

The Virginia Indigent Defense Commission

Commission Meeting
1604 Santa Rosa Road, Suite 200
Richmond VA 23229
December 10, 2015

Professor John Douglass called the meeting to order at 11:05 am. Other Commission members present were Steve Benjamin, Tom Chaffe, Steven Delle Mura, (designee for Karl Hade), Carolyn Grady, Judge Edward Hanson, Guy Horsley, Kristen Howard, David Walker, Carmen Williams and Kristi Wooten. Delegate Randall Minchew joined the meeting via teleconference due to car problems. Members not present were Judge Alan Rosenblatt and Senator Richard Stuart. Administrative staff in attendance included Executive Director, David Johnson; Deputy Director, Maria Jankowski; and Administrative Assistant, Diane Pearson.

Quorum requirements have been met.

Mr. Johnson said that Judge Rosenblatt is unable to be here because he is in the hospital, just finished an intense round of chemo therapy and is doing great.

Professor Douglass said that we have a couple of new attendees with us today. He thanked Steven Delle Mura for joining us. He welcomed our newest Commission member, Carolyn (Carrie) Grady. Carrie is an assistant Federal Public Defender and formerly a senior assistant public defender here in Richmond. She has been chair of the criminal law section of the Virginia State Bar and currently on the disciplinary committee and an adjunct professor at the University of Richmond School of Law.

The first order of business is to approve the agenda.

Mr. Benjamin moved to approve the agenda. Mr. Walker seconded the motion. The motion carried.

The next item on the agenda is approval of the meeting minutes.

Mr. Walker made a motion approving the minutes. Mr. Horsley seconded the motion. The motion carried.

Mr. Johnson welcomed Susie Hansen who is retiring February 1st after about twenty five years with us. She is the public defender in the city of Richmond. In 1986 the Richmond public defender office opened in a very hostile environment. Susie and Mr. Johnson worked together and were two of the seven original assistants. Our case load back then was tripled of what that office handles now. Susie left the office for a while but then came back to serve as his deputy.

Mr. Johnson presented Susie with a plaque recognizing her years of service.

Mr. Johnson said Elizabeth Murtagh who is the deputy public defender in our Charlottesville office has been recognized in Lawyers Weekly as a leader in law. Liz is one of the many talented lawyers in our system with a reputation for excellence. They have been giving this award since 2005 and Liz is the tenth person from our system being acknowledged as a leader in law.

Carmen Williams joined the meeting.

Mr. Johnson said there are two articles in the meeting materials. The first is regarding Virginia's vanishing death penalty by Brandon Garrett. No one has been sentenced to death in Virginia since 2011. The article says that the laws in Virginia have not changed but the lawyers have. He is specifically talking about the capital regional offices opening in 2004 and the impact they have had on representation.

There was a request from a couple Commission members to send a copy of the article to Ken Stolle who was instrumental in setting up the capital offices.

There is another article in the Washington Post that talks about the responsibility for lawyers regarding immigration.

We are interviewing for the immigration resource position next week in Fredericksburg. Heidi Altman from CAIR Coalition has agreed to help with the interview process. We want someone with expertise on immigration to help us make sure the person we hire is well qualified.

We will be organizing an interview panel for Susie Hansen's position.

In September the Commission approved twelve senior trial attorney positions. These are not new positions. We are taking APD II positions and reclassifying them. We received recommendations from offices and chose twelve we thought most deserving and would benefit the system the most. This will be effective January 10th. Those we have met with so far are very excited and we have been impressed with their enthusiasm. We have some training opportunities for them. In the future when we have our annual conferences they will be populating a lot of the breakout sessions as speakers.

The management conference will be in March. This is for the public defenders and deputies. Jeff Sherr will be speaking. Jeff is the training director with the Kentucky Systems. He is a fabulous speaker, nationally recognized.

There was discussion regarding the new immigration attorney position.

The next item on the agenda is the budget update.

Ms. Jankowski said we are almost half way through the fiscal year. On page one of the budget update in the meeting materials is an overall agency budget. These numbers are not what the Commission voted on in June because the numbers have been adjusted by the Department of Planning and Budget. You will recall that the state provided for two percent salary increases for employees. The state also provided for some compression adjustments for people who have been with the state for five years or more. None of that was set to go into effect until this fiscal year. The budget that was voted on and approved at the end of last fiscal year has since been adjusted due to state wide Department of Planning and Budget actions. Not changes on our part.

The adjusted budget is in the first column and the FY16 expenditures to date from July 2015 through November 2015 are in the second. These include the December 1st payroll. As a reminder, salaries and other extenuating salary expenses are our largest expense. That in combination with our rent takes up about ninety percent of our budget.

The bracketed numbers on the spreadsheet are overages. These were items ordered last fiscal year but did not arrive until this year. The prepayment of rent was done with the intent of covering these ordered but not delivered items.

Mr. Johnson added that we cannot pay for items until we have received those items.

Ms. Jankowski continued with the next chart that is divided by the various areas. The first page is Criminal Indigent Defense Services, our Public Defender offices. The next page is the Capital offices. The next page is Legal Defense Regulatory Services, the Standards of Practice attorney, her assistant, and certification. The last page is Administrative Services, the Administrative office.

The next item on the agenda is the training update.

Mr. Johnson said the training calendar for 2016 is in the meeting materials.

Boot camp for our new attorneys was last week; we do this twice a year. We conducted it here in the administrative office with twenty eight attorneys for four days. We had eight faculty members from the offices and several speakers. It went very well and received good reviews. That being said, for next year we are going to rewrite boot camp and restructure it. We try to do that every few years to keep it fresh. The next one will be in May.

The office manager conference was held here November 4th and 5th.

Shark ATAC (Advanced Trial Attorney College) was held here November 16th through 18th. Bonnie Hoffman who is our deputy in the Leesburg office came up with this advanced trial skills training. There was a group of really sharp attorneys here for three days receiving hands on practical training.

There has been some restructuring in the administrative office. Training previously had been with Human Resources and has exceeded the HR Director's capacity. The HR director will retain the HR training which is non-legal training to include the office manager training and the management training. Jae K Davenport, the Standards of Practice Enforcement Attorney, filled a long awaited administrative position today and together the two of them will oversee legal training.

Catherine Zagurskie, Rebecca Norris, Maria, and I will be helping as well. There is also the immigration attorney, whose job description includes training.

The next item on the agenda is closed session.

Judge Hanson 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 that are the subject of the closed session.

Mr. Chaffe seconded the motion. The motion carried.

After reconvening into open session, Judge Hanson 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 and that were identified in the motion by which the closed session was convened.

Each member so certified.

Mr. Benjamin moved that we do not at this time, fill the vacant capital defender position in the southeast office and instead we name Doug Ramseur as supervising capital defender for that office with an increase in salary to be determined by the Executive Director.

Mr. Walker seconded the motion. The motion carried.

The next item on the agenda is other business.

Professor Douglass stated that Judge Kinser assembled a special committee to consider discovery reform. There were 40 members of the committee representing the defense bar; there were commonwealths attorneys, representatives of police agencies, state police, representatives of forensic sciences, appellate and trial judges, and a couple academics.

The committee was to comprehensively review criminal discovery in the Commonwealth and recommend any changes. Doug Ramseur and Bonnie Hoffman as well as Professor Douglass were part of that effort. We presented a lengthy report with a significant number of changes. The most significant changes were to provide for defense discovery of police reports and witness statements.

There was also comprehensive reform in expert witness discovery. All the recommendations were reciprocal and there were some important protective provisions to deal with concerns over the safety or harassment of witnesses or victims.

The committee submitted its report roughly a year ago last December. The court put it out again for comment. Comments were received the first of the year. About two weeks ago the court issued a very brief order simply saying that the court declined to adopt recommendations at this time.

Mr. Johnson said that it goes without saying this is a disappointment.

There was discussion regarding what the next step might be. There is no official action proposed.

Mr. Benjamin said that there are two approaches now in addition to ongoing efforts. What you all did was absolutely the best way to proceed and you should continue in those efforts. There is always the alternative, to have someone introduce a bill for discovery that could have the same components that the committee came up with, but that is a difficult process. What we are left with is training our attorneys both how to investigate or get the information and how to litigate the issues as constitutional issues and how as a matter of strategy to deal with these problems in trial.

For example, if you are in trial and ambushed with a star witness who has devastating testimony, you can move for recess, jury or not. We should train our attorneys to put on the record the fact of the ambush, the materiality of the testimony, and the absolute inopportunity to investigate this witness, the background, their testimony, and what steps the attorney would then take if they had sufficient time.

He went on to say he thinks we confront the additional challenge of there being no discovery in Virginia but it requires training our attorneys what to do when they are suddenly ambushed by the reality of Virginia discovery rules.

There was no further business.

Ms. Grady made a motion to adjourn. Mr. Walker 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