

The Virginia Indigent Defense Commission
Budget Committee Meeting
1604 Santa Rosa Road, Suite 200
Richmond, Virginia
November 18, 2013

Budget Committee Chair, Maria Jankowski, called the meeting to order at 10:40 am. Other Commission members in attendance were Kristen Howard, Professor John Douglass, Judge Alan Rosenblatt (ret.), and Judge Edward Hanson. Administrative staff included Executive Director, David Johnson; Deputy Director, DJ Geiger, and Administrative Assistant, Diane Pearson.

Quorum requirements have been met.

The first item on the agenda is to approve minutes from the previous Budget Committee meeting.

Ms. Howard made a motion approving the May 13, 2013 Budget Committee meeting minutes. Judge Rosenblatt seconded the motion. The motion carried.

The next item on the agenda is proposed ongoing expenditures.

Ms. Geiger said that after the September Commission meeting we brainstormed some ideas that would impact client representation and possibly address salary compression.

The proposals we are presenting today have a couple of different intentions. One is to address caseload disparity. Right now our caseload range from the lowest office to the highest office spans 210 cases per attorney to 426 cases per attorney. This is a rather large spread. We anticipate the proposals that we have today can change that range to approximately 231 to 369. We would also provide tools for the offices and update training to assist with representation. We would also like to provide limited retention efforts for longer term employees of the system.

There are two proposals:

- (1) Ongoing items, or permanent spending, and
- (2) One time spending

The proposals in the meeting materials include items the Personnel Committee voted to recommend the substance of to this Committee.

On Page 1 we are proposing an APD II position for the Danville Public Defender office based on caseload and number and level of attorneys in that office. Danville has been carrying the highest caseload per attorney for several years (426 this year). With salary, benefits, and

startup costs the total annual costs are \$64,387. For this fiscal year it would be about half that if the position is filled by January.

Mr. Johnson added that the Danville office will be moving in January 2014 and will have space for the added position. This is a new position. The additional position will bring the caseload down to the 360's. If we had to prioritize, this would be the number one priority.

On Page 2 we are requesting three additional entry level attorney positions, one each for Fredericksburg, Richmond, and Virginia Beach. This is based on attorney caseloads in those offices as well as the workload study and projections for those offices.

Total cost for each of the attorney positions is \$56,374. The total ongoing costs are \$187,122 per year. The salary is \$49,000.

There was discussion regarding salary differences in Northern Virginia and other parts of the state.

Discussion continued regarding base salaries inclusive of benefits.

Ms. Geiger said that the corrected total costs for an APD II position in Danville would equal approximately \$70,000.

The next item is the reclassification of senior attorney positions to deputy positions. There are seven offices that do not have a deputy position.

Mr. Johnson said a couple years ago we had several offices without office managers. The people in those positions functioned as office managers. However did not receive the same pay. We made that adjustment to reclassify them as office managers.

Reallocating the senior positions to deputies is something we would have liked to have done years ago. He believes each office needs a deputy in case the public defender is ever out. The difference between the costs of a senior and deputy is about \$12,000.

There are some responsibilities of a deputy that a senior is unable to perform including signing travel vouchers and time sheets.

Ms. Geiger said the next item we looked at is the supervising attorney to attorney ratio in each of the offices. We found that the Richmond office is lower than similarly staffed offices. There are six supervising attorneys and 28 allocated attorney positions. We would like an additional supervising attorney position for that office. Virginia Beach has 25 allocated attorney positions with seven allocated attorney supervisors. Norfolk has 23 allocated attorney positions and six allocated attorney supervisors.

We believe the Richmond office is in need of an additional supervisor. There is an attorney acting as a supervisor in the office but she is not being compensated for it.

The annual ongoing cost is \$14,302 and for FY14 the cost is \$7,151.

Ms. Geiger continued with Page 5. We are requesting a satellite office and position reallocation for the Staunton office. This was requested by the public defender. The Staunton office covers multiple, geographically widespread jurisdictions. They have three part-time outside attorneys covering these jurisdictions. This limits the ability to provide adequate supervision. They are private attorneys who handle public defender cases. There was a challenge with a standards of practice complaint this year based on the challenges of supervising outside attorneys.

Mr. Johnson added that the Winchester and Staunton offices are two of the better offices and have some of the most geographically spread jurisdictions.

Judge Hanson arrived.

Mr. Johnson continued saying that this is something we feel will positively impact client representation. Our Leesburg office, which has similar geographic challenges, has a satellite office in Warrenton.

This proposal includes the reallocation of three part-time attorney positions to make one senior full-time position and one full time APD I position. The senior position would supervise the satellite office. There would be no support staff. The support would be done from the Staunton office.

Staunton had the second highest caseload this year, and has routinely been in the top five.

Total annual new costs are approximately \$62,917. The total FY14 cost is \$55,304.

This will not be a true satellite office like Warrenton as there will be no support staff.

There was discussion regarding rent and the involvement of the Department of General Services (DGS).

Page 6 is the proposal for the Winchester Public Defender satellite office and position reallocation. This office covers six jurisdictions, three are significant distances from the others requiring significant travel time. The satellite office would be located in Front Royal.

A Senior APD position is proposed to serve as the supervisor. Further, the reallocation of a part-time Secretary I position to a full-time Secretary I is requested.

The Senior APD would supervise a rotation of two to three attorneys who are already on staff, and the full time secretary.

There was discussion regarding the satellite office.

Mr. Johnson said this would be a cost savings because of travel that is involved now, and this would significantly cut down on travel time.

Ms. Geiger said the distance from Winchester to Luray or Page County is fifty miles or sixty five minutes. Winchester to Woodstock or Shenandoah County is thirty five miles or forty minutes. Winchester to Front Royal or Warren County is twenty five miles or thirty minutes.

If the office is located in Front Royal it will be nearly equal distance to the other two jurisdictions. There would still be some travel but significantly less.

Page 7 summarizes the costs of the proposed ongoing items.

Ms. Geiger said that we have listed the low and the high estimated costs of each proposal. The total for the low costs is \$625,140 and the high total costs are \$654,440.

There are two other items in the chart. The first is a broadband speed upgrade. This is an IT tool that we are hoping will help the offices. Last year we went from T1 lines to broadband that was less expensive, but gave us more speed. With nearly all applications now online, there is a higher demand for internet bandwidth. Our recommendation is to double the current capacity, which should be sufficient for a while.

There was discussion regarding offices affected by slow internet access. There are three offices that do not have broadband at all, and one is Richmond. There is a dead zone in the middle of downtown Richmond.

Ms. Geiger said that we recruited, interviewed, and hired a part-time ISO. However, the day the candidate was to begin, he emailed apologizing and advising he needed a full-time position. We did not have a very robust applicant pool for this position.

The Information Security Officer (ISO) is a position that cannot be within the IT department and is required by Virginia Information Technology Agency (VITA). The position is responsible for developing and administering an IT security program for all of an agency's information which includes both paper and electronic records. The ISO looks at your system; does a risk assessment, and a business impact analysis, and makes recommendations for what should be done to keep information and systems safe. The ISO also audits what the IT department has done and makes recommendations based on that.

We can further explore either sharing this position by finding another agency that will pay half or hire a non-certified candidate. VITA provides two options for meeting this requirement: (1) an IT professional with the required IT security related certifications, or (2) an employee who goes through the VITA program which includes taking courses on the ISO Academy through the Knowledge Center, taking extra hours of education throughout the year, and attending the VITA monthly meetings in Chester.

We looked at the most recent recruitment job posting for a full-time ISO that was posted by the Department of Juvenile Justice (DJJ). The salary range was \$70,000-\$92,000, and with benefits the cost is \$94,500-\$124,500.

There was discussion regarding the ISO position.

Mr. Johnson added that there are so many problems with this position. Certified ISO's make a lot of money, it is a very specialized position, and we are not going to find someone with the skillset that is required who will be willing to work part-time with no benefits. We do not know if we have enough work to keep someone in this position busy.

VITA does not offer meaningful help to agencies. They indicate that we are non-compliant with that requirement. There are supposed to be some positions they are creating that agencies can use but we are not an executive branch agency, so we are not sure if we can actually take advantage of that or when they will be created.

Ms. Geiger said that we are asking for one of two things, 1) either to look for another agency that is willing to partner with us to split the costs of a full-time ISO which is more complicated, especially if it is executive branch because they are slightly different than we are. This would impact cost because we would be paying half, or 2) alter our recruitment for a full-time ISO. We would need to change the job description because we would add duties that would be non-IT related.

There was discussion regarding the different sides to this position whether part-time or full-time.

Ms. Geiger said that one additional responsibility for the ISO position could be records retention. We can try again and contact some other agencies to see if there is a possibility to share the position. It requires 120 hours of continuing education a year to maintain the certification. It is a very specialized area.

There was further discussion regarding VITA and the ISO position requirements.

VITA is trying to assist agencies, but there are a lot of requirements for meeting compliance. They are supposed to be changing one of the requirements of the standard but it has not been posted. There is a lot of tension between VITA and state agencies. Their report will show that we did not comply and eventually they will use the recommendations and reports with regard to additional funding requests.

These are state IT security standards and we are required to comply. This will become a bit less onerous on us because we are contracting out many of our applications. Our case management system, ACeS, email, and soon document storage are done through vendors, who are required to comply with the standard.

Mr. Johnson said that we can pull this proposal out, and it does not need to be discussed at the December Commission meeting because we already have funding for it. We have worked for years to try to get compliant, and we will get aggressive with it but it is not likely we will have someone in place by then.

Ms. Geiger said that on the chart on page 7, to update the totals, we added \$24,000 for the additional benefits in the salaries, so the low total is \$625,140 and the high total is \$654,440. If we remove the ISO costs, the totals are \$577,440 of proposed permanent ongoing spending.

The final item is on page 8. In the September Commission meeting we proposed a retention bonus. That is not a sufficient fix because it is a one-time retention bonus and does not impact ongoing salaries, retention, or compression. We came up with three new proposals and there is quite a bit of difference in the costs for each.

Mr. Johnson added that we are going to explain why we believe we can meet the proposed continuing obligations.

Ms. Geiger said that the proposals are similar to what the General Assembly did this past year. They took your years of state service, if you had been here five years or more, and added \$65 for every year of service to your base salary. It is called a compression base adjustment.

We took a page from their book and put together cost estimates to adopt something similar. The first proposal (Plan A) would have two tiers (1) the people who have been with the agency from two to four years and (2) the people who have been here more than five years. To impact both of those groups, \$100 per year of service would be added to the base salary for group 1. \$150 per year of service would be added to the base salary of group 2. The annual cost, based on our current employees, is just under \$600,000 per year.

Plan B eliminates the two-four year category and compensates those who have been with the agency five years or more. \$50 per year of service would be added to the base salary and the annual cost is \$187,961.

Plan C is for service of five years or more. \$75 per year of service would be added to the base salary and the annual cost is \$281,941.

There was discussion regarding meaningful compression adjustment and compensating long term employees.

Mr. Johnson said that to make a more meaningful compression adjustment, we need more money. The option that would fit right now would be Plan B which is \$187,961 (\$50 for five or more years of service added to the base pay). If the reallocation of senior positions to deputy positions is not approved, that saves some and puts the compression amount to \$75.

There was further discussion resulting in the elimination of Plan A.

Mr. Johnson said that if we do \$100 for each year of service for everyone who has been here five or more years it would leave us with \$425,000.

There was discussion regarding the deputy public defender positions, the satellite offices, the compression base adjustments, and public defenders who remain in their position for five or more years.

Ms. Geiger said that to understand where we are and why we think this is the right time to make some adjustments; we need to look back several years when the economy hit the skids. There was a judicial reversion of \$944,000. We made several cuts and cost saving moves including closure of the Appellate Defender Office, the budget for which at the time was \$610,000 funded purely out of turnover and vacancy savings. We made those adjustments and paid back the \$944,000 every year. That reversion was eliminated in FY12. That was the first year we did not have the reversion. We did not readjust expenditures on a permanent basis.

In FY13 we needed new desktops, a new operating system, new copiers and printers, and a new case management system. We had all of these huge IT equipment costs.

Where we are now is we have a \$200,000 reversion for FY14, payment of which has already been provided for in our current budget. At the end of FY13, we had sufficient funds to pre-pay four months of rent. That is not a good practice. We have to take a couple steps now to make appropriate, permanent adjustments based on everything that has happened. When we look at pre-payment of rent, ideally we only want to do that one time. Our monthly rent is \$210,000 so three months of rent is \$630,000. That gets us close to the \$800,000. The \$630,000 is basically the appellate office budget. We are readjusting the funds back into the system.

The turnover and vacancy savings total about \$400,000. Add that to the Appellate Office savings, and we are right in the \$800,000 comfort range. That is how we can make these proposed adjustments.

We are trying to make some strategic improvements to caseloads and to improve the tools available to the field. Our fiscal department gets nervous when we get over \$800,000. We do not have the reversion anymore. We have not made the necessary, permanent adjustments, and now we think that we can do so.

There was discussion regarding the need for new attorney positions in the Richmond, Virginia Beach, and Danville offices.

Ms. Geiger said that among those three offices Virginia Beach has the lowest caseload, Richmond has the third highest caseload, and Fredericksburg is number four. Danville is

number one and we are already addressing that. Staunton is addressed as well. The Winchester office is in the middle.

This year, the Winchester office had to temporarily decline accepting some cases. The deputy passed away and there were three vacant positions. Mr. Johnson added that the Winchester office is usually 10th out of our 25 and that is amazing with all of the travel they have. The Virginia Beach office had a position that we unfroze from the positions we removed from Arlington. Their caseload has gone down over the last five years. They had a high of 451 cases per attorney and are now at 367. An additional attorney does not necessarily lower their caseload as much as it would in a smaller office. Richmond and Fredericksburg are our higher caseload offices.

There was discussion regarding prioritizing.

Mr. Johnson said that Virginia Beach's caseload is not off the charts but they could certainly use another attorney. The Richmond office would like another attorney but the preference would be to have a senior position to assist with supervision. We could remove two proposed attorney positions which is about \$140,000 and that would still allow new positions for Danville, Fredericksburg, Winchester, and Staunton, and allow satellite offices for Winchester and Staunton. If we did that and removed the proposal on the deputy positions, that increases available funds and \$230,000 allows us to do a more meaningful compression adjustment.

We would still be accomplishing a lot: a new position for Danville and Fredericksburg, new positions in conjunction with creating satellite offices in Staunton and Winchester, and allowing Richmond to add an additional supervisor. If we remove the ISO, we would have a larger pool of money to come up with some options for compression adjustments.

The only office not being impacted is Virginia Beach.

To sum up: Danville and Fredericksburg each would get a new attorney position. Richmond reclassifies an APDII position to a senior position. Staunton and Winchester will get satellite offices with staff and rent. The full-time ISO position is rejected. Seniors in offices without deputies will not be promoted. We can do the calculations and determine where this leaves us and what we can do about compression.

Ms. Geiger said that the estimated overall ongoing cost of the remaining proposals is \$347,673, leaving approximately \$452,827 for the compression proposals. The cost of the \$100 per year for five years of service proposal is \$375,000. The \$150 per year costs are \$566,000.

Judge Rosenblatt made a motion to recommend to the full Commission an APD II position for Danville, an APD I for Fredericksburg, the reclassification of an APD II to a Senior APD in Richmond, satellite offices and positions for Staunton and Winchester, and the calculation of a compression base adjustment for VIDC service of five years with \$125, or five years

with \$100 and or ten years with \$125 or five years with \$100 and ten years with \$150. Ms. Howard seconded the motion. The motion carried.

The next item on the agenda is the proposed one-time expenditures.

Ms. Geiger said our budget and finance department has projected we will have a fair amount of money left over at the end of the fiscal year. This is partly because we prepaid rent and we did not have any significant IT equipment or projects.

We have had upwards of one hundred interns during the last few summer. One of the proposals is to allow paid interns. One of the proposals is to pay up to fifty interns at \$15 per hour for twenty hours over nineteen weeks at a cost of \$285,000. If we allowed up to one hundred interns it cost \$570,000.

We also have several volunteer or fellow attorneys. These are attorneys who have passed the bar and are volunteering in our offices with hope that a position will open up or until they find something else. The proposal is to pay up to twenty five of those attorneys at \$20 per hour for twenty five hours per week for nineteen weeks. The cost is \$237,500 and if it was doubled to fifty attorneys it would be \$475,000.

The offices that have volunteer attorneys have been getting pretty good benefit from having them. Richmond has two at this point. They are able to take cases but they do not get paid. We are not sure we can get that many interns during the school year or that we would have that many volunteer attorneys. The number of hours is dictated by the state's policy on part time wage employees. Part time wage employees may not work more than twenty nine hours. The twenty five hour limit gives us a little room to not exceed that limitation. This is one-time money to be paid out of funds this fiscal year.

There was discussion regarding interns and fellows attorneys.

Discussion continued regarding attorney salaries.

The next item on the agenda is IT.

Ms. Geiger said our firewalls will need to be replaced next fiscal year. However, if we replace them this year it will save us about six months and we can head off that cost for next year. The firewalls have a lot to do with IT security. We are looking to move to cloud storage for all of our documents. One of the reasons we have not done it yet is because there is a concern with the system allowing auto syncing to personal devices. If we can eliminate that, the servers we need would be less sophisticate and less expensive. If we cannot use the cloud storage, then the servers are going to need to be robust. This is the last year of useful life for the servers. The estimated cost range depending on functionality needed for the firewalls is \$88,000 to \$205,000 so the contingent approval would be to get what is needed at the time.

Back to the one-time expenditures, and increase up to one hundred fellows would cost \$950,000. The total estimate expenditures would be approximately \$1.273 million.

There was discussion regarding retention bonuses.

Judge Rosenblatt moved to recommend to the full Commission to approve \$1.25 million for firewalls, servers, as contingently proposed. Judge Hanson seconded the motion. The motion carried.

There was no further business.

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

The meeting adjourned at 1:05pm.

Respectfully Submitted:

Approved By:

Diane Z. Pearson, Administrative Assistant

David J. Johnson, Executive Director