19.2-254. Mr. Walker seconded the motion.

There was discussion regarding the conditional plea legislation.

Ms. Geiger said that the current statute required the approval of the Court and the consent of the Commonwealth Attorney. The proposal doesn't change that.

This will be drafted into a bill that we will secure a patron to introduce.

Mr. Benjamin said that you could add to the bill that you are requesting a modification to the statute that permits the Commonwealth to appeal to increase the number of issues that they can appeal on, for these reasons: First, the opportunity to have matters settled by appeal helps the law grow. Secondly, trial judges are aware the Commonwealth can appeal in an admissibility ruling and aware the defendant cannot. The problem is the defendant cannot appeal unless you go to trial on a not guilty plea. But if the Court, in resolving a question, knew that the Commonwealth could appeal, he thinks it would make it a little bit easier for the Judge to make what might be a difficult call, knowing that it could go up and be corrected if it is wrong. That is ambitious.

There was continued discussion.

Mr. Benjamin withdrew his motion.

Mr. Lett moved to pursue Option 2 through the legislature. Mr. Walker seconded the motion. The motion carried with Mr. Hade, Ms. Howard, and Mr. Benjamin abstaining.

Ms. Geiger continued with suspension or modification of a sentence. This would address the case of Stokes vs. Commonwealth. In that case, the trial court ordered that Stokes not be transferred to DOC (Department of Corrections) pending a hearing on a motion to modify the sentence. That is one way that the Court keeps jurisdiction. After the motion to modify had been filed and the order not to transfer was entered, Stokes was transferred to DOC anyway. The Court of Appeals found that the current language of §19.2-303 was unambiguous, and it limited the authority of the trial court following the transfer of a person to DOC. Regardless of whether there is an order entered properly, once the body moves to the DOC you are done.

The Court suggested that the legislature could have said “lawfully” as a modifier of “transferred” but they did not. They sort of provided us with the language for this next proposal, which is that the person has to be lawfully transferred. If there is an order saying the person cannot be transferred, the transfer to DOC would not be lawful, and the Court would be able to continue with the hearing on the motion to modify the sentence.

There was discussion regarding the lawful transfer of a person to DOC and the wording of the language.

Mr. Walker made a motion to add the word “lawfully” to the language in §19.2-303. Judge Hanson seconded the motion. The motion carried with Mr. Hade, Ms. Howard, and Mr. Benjamin abstaining.

Ms. Geiger said that the third item for proposed legislation is recording misdemeanor cases in Circuit Court, §17.1-128.1. Some courts are ordering court reporters or an actual official recording of misdemeanor trials upon request of the defense or request of the Commonwealth, some are not. In addition to not ordering a court reporter, some courts are not allowing the attorneys to record the proceedings either. If you want to appeal a case that has no court reporter or official electronic recording by the court, you have to do a written statement of facts in lieu of the transcript. It can be very difficult sometimes to recreate that.

Appeals can hinge on specific words or language. If an appeal is not worded just right, you might waive an argument you had. One solution would be requiring court reporters or official recordings in every misdemeanor trial, which could have a big fiscal impact. Under our proposal if the court is not going to order the court reporter or record it on the official court equipment, the judge would be required to allow the defense and the Commonwealth to record it so that we can use it as an aid in developing a statement of facts in the transcript. It would not become part of the record, but would assist us.

This actually came from our Annual Conference last week in the Appellate training session. It was brought up by our Chesapeake Public Defender who is apparently not allowed to record and does not get court reporters for misdemeanor trials in Circuit Court. This is the case in several other jurisdictions as well.

There was discussion regarding the use of recording devices and the statement of facts.

Ms. Geiger read a comment from the legislative team that said, "Fairfax does not have court reporters in misdemeanor trials and routinely denies our motion for recorders at misdemeanor trials. Further, at least three judges have specifically denied motions to record the proceedings for fear the recordings would be altered or manipulated."

Fairfax and Virginia Beach have been denied petitions for recording in misdemeanor trials.

Mr. Walker moved to add in the proposed legislation, to allow recordation of misdemeanor trials in Circuit Court. Mr. Chaffe seconded the motion. The motion carried with Judge Hanson abstaining.

Ms. Geiger said that the data that was relied on in proposing cuts to our offices was provided by the Sentencing Commission and was not in response to any specific request for information related to our caseloads or workload. Rather, it was data indicating the number of completed capital murders per year, and further indicated whether the sentence was life or death. We have received a data compilation from the court relating to all cases opened in the past five years containing a charge of 18.2-31 (capital murder). Ms. Geiger has analyzed that information and will provide a summary, a more full report, and recommendations to the Commission during the December meeting.

There was no further business.

Mr. Lett made a motion to adjourn. Judge Hanson seconded the motion. The motion carried.

The meeting adjourned at 1:15pm.

Respectfully Submitted:

Approved By:

Diane Z. Pearson, Administrative Assistant

David J. Johnson, Executive Director