

**The Virginia Indigent Defense Commission
Commission Meeting
1604 Santa Rosa Road
Richmond, Virginia, 23229
June 12, 2008**

Professor Robert Shepherd called the meeting to order at 11:25 am and welcomed Senator John Edwards. Other Commission members in attendance were Judge Edward Hanson, Chris Anderson, David Walker, Carmen Williams, James Towey, and Karl Hade. Administrative staff included Executive Director, David Johnson; Deputy Director, DJ Geiger, Bonnie Farrish, and Diane Pearson.

Quorum requirements have been met.

The first item on the agenda is to approve the agenda for today's meeting.

Mr. Towey made a motion to approve the agenda.

Mr. Walker seconded the motion.

The motion carried.

The next item is to approve the minutes from the April 7, 2008 meeting.

Senator Edwards made a motion to approve the minutes.

Mr. Walker seconded the motion.

The motion carried.

The next item on the agenda is the report of the Executive Committee. There are two items to report on, the first is the nomination of a Chair and Vice Chair.

Judge Hanson reported that the Executive Committee recommend to the Commission that the current Chair and Vice Chair continue in office for the next year. Professor Robert Shepherd is Chair and Judge Alan Rosenblatt is Vice Chair.

This is a committee report and does not require a second.

The recommendation passed.

Judge Hanson reported that the Executive Committee propose these recommendations for committee assignments; Delegate Kilgore to be moved to the Budget Committee, Carmen Williams will move from the Personnel Committee to the Executive Committee, Senator Edwards will be added to Personnel and Training, James Towey to be moved to Policy and Procedures. Delegate Kilgore will replace Senator Quayle on the Budget Committee for July 1, 2008 through June 30, 2009.

This is a committee report and does not require a second.

The recommendation passed.

Mr. Johnson said that it has been a year since the Commission approved the new appellate policies and procedures. If you recall there was a problem within our offices and in general with appellate defaults. We put together a work group of public defenders and others and came up with appellate policies and procedures that were voted on by the Commission and were made mandatory in the offices. I am very pleased to report that the number of appellate defaults has dramatically decreased.

We would like to get the committee together, look at the few defaults we've had in the last year, analyze how they happened, and see if we need to make anymore changes to the appellate policies and procedures.

The next meeting scheduled for that workgroup is July 8th. If we have any amendments we will present them to the Commission at the next meeting.

Ms. Geiger reported that we have had a few audits this year. The APA (Auditor of Public Accounts) did their usual annual audit. The final report has not been issued, we did, however, get a draft report of what they are proposing. Last year's report recommended that we take a look at our administrative structure and ensure that it is what we needed to serve our field offices. We went to the Department of Planning and Budget and had them do a best management assessment for us and we got the recommendations back.

The APA's draft report recognizes the Commission taking the steps to do that and was very pleased that we had taken their advice on their previous recommendation. There were two notes that they made and will probably end up in a management point. Several agencies had the same issue with I-9 forms. There were some changes made to the forms and they found errors in most agencies.

We hired a part time person to go through every I-9 form that we have in the system. He has made all of the corrections that need to be made and is finishing up his work.

The Department of Accounts has put out a Power Point presentation for the proper way to fill these forms out. We've taken what they have and also the Federal instruction booklet, which was forty plus pages and made our own power point that we will use for training for the central office and for any office manager that does the I-9 form HR component in the field offices. We will be providing that training.

The I-9 form is a component for Homeland Security and requires that before hiring someone you establish that they are legally here and entitled to hold a job. There will be that finding when the final report comes out but we have already taken corrective action.

The second item they noted was the VITA standards which are very cumbersome. We've been working toward compliance and have had some funding issues as far as our IT is concerned to try to get the components that we need to meet those standards. It is a repeat finding but we knew it was going to happen. We had taken some steps to comply with that. Some of the funding that you approved for new servers, new switches, and new computers will assist Mr. Ernouf and his group in meeting those IT standards. There are some other plans in place but that will show up as a deficiency for this year.

The second audit was done by the Department of Accounts and that's the statutorily required decentralization of financial records audit. They look at your state travel regulations, expenditures, petty cash, charge cards, moving and relocation and the agency travel processing. The final report that they issued found that there was no need for a corrective action plan. There were a few things they suggested we look at which we have done but there won't be any major findings from that report.

Mr. Johnson reported his findings on developing a forensic science unit which was brought up at the last Commission meeting. He said he has been talking with people in other states that have similar positions. The idea is to create a forensic specialist position. This would be a person or persons who would help the lawyers in the field keep up with the advances in science which is a constant struggle. He explained that he spoke with about four offices in different states, they all have these divisions but they are all set up completely differently, different funding, different models. I got suggestions on what we might be able to do with just one position. They have given me people to contact in other states. At this point I am very encouraged; I think with one person we can make a significant impact using parts of each of their models; a lot would be a training component. One of the things we will be working out is how to fund the position. I think I will be in a better position to be more specific with this at the next meeting.

Mr. Johnson added that he polled the Public Defenders and got responses from twenty-two of them and all twenty-two were very enthusiastic about the prospect of having a forensic science unit.

There was discussion about the position and that the person would be an attorney with some scientific background, also getting the right person and setting this up correctly. This person will use the proper forms to demonstrate to the court that the expert was necessary, to review the cases, etc.

Mr. Johnson said that he is working on exactly what the model is and will present that to the Commission at the September meeting. He spoke with Patrick Kent of the Maryland Public Defender system who spent most of his first two years educating on discovery and helping to litigate discovery. At this point they have gone to a system where they had very little, to where the forensic department just gives them everything plus their bench notes. They did broad training for the entire system but designated about a dozen lawyers in the system to really get intensive training to be the regional experts.

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 §2.2-37(12) (F) of the code of Virginia, the Commission also requests the attendance of the Executive Director, David Johnson and the Deputy Executive Director, DJ Geiger because it is reasonable to believe that their presence will aid the Commission in its consideration of the matters which are the subjects of the closed session.

Mr. Walker seconded the motion.

The motion carried.

The meeting reconvened at 12:50pm.

Judge Hanson moved for a roll call vote asking that each member certify that to the best of his or her knowledge, during the 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 were identified in the motion by which the closed session was convened.

All members so certified.

Mr. Johnson reported that Carlos Hopkins, our Training Director will be leaving June 27, 2008 and will be in Cuba for a year. Contingency plans have been made in his absence for the coming year. We have an aggressive training schedule and we are making great use of this training facility and the grant we received for the recording equipment. All of the public defender offices have DVD's to do certification trainings for new lawyers; we also have partnerships with several bar associations for some of the trainings they hold.

One thing we started this year is the lunch time lecture series which has been very popular. We get a speaker in here for an hour lecture and record it on DVD. We have also started trial advocacy workshops. We have had two so far and those have gone quite well.

One of our goals had been to increase training, to make more training available not just to the public defenders but for lawyers doing court appointed work. All of the trainings we do are at no cost to the participants.

The Commission complimented Mr. Hopkins on an incredible job that he has done in the time he has been here and wished him well in the coming year.

The next item on the agenda is the report of the Budget Committee.

Mr. Johnson explained that during the Commission meeting in April, we presented a proposed spending plan to try to meet some needs with unexpended funds between now and the end of the year. This means we try to get things delivered, invoiced, and paid for before the end of the fiscal year. The biggest piece has been that all of the computers in our system were off warranty or about to come off warranty and have started the process of replacing the desktops. That process will be completed by June 27th.

At this point we will make an estimate of what our unexpended cash will be at the end of the year. The estimated cash balance at the end of the year will be around \$1.9 million. Recently we had \$7 million and have steadily worked it down. The reason for unexpended funds is our high turnover. Last year the General Assembly gave us the money to give significant raises and we have seen about a twenty percent decrease in our turnover. Moving into the future this is going to continue to be an amount that gets reduced every year. We try not to spend recklessly and try to spend on actual needs. We're going to try to budget a little more aggressively the projected turnover and vacancy to continue reducing the amount.

Mr. Johnson went on to the proposed budget for FY09. He said that at the suggestion of Walt Kucharski years ago, because of our high turnover he suggested that we anticipate it and budget our personnel at more than 100% because we are always going to have vacant positions and that would let us spend the

money during the year. We budgeted at 103% which is extremely conservative. We still have a balance of unexpended monies. What we are proposing this year, which we still think is conservative is budgeting at 105% and spending the money during the year where it needs to be spent. We think that will reduce the unspent balance at the end of the year and help us meet our needs. One of the things that would fund is the HR manager position we talked about. This also allows us to increase entry level salaries two percent in November. One of the challenges we have always had was that although employees got raises, entry levels stayed stagnant eventually resulting in twenty seven percent turnover. Now that we have corrected the salaries we have to keep moving entry levels. We don't have the funding to do that fully, so part of that is going to be by budgeting at more than 100%.

There was discussion about the starting salary for a public defender, which is \$48,000 and a little less than two years ago it was \$38,000. The impact of the salary adjustments has been immediate. We compared the period from last year to this year, we had 514 positions last year and our turnover rate was 22.1% and now with more positions, 540, we are down to 17.7%. Ideally we would like to get down to 10 percent. We now have 331 full time attorneys. About 90% of our budget goes to personnel and rent.

The College Cost Reduction Act is a program in which an attorney coming out of law school who works as a public defender can pay off his/her college loans at a reduced rate; if that person stays for ten years, the loan will be forgiven.

He continued with the budget. Mr. Johnson explained that there now is a way to monitor where our turnover and vacancy savings are on a monthly basis so he will be able to report to the Commission each quarter as to where we stand.

The Budget Committee reviewed the proposed budget at their recent meeting.

Judge Hanson commended Ms. Farrish on her hard work and enormous efforts to help the Commission get up to speed because of the personnel decision that was made.

Judge Hanson moved that the recommendations of the Budget Committee be accepted.

This is a committee report so no second is necessary.

There was discussion regarding the differences in the budgets for custodial services and postage in the field offices. One difference is that some offices have custodial services included in their rent while others need to hire that service out on their own. Ms. Farrish explained that the postage budget for each office includes the rental of a postage meter.

Mr. Johnson said that one of the reasons we hired someone with budget analyst experience is specifically for the reasons discussed.

The motion carried with Mr. Walker abstaining.

The next item on the agenda is language in the Appropriations Act and employee evaluations.

Mr. Johnson reported that this requires the Commission to certify that all employees who receive the two percent raise in November are performing as contributors which is the equivalent of our “meets expectations”. This changes our time frame for doing annual evaluations and certainly changes the importance of them. As a side note the same would apply to me, so the Commission will need to evaluate me at the appropriate time. The Public Defenders will be coming to Richmond for a meeting on July 9th and we will be doing a training that day and a significant portion is going to be on their evaluations.

Judge Hanson made a motion to recognize Mr. Johnson as a contributor and meets expectations and to delegate the responsibility of certification to the Executive Director and staff.

Mr. Walker seconded the motion.

The motion carried.

The next item on the agenda is the amendment to §5.1 of the Commission’s policies and procedures.

Ms. Geiger said that we needed to tweak the language a little. This is where we say “contributor” is the same as our “meets expectations”. If an employee has been here less than six months, the supervisor can, in lieu of a full evaluation, do a summary. It just tightens up the language of the policy in order to meet the Appropriations Act requirements.

Judge Hanson made a motion to amend our policy to meet the Appropriations Act requirements.

Mr. Walker seconded the motion.

The motion carried.

The next item on the agenda is the deficit certification.

Mr. Johnson said that as a Commission we need to certify that we have not accrued a deficit, and Mr. Johnson must certify that he has provided the Commission with this notice by copy of the appropriate section of the Appropriations Act which we are sending out. The appropriate form will be filled out by Mr. Johnson which he will return to the Director of the Department of Planning and Budget prior to the deadline on July 18, 2008.

The next item on the agenda is the Department of Planning and Budget’s Best Practices Report update.

Mr. Johnson reported that the Department of Planning and Budget gave us what we think is a really good Best Management Practices report which we screened for the Commission in April. The Commission instructed Mr. Johnson to prioritize and implement the recommendations within budgetary constraints. Mr. Johnson pointed out that the check marks on the status chart indicate that we have already implemented or are well on the way to implementing. He mentioned that twelve of the twenty three recommendations have either been completed or are in the process of being completed. Of the eleven that are left, nine will be responsibilities of the Human Resources Manager. Once we get that person on board we will actually be in a very good position to come into complete compliance with the report.

Ms. Geiger reported that we have entered into a contract with a consultant to do a caseload study and hoping to use that as a tool for determining how many personnel we need, if we need to shift resources, and getting an idea of what is a good caseload for an attorney to carry.

There was discussion regarding the difference in caseloads depending on the sizes of the jurisdictions or how a judge handles cases, also some offices do a lot more jury trials than others.

Ms. Geiger went on to say that the study is broken down into six phases. We've completed the first phase and are currently finishing the second phase. We did a time study where all of our employees kept time sheets on how they spent their day for a period of four weeks and that data will get analyzed. The first two phases were what the situation is now; the next phase is what ideally would be the best system. Then they will figure out from all of the data they have compiled, what some of the hurdles might be for some of the offices that others don't have. What is the range of cases an office should be able to carry.

We have an advisory steering committee that is made up of some Commission Members, some Public Defenders, Commonwealth Attorneys, and some people from the Attorney General's Office. We tried to get as many people as possible from the system in on this study to get their feedback. There has been an ongoing data issue. They have a range of data and classes of data that they want to use and our case management system is not categorized that way. We thought we had what they needed and then they asked for prior years which created a whole other set of challenges. We are trying to get them exactly what they need so the data is not questionable. We may need to delay that a little but we are moving along.

The next item on the agenda is ARMICS.

We finished stage one last year around the end of September and submitted it. We have not gotten any feedback. The Stage II deadline is June 30, 2008 and because of the personnel change we made, we have asked for an extension. In order to get Stage II completed, we hired a part time retired Department of Accounts person, Millie Sauer, who was recommended by the Director of the Department of Accounts, Ron Necessary. She has provided us with our draft for stage two; we are missing one piece of data that needs to be verified. Once we have that we will review her drafts and make sure everything is finalized and submit stage two. We will be able to meet that June 30th deadline.

Stage three is developing a corrective action plan for anything that was found in stage one and stage two. Ms. Sauer provided us a skeleton of what she thinks the corrective action plan should include. We got an extension of a month to do stage three and we will be finished for this year. This is an ongoing certification so the process will need to be done every year but will be a lot simpler in the following years because we already completed the hardest part of it.

The next item on the agenda is VITA, the APA security standards which is part of the materials distributed today. As part of the compliance and trying to meet all of the requirements between the VITA standard and the APA's best management rules, we have set up IT meetings that are held weekly with all the directors. Mr. Ernouf has gone through all the security standards and established what we need to do. This gives you an idea of the issues we have begun to address and need to be addressed in order to meet the VITA standards.

Mr. Johnson added that the VITA compliance is a difficult and painful process that is taking a huge amount of man hours but when we finally get to the end of it we will be in a much better place. The strain on our small IT Department has been really rough but we are making good progress.

Mr. Ernouf will be filing for some exemptions and extensions along with a calendar of when we think we can meet certain requirements. A lot of agencies are finding they are in need of an extension for some part of it.

Mr. Johnson mentioned that Charles Payne has returned after 12 months in Iraq. Mr. Payne is part of the IT staff.

The next item on the agenda is the strategic planning update. Ms. Geiger said that there have been no new postings on the Department of Planning and Budget website for deadlines or any of their guidelines for this year. We are going to use what we started with last year but we are waiting for some instruction from them and will then set up a steering committee meeting to review what was done last year, what was approved and any new requirements this year. A big part of the strategic plan is that it has other components. This is how we found out that we had to report to the Department of Aging on the aging population's effect on the agency. This is how we found out we needed to have a SWOT analysis which is strengths, weaknesses, opportunities, and threats. This is how we found out we needed to have the continuity of operations plan. We are waiting to see what the requirements are for this year.

Under the Strategic Plan tab in your binder is the business continuity of operations (COOP) plan. If there is a disaster of some sort; how do you continue the operation of the office, or for us, 32 offices? Each office was required to go through and determine, if in the event of an emergency, and depending on the length of the emergency, what do you do to get up and operating again. Rebecca Norris, who is our part-time lease administrator worked with Ed Ernouf and all our offices, first to come up with a template and second, an individual plan for each office. There is some information that is specific to each office and there is general information. We have a start-up kit that has been developed so if an office is down we will be able to take computers to them, telephones, paper, printers, whatever they need to get up and running. Each office had to identify an alternate site along with develop a team that could be contacted. Everyone had to provide home and cell phone numbers and email addresses. There is a team in the administrative office that can be contacted in the event of an emergency. A lot of work and organization went into the process of setting this up and we now have pretty much every office set up and covered. We actually had to use it once because the Suffolk office lost power, phones, etc. We were able to look at the plan and contact the office manager via cell phone.

This is part of the VITA standards but also a part of the strategic plan so as we do these different requirements from different agencies it's coming together and it is going to make us more efficient and it will assist us going forward.

A question was asked about data storage and backup. The data is stored redundantly. The local office stores it there and then it is sent here every evening. Our data is also sent to our VITA storage cabinet which has another system. It is actually contained in three places.

Mr. Walker complimented everyone who was responsible for getting this set up as it is going to be very useful in the future.

The next item is the policies and procedures.

Ms. Geiger reported that we have started on our annual updating of the policies and procedures. We are reviewing current policies and will present any amendments to the Commission at the November meeting. She said she will come up with a proposed draft for the workgroup and the policies committee and hopefully have it sometime in September for the committee to meet and propose any changes.

The next meeting is scheduled for September 18, 2008 at 11:00am here in the administrative office.

Professor Shepherd, on behalf of the Commission, wished Carlos Hopkins well in his tour of duty in Cuba for the next year. He complimented Mr. Hopkins on a great job as Director of Training.

There was no further business.

Mr. Anderson moved to adjourn the meeting.

Mr. Walker seconded the motion.

The motion carried.

The meeting adjourned at 2:00 pm

Respectfully Submitted:

Approved By:

Diane Z. Pearson, Administrative Assistant

David J. Johnson, Executive Director