

The Virginia Indigent Defense Commission
Commission Meeting
1604 Santa Rosa Road, Suite 109
Richmond VA 23229
March 17, 2011

Chairman Judge Alan Rosenblatt (ret.) called the meeting to order at 11:10 am. Other Commission members in attendance were Maria Jankowski, Kristen Howard, Steven Benjamin, Kent Smith, David Lett, Carmen Williams, Kristi Wooten, Karl Hade, John Douglass, 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 order of business is to approve the proposed agenda.

Judge Hanson moved to approve the meeting agenda. Mr. Smith seconded the motion. The motion carried.

The next item on the agenda is to approve the previous meeting minutes.

Judge Hanson made a motion to waive the reading of and approve the December 2, 2010 meeting minutes. Mr. Lett seconded the motion. The motion carried.

There were no objections to move the September 22, 2011 Commission meeting to Wednesday, September 21st. The annual conference is scheduled Thursday and Friday, September 22-23. The location for the conference is to be determined.

The next item on the agenda is the budget update.

Ms. Geiger reported that there were no additional judicial reversions for this year. We had a carry forward balance at the end of last year of \$594,340. We did not know we were getting that money back because we had not heard anything. The prior three years they just took it. Therefore, we did not budget or plan for it. We will have to reappropriate the carry forward back to ourselves and then unallot half of it back to the General Assembly. The amount to be unallotted is \$297,101.

Something in play this year is the ongoing funding of VRS and its viability. It was proposed in the Governor's budget that the current employees would have to start paying their retirement and he would offset some of that with a three percent raise. The General Assembly instead approved the following: for employees hired on or before July 10, 2010 there will be a five percent raise. At the same time they will be required to provide five percent toward their retirement. In effect, there is no raise, it is just enough to cover the five percent toward their retirement.

The amount that was appropriated for the entire state for the five percent raise is \$15 million which clearly is not going to cover a five percent raise for every state employee. They are offsetting the amount of the raises to the amount that is coming back in the five percent VRS contribution. There should be some fringe and tax ramifications and that is how the \$15 million is going to be used.

We have not received any instructions from the Department of Accounts (DOA) or Department of Planning and Budget (DPB) on how they are going to calculate amounts that may be coming to us based on the changes.

We went through our current budget and how they are dividing and showing the costs of retirement for employees hired in the last year. It looks like it is pretty close to even. There should not be much coming to us to cover those differences but that is actually how it will happen.

Moving entry level salaries is not an option because there will not be additional funds. Employees might see a slight difference in their take home pay in that there may be more taxes taken out.

Our entry level salaries have not been adjusted for nearly four years.

There was discussion regarding entry level salaries which is a statewide concern.

Ms. Geiger continued with the quarterly report and projections.

The way we populated the field office budgets was to use what they spent the previous year to populate their budgets for this fiscal year. This report is through the end of February. The administrative office and the regulatory office are coming in under budget. The capital and public defender offices are over budget right now. This is due to increased personnel costs which means we filled more positions in the field offices and kept them filled this fiscal year than the year before. In the administrative and regulatory areas we had more vacancies.

We pulled out the judicial reversions from our initial appropriation, we subtracted what we were proposing for our budget which was pretty much level funding so that we would have an unallocated amount of about \$484,000. We projected the cost of the appellate office through December which was \$37,199 that left us with \$447,000 as an unallocated amount.

When we were working on budgets for FY11 and projecting for FY12 we were concerned about additional reductions. We wanted to keep our ninety day hiring delay; we kept positions frozen. The last reversion caused additional positions to be frozen. Last year we moved the annual conference from March to September so we did not have an annual conference in FY11. We closed the appellate office for fear we would not be able to

afford all the costs associated with it, and we have not filled the appellate coordinator position.

As of the end of February we had \$14,615,469, remove the judicial reversion amount of \$944,000 and that leaves \$13,671,469. The average available funds, if you divide by the remaining four months is \$3.4 million per month. Our average monthly expenditures are approximately \$3.3 million. We are under spending right now compared to what is available to us monthly. That leaves a positive balance each month of about \$63,790. If that is projected over four months it is about \$255,000.

If the projected balance of unallocated funds was \$484,000 and we subtract the cost for the appellate office through December that will leave our unallocated balance at \$433,000.

In July we pay three payrolls and the following June we pay one. By not paying that extra payroll in June there is a savings of \$1.5 million or approximately the amount of one payroll.

If you add all of the remaining amounts we are projecting \$2.1 million at the end of the fiscal year. We add in the expected \$297,000 from the General Assembly and that takes us to \$2.4 million.

At the end of every year we pay insurance premiums, unemployment compensation, workers compensation, all of our year end balances, we prepay our Bar dues and last year we also prepaid three months of rent. All of the prepayments for FY2012 and year end payments for FY2011 will total \$857,000. Subtracted from our projected balance this leaves approximately \$1.63 million at the end of the fiscal year.

That assumes we will spend the same amount we have been spending. This does not include several of our ambitious IT projects that have not yet hit the pay outs. We have about \$470,000 in estimated costs that will be paid out in the next several months for those IT projects.

As of January 28, we eliminated the ninety day hiring delay because we believe we can carry the costs through the end of the year based on these projections.

Everyone in our capital offices, with the exception of the office manager, has a laptop. These laptops have not been replaced in four years. We would like to replace all of them and move the old laptops to use in our COOP program (Continuity of Operations Plan). In the event of a disaster we can take those to an office in need. We are required to have a disaster recovery plan in place and this is part of that. We also use laptops for hands-on trainings programs.

The cost of the laptops will be between \$40,000 and \$45,000 because the laptops must be re-imaged before we send them to the capital offices.

Judge Hanson made a motion to approve the purchase of new laptops for the capital defender offices, reusing the current laptops for the COOP and training labs. Mr. Lett seconded the motion. The motion carried.

We also need to make some physical security improvements to several of our field offices. The Information Technology Security Standard requires us to protect our data and our employees. The entrance and lobby of our Roanoke office has a completely open layout. We would like to put up a wall with a security door. In Petersburg we would like to put up a more secure door and Plexiglas on the reception window areas, which are currently open. Hampton needs a door in the reception area.

Judge Hanson moved to direct the administrative staff to review the field offices for needed security improvements and when (i) necessary (ii) funds allow and (iii) the work can be completed in this fiscal year, take steps to make those necessary security improvements. Mr. Lett seconded the motion. The motion carried.

Judge Hanson moved to direct the administrative staff to pursue any tenant improvements necessary in conjunction with the renewal of leases for the Fairfax, Winchester, and Roanoke public defender offices. Mr. Lett seconded the motion. The motion carried.

The next item on the agenda is the training update.

Mr. Johnson said we are conducting a major appellate training March 21st and 22nd. This is part of our effort to adjust to no longer having a dedicated appellate section. Each of our offices has a designated appellate supervisor and will be attending this training. In the smaller offices the public defender is the appellate supervisor. The training impresses the importance of this responsibility. A lot of the training is being done with folks here but we also have speakers from outside the agency.

We will probably have about thirty new lawyers this year for our boot camp program. We take them through a week of preparing for trial and the last day we will tell them they lost and for the following three months they will be going through the appellate process. Hopefully there will be a default. After three months we will bring them back for oral argument. This is also training for the appellate supervisors.

In May Carlos Hopkins will include a legislative update for our trial practice series. May 23rd and 24th is our chief public defender management training. This is an ongoing training to help them with their management responsibilities and training on the HR portion of their job.

In June we will have a training for the capital investigator/mitigation specialists. We will then be preparing for our trial skills boot camp. Unfortunately we will not be able to use the law school because of renovations but will find a location here in Richmond.

Our Annual Public Defender Conference, as we discussed, has been moved to September. The September chief public defender management training is tentative and may be moved to January. Then the appellate practice boot camp is in October.

There was discussion about the monthly trial practice series. These are one hour sessions that are recorded and sent to our offices.

Joe Sadighian has review the Standards of Appellate Practice for us and made a few changes. These changes are not substantive.

Mr. Benjamin made motion to approve the revisions to the Appellate Standards of Practice (complying with Rule 5 and 5A). Judge Hanson seconded the motion. The motion carried.

Mr. Johnson reported that the John R. Justice loan forgiveness program was approved by congress and been partially funded. The Department of Criminal Justice Services (DCJS) is administering this program. They are making their first awards. Twenty public defender attorneys and twenty prosecutors are going to receive \$5,000 loan forgiveness this year and it is renewable for three years. The formula is based on a ratio of debt to income. When this program is fully funded it will allow \$10,000 a year for six years.

The next item on the agenda is the IT update.

Ms. Geiger reported that the IT auditor was extremely complimentary of our IT Security Program.

“Over the past 12 months the Commission has implemented an impressive IT Security Program and in many aspects its programs and practices exceed requirements. Especially noteworthy is the attention and support provided to the program by the Commission’s Executive Director, the Deputy Director, and the Information Systems Director.”

Mr. Johnson said that because Mr. Ernouf had everything well documented and organized, the auditor was able to complete the audit in 56 hours less than he anticipated and saved the agency fifteen percent. When all of these security requirements were put into place it was almost hopeless that we would ever be able to come into compliance but we have made steady progress and we are now really close.

Ms. Geiger said that if we had a process documented the auditor made sure that we followed it. Our IT security program is in compliance with the Commonwealth’s standards. There were some things we need to do to strengthen that and he made recommendations as to a higher best practices standard and we will be looking at those as well.

The first IT project that needs to be completed in order for the others to work is moving to broadband access to increase our internet speed. We have now identified multiple providers under the state contract in nearly all of our localities. What this provides is that when the first internet connection goes down, we will have back up that can be used to get the office up and running again quickly. We can do this for an amount just slightly less than what we are spending right now.

Email is ready to go as soon as we get the broadband in place.

For document storage and case management, Virginia.gov is the contractor. In order to have accessibility we will need a universal access port. Employees will go to a website, it will verify you are who you say you are and you are accessing it from a computer the system recognizes. This will give you access to whatever systems you have been authorized to use.

We are waiting for Virginia.gov to give us some quotes before we get to that June 30th finish line.

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, the Deputy Director, and the Human Resources 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.

Ms. Jankowski seconded the motion. The motion carried.

The Commission immediately reconvened in open session. A roll-call vote will be taken and each Commission member will be asked to 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.

Judge Hanson moved that the Commission reallocate a Senior Assistant Public Defender position previously frozen to meet the judicial reversions required by the budget reductions in part to the Staunton Public Defender office and in part to the Fredericksburg Public Defender office as indicated by staff during the closed session.

Mr. Benjamin seconded the motion. The motion carried.

Ms. Geiger said that the legislative proposal that the Commission requested has been approved by the House and Senate and is awaiting the Governor's approval. One of the keys was that the legislation was drafted very narrowly and the Attorney General and the Commonwealth Attorneys did not oppose it. Our patron was Delegate Charniele Herring from Alexandria. There is a final copy of the bill in the meeting materials.

House Bill 2277 will not immediately impact the current Commission members. However, for those Commissions that meet more than three times a year, and the members have been appointed after June 30, 2011, reimbursement will be required to be done via direct deposit.

The next item on the agenda is informational items.

Normally we propose policy updates in November; however, there have been several items that have arisen that we believe will require attention prior to that time. We will propose mid year policy updates at the June Commission meeting. We do not currently have a telework policy. There is more of a demand or a request for agencies to have a policy whether or not the agency allows it.

There was legislation passed during the General Assembly session that is requiring the Secretary of Technology in VITA to look at agencies teleworking policies and what they include and the cost effectiveness. Since we do not currently have a policy we thought it would be worthwhile to get one so it could be looked at if needed.

There are some IT security tweaks for Chapter 11, which is our Information Technology chapter. We have a couple of clarifications on inclement weather, a couple of clerical corrections for the appellate references that are still in there. There is an adjustment for part time employees on disability.

We will bring the policy and procedure committee together prior to the June Commission meeting.

Also in June, we will need to re-elect the chairman, vice chairman, and committee members. We will have an executive committee meeting prior to the June commission meeting.

Mr. Johnson said that we have an annual APA audit. We have responded to them every year and have made progress every year. We were notified this year that we are no longer on the annual audit list. We have been moved to the every two year audit list.

Ms. Geiger said that a policy the commission adopted was a background check for employees and was based on IT security. We have implemented it. We were on hold because the state police did not have enough personnel to add us. We have been given

the green light to implement it so we have started the background checks as part of our hiring policy.

We are not checking lawyers licensed within the last year. We utilize the good standing status with the Virginia Bar based on the character and fitness investigation done for new attorneys. The State Bar now has a website where you can check to see if an attorney is in good standing.

The turnover is still pretty low; we will have about thirty attorneys scheduled to attend boot camp this year.

We are recruiting and hoping to hire a budget analyst to fill the vacancy in the administrative office. We didn't get a great response the first time we interviewed for the position.

Several years ago we had the Department of Planning and Budget (DPB) help us figure out how to better serve the field offices. We had accountants in our fiscal department but no budget or analytical, projection type positions and their recommendation was to bring someone in at the top that would have those qualifications.

DPB came back again to do more of a micro look at those accounting processes, and we are still light on the budget side. Janice Johnson is going to be the Director of Budget and Finance, and we are slowly moving more duties to her. So our need now is for a Budget Analyst.

We have advertised and had some response.

There was no further business.

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

The meeting adjourned at 1:05 pm.

Respectfully Submitted:

Approved By:

Diane Z. Pearson, Administrative Assistant

David J. Johnson, Executive Director