

The Virginia Indigent Defense Commission

Commission Meeting
1604 Santa Rosa Road, Suite 200
Richmond VA 23229
March 24, 2016

Professor John Douglass called the meeting to order at 11:00 am. Other Commission members in attendance were Steve Benjamin, Tom Chaffe, Delegate Chris Collins, Carolyn Grady, Kenneth Griggs, (designee for Karl Hade), Guy Horsley, Kristen Howard, and Kristi Wooten. Members not present were Judge Alan Rosenblatt, Judge Edward Hanson, David Walker, Senator Richard Stuart, and Carmen Williams. Administrative staff in attendance included Executive Director, David Johnson; Deputy Director, Maria Jankowski; and Administrative Assistant, Diane Pearson.

Quorum requirements have been met.

Professor Douglass welcomed Delegate Collins.

Mr. Johnson also welcomed Kenneth Griggs and updated the Commission on Judge Rosenblatt who expects to return for the September Commission meeting.

The first item on the agenda is approval of the agenda.

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

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

Mr. Benjamin made a motion to approve the minutes. Ms. Grady seconded the motion. The motion carried.

Mr. Johnson asked everyone to introduce themselves to Delegate Collins as this is his first meeting.

Mr. Johnson said there are a couple items of recognition in the meeting materials.

The first is from the Dean Baker CIT Coordinator for the Hampton Newport News Community Services Board. The letter recognizes that the Newport News office has consistently gone above and beyond to assist defendants suffering with behavioral health disorders and special challenges. In the last paragraph several attorneys are mentioned as especially gifted.

The second is a letter from a former client of Buddy Ward who is the Public Defender in Halifax. This woman was represented by Mr. Ward in 1999. She called him recently and Mr. Ward remembered everything about her case. In the letter she expressed her appreciation of his help that his belief in her greatly enhanced her life.

The next item on the agenda is the budget update.

Ms. Jankowski said there are two charts. The first chart is for the entire agency and is broken down by specific line items.

The second chart is broken down by service areas; Criminal Indigent Defense Services, (public defender offices), Capital Indigent Defense Services, (capital offices), Legal Defense Regulatory Services, (standards of practice attorney and her assistant), and Administrative Services, (administrative office).

It is the same data but in two different formats. Our budget is ninety some percent salaries and rent.

There are some areas in brackets and make it appear we went over budget but these were taken care of in another line item. We are within budget.

There was discussion regarding the budget and rent.

We have 33 offices and 33 different leases. All of these are negotiated in conjunction with DGS (Department of General Services) who are very involved in the leasing process.

Ms. Jankowski said we have three main committees; policy, personnel, and budget. Each of these committees meets at least once a year. The budget committee typically meets in May to review the budget for the following year. Then the full Commission will vote on the budget in the June meeting. We wait to schedule the budget committee meeting until after the General Assembly. The Budget Committee typically reviews the proposed budget for next year prior to it being presented to the full Commission.

If we have expenditures beyond those previously budgeted and exceeding \$15,000, we ask the full Commission for approval. This year due to timing we would like to ask the full Commission to grant this authority to the Budget Committee.

Ms. Wooten moved to have the Budget Committee authorized to approve proposed year end expenditures prior to the next full Commission meeting. Mr. Benjamin seconded the motion. The motion carried.

Mr. Johnson said in the meeting materials is information regarding the National Association for Public Defenders. It is an organization just for public defender attorneys. They are offering us a group membership that works out to be about \$10 per employee, and includes all employees, office managers, etc. They have a MyGideon website that is an incredible resource; they also offer forty webinars per year, conferences, library of public defense resources, etc.

The policies give Mr. Johnson authority on what memberships we can join. This is not something we routinely do but he believes this is too good of a deal to pass up and will provide a valuable resource.

The next item on the agenda is the APA (Auditor of Public Accounts) audit report.

Mr. Johnson said we are usually audited every three years. This audit was for 2013, 2014, and 2015. We had one auditor on site for less than a month. Our exit interview was last week and was very positive and cordial. There was one area of concern but the issue has already been resolved. Most importantly in all significant ways we are spending money appropriately and no evidence of

anything being misspent. Each member will be getting the report emailed directly to you from the APA.

The next item on the agenda is the training update.

Mr. Johnson said we held our management conference last week. When we started this conference ten years ago it was for the chief public defenders. We realized the supervising attorneys needed to be included so about four years ago we started to include them as well. One of the speakers this year was Karen Michael who gave a great presentation the first day. The next day Jeff Sherr, who is the training director for the Kentucky Department of Public Advocacy, had a training session with all of the public defenders and supervisors.

For a breakout session Mr. Johnson did a presentation on raising the bar.

From Mr. Johnson's perspective he believes the management conference went well.

April 25th is our appellate conference. We put emphasis on our appellate practice four years ago when we hired Catherine Zagurskie who is our senior appellate coordinator. We now have appellate supervisors in every office. This training is the supervisor's conference and is part of the whole emphasis on appellate training. Separately, we partnered with Judge Decker and Justice McCullough and did a training with attorneys from the private bar and we keep repeating it. We have established a good training dynamic with the court.

We have our twice a year boot camp for our new attorneys coming up in May. They spend the majority of a week in intensive training with us.

We have shifted our training focus a little. Jae K. Davenport is now leading our legal training.

We are in the process of interviewing for the Richmond Public Defender position. Susie Hansen was the public defender and retired last month. We had our first round of interviews earlier this week and have two finalists to interview Monday.

Todd Petit our Fairfax public defender just got named to the Fairfax juvenile court bench. We will have that position open July 1. Jim Hingeley our public defender in Charlottesville is retiring the end of summer. For a system that had almost no turnover for a decade with public defenders, they are now retiring or going on the bench.

Ms. Jankowski said one more item is the General Assembly update. All our requests in the decision package to DPB were in the Governor's budget and had no problem in either the House or Senate. There was a one-time request for a phone system; the other piece is the sentencing advocate positions in offices that only had a part time sentencing advocate.

Mr. Johnson added that in some of our offices with our current phone system there is such a volume it is difficult to get through and the system cannot even send calls over to voice mail and folks get a busy signal.

Ms. Jankowski said there was a resolution in the General Assembly to do a study regarding taking the public defenders offices state-wide. It was amended to ask the Crime Commission study it for an appellate office.

Ms. Howard said that the House tabled it in Rules. The procedure at that point would be to send a letter asking the Crime Commission do the study so it is no longer a mandate.

The next item on the agenda is the Policy Committee recommendations.

Ms. Jankowski said we have a statutory mandate to review our policies. The Policy Committee met in February and went through all the staff proposed changes.

In the meeting materials are all of the reviewed, voted on, and recommended policy changes with two exceptions. There were two matters the Policy Committee felt should be decided by the full Commission. One is records retention and the other is our public records policy. The public records policy was deferred to the full Commission to give staff time to work out the language. The committee had no substantive disagreement.

Throughout the policies the Committee removed remedies because there is a specific section on remedies. We also removed examples. Some of the changes are to keep us in line with changes at the state level. For example one material change relates to mileage reimbursement which the state adjusted the distance/rate to 200 miles for full reimbursement. We decided to only increase to 150 miles.

We eliminated the requirement that employees sign a retention agreement and get a scholarship to attend a training that costs more than \$2000.

The two policy issues the Policy Committee wanted the full Commission review are:

Section 2.4 Maintenance of Client Files and Records Retention

Section 11.1 Expectations of Privacy in Communication

We spend about \$15,000-\$20,000 per quarter to store our files with the Library of Virginia and they charge \$6 to destroy one box. We have found there are many vendors that would destroy the files on site for less.

Our record retention policy on misdemeanors is to keep the file for 5 years. The policy is to keep in the office for three years, ship it to the Library of Virginia, and the Library destroys it two years later. We are proposing to take schedule from five years to three years and have them destroyed in the offices.

There was discussion regarding the length of time to keep misdemeanor files.

Ms. Jankowski said we have found a contractor who can cover every office. They are on the state contact, in eVA, and ready to work with us to pick up the misdemeanor boxes and destroy them.

There was discussion regarding the current file retention schedule.

The Commonwealth's Attorney schedule for civil files is they keep for zero years. Case files, criminal, less serious (includes misdemeanors), one year. Case files, most serious (includes felonies), twenty years. Case files, criminal, serious (includes misdemeanors, felonies), ten years.

We are proposing creating a new schedule called less serious felonies with a retention schedule of ten years. This could include felonies reduced to misdemeanors, probation violations and other less serious felonies.

The concern is to keep murders, rapes, robberies, burglaries as current for twenty years.

We are proposing to call non-violent crimes less serious felonies. That would include probation violations.

We will retain misdemeanor files for three years. Retain misdemeanor special handling for ten years. Retain felonies, less serious for five years in the office then stored for another five for ten years total. All of the other felonies we would still keep for twenty years.

Our Case Management System already tracks violent felonies.

In 2015 we did 5,602 violent felonies. That is not charges, it is cases. We had 22,712 non-violent felonies and 6,488 probation violations.

Mr. Johnson said this will eventually allow us those 5,602 violent felony cases would be the only files we keep for twenty years. The others would be ten years. That is why we left that language in there. If we want to keep a file longer we will flag it for special handling.

There was discussion regarding the files and special handling.

Ms. Jankowski said the second item, Section 11.1 used to be titled "Public Records". We decided this should not be in there at all and this really is about privacy and communication. Our files are not public records; they are client files so we removed the entire paragraph. We instead focused on what is really important and that is the expectation of privacy and communication and ensuring that the employees understand their obligation with regard to client confidentiality and protecting client confidentiality. The policy committee has not reviewed this language which is:

"Employees shall have no expectation of privacy while using Commission provided computing resources. All information, including but not limited to email, documents, pictures, multi-media files, or any other data stored on any Commission owned or leased computer system, or designated domain or data storage facility is the property of the Commission. Authorized personnel may obtain access to any file(s) at any time without notice. The Commission reserves the right, with or without cause, to monitor, access and disclose all data created, sent, received, processed or stored on Commission owned or leased computer equipment systems."

"All such communication that is protected by or subject to attorney client privilege, the Rules of Professional Conduct or client confidentiality shall be protected by the employee and the Commission from any and all disclosure without proper client consent."

There was discussion regarding this language.

It was decided to remove the word "such" in the second paragraph.

Members suggested a number of other technical changes:

Section 2.6 Personal Conflicts of Interest

In the last sentence of the first paragraph replace the word "Responsibility" with the word "Conduct"

Section 3.5 Workplace Harassment

Second to the last paragraph last sentence, add the following "State office of Equal Employment Services".

Section 3.9 Attorney Duty to Report Formal Allegations of Ethical Misconduct or Ineffective Assistance of Counsel

Last paragraph should be letter “C”

Section 8.6 Separation Process should be Section 8.5

Paragraph B last sentence add the word “and” and remove “a”

Section 11.2 Access and Data Security

Change “pubic” to “public”

Mr. Griggs made a motion for the Commission to approve the changes in the policies made by the Policy Committee with the additional alterations as suggested by the Commission. Ms. Howard seconded the motion. The motion carried.

Ms. Wooten said this is her last meeting. She has served on the Commission for two terms. She said it has been a pleasure working with everyone.

There was no further business.

Ms. Grady made a motion to adjourn. Mr. Horsley seconded the motion. The motion carried.

The meeting adjourned at 12:20pm.

Respectfully Submitted:

Approved By:

Diane Z. Pearson, Administrative Assistant

David J. Johnson, Executive Director