

The Virginia Indigent Defense Commission

Commission Meeting
1604 Santa Rosa Road, Suite 200
Richmond VA 23229
September 17, 2015

Chair, Judge Alan Rosenblatt (ret.) called the meeting to order at 11:10 am. Other Commission members present were Steve Benjamin, Guy Horsley, David Walker, Professor John Douglass, Kristi Wooten, Tom Chaffe, Kristen Howard, and Carmen Williams, Members not present were Senator Richard Stuart, Karl Hade, Judge Edward Hanson, and Delegate Randall Minchew. Administrative staff in attendance included Executive Director, David Johnson; Deputy Director, Maria Jankowski; and Administrative Assistant, Diane Pearson.

Quorum requirements have been met.

The first order of business is to approve today's agenda and the June 11th meeting minutes.

Mr. Benjamin moved to approve the agenda and minutes. Ms. Howard seconded the motion. The motion carried.

The next item on the agenda is PD's in the news.

Mr. Johnson said that Liz Murtagh, our Deputy Public Defender in Charlottesville has been named one of the leaders in the law by Virginia Lawyers Weekly this year. This is quite an honor. Since the inception of this award in 2006, we have had nine public defenders or Commission members recognized.

Next, Kelsey Bulger an APD in the Pulaski Public Defender office did extraordinary work defending a homicide case involving a small child who drowned in a septic tank. This case made news across the state.

The Halifax Public Defender's office celebrates its twenty fifth anniversary this month. There was a nice write up in the local paper. This is a small office but they serve several jurisdictions. They actually do house calls because they have clients who have no transportation and there are no buses.

Annette Miller a Senior Assistant in the Virginia Beach Public Defender Office was featured in the Virginia Pilot Online. She has become recognized not just within our system but in the legal community as an expert in representing those with mental health issues. The article quotes Commonwealth's Attorney, Colin Stolle saying how they rely on her advice in cases. Former Senator Ken Stolle who is now the sheriff says that because of her they are now able to revamp how the jail treats inmates who are mentally ill.

Bonnie Hoffman the deputy public defender in Leesburg served as chair of an NACDL committee that released a recent report. It is a very impressive work group. Kudos to Bonnie who has been in our system a long time and we are very proud of her.

There was discussion regarding the changes in the public defender system and all the good news of late. Things are going very well.

Mr. Benjamin added that the answer to these good changes is the stewardship of Mr. Johnson. This has been a work in progress that we have all seen. He commended Dave and staff.

The next order of business is scheduling the Commission meetings for 2016. The following dates were determined.

March 24th June 9th September 22nd December 8th

Mr. Horsley made a motion approving the meeting dates. Ms. Williams seconded the motion. The motion carried.

Ms. Jankowski said we would like the Policy Committee to meet in January or February for the annual policy review. We review internally for the next few months, and bring any proposed changes to the committee for consideration. Once the committee has reviewed any recommended changes will go to the full Commission in March.

The Budget Committee is due to meet in May and as the date gets closer we will reach out to you to schedule a date.

Mr. Johnson said as a reminder the Personnel and Training Committee is scheduled to meet October 22nd at 2:00. This is the annual meeting where we review the public defender evaluations. Our annual conference is scheduled for October 6th and 7th.

Professor Douglass arrived.

The next item on the agenda is the annual report.

Ms. Jankowski said since the report is prepared to comply with statutory mandates it follows a standard format. Among the statutory mandates are the case loads of every public defender office and the state by state finding comparison. This year, in an effort to more accurately convey the work load of offices, she also reported the number of charges handled. We count a case by one individual defendant whether they have one charge/count or several. When the private bar is appointed they charge by count.

Mr. Johnson introduced Shlok Grover. Shlok is from Singapore, recently graduated from UCLA and is an intern volunteering with us for several months. The complex chart in the back of the annual report that compares funding sources in every state was done by Shlok. He spent a great deal of time on the phone and internet to complete this project and did a great job.

There was discussion regarding certified court appointed attorneys and capital qualified attorneys.

Discussion continued regarding the difference in how much court appointed attorneys are paid in each state.

Virginia still has one of the lowest rates for court appointed attorneys. It was noted this was especially true for the rate for handling an appeal.

Mr. Benjamin made a motion approving the annual report. Mr. Horsley seconded the motion. The motion carried.

The next item on the agenda is the budget update.

Ms. Jankowski said the budget data in the meeting materials is the same but in two formats. Both spreadsheets show where we ended up in FY2015. The first is by account code which is the different areas in which we spend money such as salary or rent. The second spreadsheet has the same information but in a different format. This format presents the data grouped by Public Defender Offices; Capital Defender Offices, Legal Defense Regulatory Services (the standards of practices enforcement attorney and the assistant) which is a separate budgetary appropriation. The last is Administrative Services. What is reflected here is the final end of year actuals.

In the December meeting we will have a more in-depth status of where we are but we did finish FY2015 with about \$58,000.

We pre-paid six months' rent and that is reflected in building rentals.

There was discussion regarding the budget.

Ms. Jankowski said that it is decision package time and that means that agencies must tell the Department of Planning and Budget what they would like included in the Governor's budget. We met with the Department of Planning and Budget in the spring and they agreed to submit a request for our part time sentencing advocates to become funded full time positions. It would increase our number of positions. This was their suggestion after we discussed with them our needs.

We are also requesting a new phone system since the one we have is so old and our clients are so reliant on the phone. The expense for the entire agency is about \$500,000.

There was discussion regarding sentencing advocates and what their role entails.

The next item on the agenda is the Personnel Committee report.

Mr. Johnson said the first item considered by the Personnel Committee was the resource attorney position the Commission eliminated last year. We would like to reinstate this position as an immigration attorney position.

There is a recent Virginia Supreme Court decision in the meeting materials addressing the responsibility of the lawyer to fully apprise clients of immigration consequences in a criminal case. It sets the bar very high. The Court found that it was ineffective assistance of counsel when the attorney failed to adequately and accurately advise the non-citizen client. This has been a concern in our offices for quite a while.

We want to fill this position and get someone with the expertise in immigration to both provide training in our offices and serve as a help desk.

The Personnel Committee was very supportive of it and voted to recommend approval to the full Commission.

Professor Douglass added that this is a problem that requires specialization and is repeated in so many places so often and it makes sense to have a specialized person in this position.

Mr. Johnson said this will be popular with the field offices because this is something they have struggled with in certain areas of the state but particularly in Northern Virginia and the Tidewater area.

There was discussion regarding the role of an immigration attorney.

Professor Douglass moved to reinstate the resource attorney position to an immigration attorney position. Mr. Walker seconded the motion. The motion carried.

The next item on the agenda is the approval of a senior expert/trial attorney.

Mr. Johnson said this is something we have spent some time working on and talking to the Department of Planning and Budget (DPB). The way our system is set up, an attorney is hired as an APD I, and if there is an opening that person can move up to APD II. At that point things can come to a stop. Each office has a deputy and possibly one or more senior supervisor positions depending on office size. This is a big frustration for the chief public defenders for a number of reasons. First we lose some really good people because of lack of opportunity for advancement and second because the only senior position is supervisory.

We really need something like the Commonwealth's attorneys have in the senior trial attorney who has advanced knowledge and experience. These are not new positions just a reclassification to create a non-supervisory senior track. These lawyers would not only be experts in the office but also serve as a resource to the system as a whole. We would expect them to do training for us as well.

Our hope is for this to be effective January 1, 2016. The cost this year would be about \$82,176. The ongoing cost would be about \$164,352 a year. To put it in perspective it is about one month rent.

There was discussion regarding determining the twelve attorneys and what this position would entail.

Mr. Walker made a motion approving the senior expert/trial attorney positions. Ms. Williams seconded the motion. The motion carried.

The next item on the agenda is the approval of an HR/Training Assistant.

Mr. Johnson said that several years ago we combined Human Resources with the Training Department.

Our Human Resources Director would like to take her two thirty hour positions and make them full time. This is an additional cost of \$20,000.

Mr. Walker made a motion approving the two full time human resources positions. Ms. Wooten seconded the motion. The motion carried.

The next item on the agenda is the training update.

Mr. Johnson said every month we hold certification training here and in Roanoke at the courthouse. We will be redoing the certification training this year. We do this every couple years. We continue to have a good healthy turnout for certification trainings.

In June we had the initial capital certification training at UVA. About 130 lawyers attended this two day training. The panel of speakers was fantastic. This has been shown three times in video replays.

We contracted with someone to do the filming and editing and the final product was great. We may do that with certification training too.

Also as part of the new certification requirements we are offering capital habeas training. The first was held here July 31st. Again, the speakers were very impressive.

The appellate conference that Catherine French Zagurskie developed had a huge turnout. This will be repeated October 9th in Tidewater. The Court of Appeals Judges like it so we are going to keep doing it. The private bar has been very responsive. There is so little appellate training for the private bar and this is something we are able to offer at no cost.

November 15th-18th is Shark ATAC (Advanced Trial Advocacy College). This will be held here and at the University of Richmond. Bonnie Hoffman is organizing this with the help of several other deputy and senior public defenders.

December 1st-4th is our new attorney Boot Camp. We will be working on refreshing it. We have about twenty five new hires who will be attending.

Our annual public defender conference is October 6th-7th in Hampton. Any Commission member wishing to attend is welcome. We have another great program planned.

There was discussion regarding the taping of the trainings.

There was no further business.

Mr. Walker made a motion to adjourn. Ms. Howard seconded the motion. The motion carried.

The meeting adjourned at 12:40pm.

Respectfully Submitted:

Approved By:

Diane Z. Pearson, Administrative Assistant

David J. Johnson, Executive Director