

**The Virginia Indigent Defense Commission
Policy and Procedure Committee Meeting
1604 Santa Rosa Road
Richmond, Virginia 23229
November 13, 2007**

The meeting was called to order at 11:15 am by Committee Chair, David Walker. Other committee members in attendance were, David Lett, Karl Hade, and Carmen Williams. With four committee members in attendance, quorum requirements have been met. Administrative staff included, Diane Pearson, Executive Director, David Johnson; and Deputy Director, DJ Geiger.

Mr. Hade made a motion to approve the November 6, 2006 meeting minutes. Mr. Lett seconded the motion. The motion carried.

Ms. Geiger reported that she used the existing policy and procedure manual and made the suggested changes to it.

Chapter 1 is mostly grammar, language tweaking, and typos that are being corrected, along with some technical adjustments.

Chapter 2, Section 2.0 Professional Conduct

We are adding the code of ethics which is an ARMICS requirement.

There was discussion regarding the signature requirements of each employee after having read the policy and procedure manual, to acknowledge having read it. There is an existing acknowledgement sheet which can be adjusted to be more specific.

Section 2.2 Case Assignment and Client Contact

In paragraph C.2, we added "or conduct an initial interview by telephone" and change to five days the amount of time attorneys have to conduct the initial interview when the client is not detained locally. Mr. Walker suggested that language be added stating that if it is not practicable to meet in person, the initial interview could be conducted over the telephone.

Ms. Geiger said the language would be adjusted.

The last paragraph change "standards 2.3" to 2.2.

Section 2.4, Professional Organizations

Ms. Geiger said that we are trying to focus more on where the dues are going and the types of dues we are paying for our Public Defenders and their assistants. We want it to be focused more on the criminal defense oriented bars or local bars. There are four organizations that the Commission pays the dues for the Chief Public Defenders, of which some participate and some do not know they are members. We added language so that the Public Defender actually has to make a request so we know they considered whether they want to be members of those associations.

Mr. Lett asked if we were withholding taxes on the dues.

There was discussion regarding the dues being a business expense, therefore the dues would not be taxed and the dues are a requirement of the job.

Section 2.5, Personal Conflicts of Interest

Proposed paragraph C would read as follows: Employees are discouraged from establishing relationships with judges, commonwealth attorneys, police officers, probation officers, or sheriff's deputies in the same jurisdiction served by the office when such relationships create a conflict of interest or the appearance thereof.

There was discussion about interoffice relationships and reporting this information to the Public Defender, which more than likely will not happen. The language in proposed paragraph C is basically saying that we have warned employees of the possible problems.

Chapter 3, Section 3.6, Alcohol and Controlled Substance Policy

The way it was written was somewhat clumsy, where we were saying that alcohol was actually illegal. We have split out alcohol. Paragraph A says you cannot perform your duties under the effects of alcohol and paragraph B talks about the illegal controlled substances. We are suggesting that paragraph F be stricken because it is covered in Section 3.7, the reporting section.

Section 3.7, Employee Duty to Report Criminal Charges and Convictions

The suggestion was that we remove A. iii. because any alcohol or beverage control law that you think you are going to need to hear about would be a class one or class two misdemeanor or felony so it is a little redundant.

Section 3.8, Attorney Duty to Report Formal Allegations of Ethical Misconduct or Ineffective Assistance of Counsel

We added "and ethical standards".

Section 3.9, Weapons Policy

Strike the language "The prohibitions in this section apply regardless of whether the employee has a concealed weapons permit or is otherwise authorized by law to possess, discharge, or use any such device or substance." Also, remove "knife" from paragraph A.

There was discussion regarding the definition of a weapon and whether knives that are used as utensils should be included or if pepper spray is a weapon. Legal or not, guns are not allowed on the job. So we prohibit firearms and any other unlawful weapon.

Section 3.10, Outside Employment

Because it gave the appearance that Assistant Public Defenders might have had enough time to do some private practice on the side, this caused some concerns from one of the delegates. The new language clarifies that they are not to be doing criminal private practice in the jurisdiction where they work and also not at the same time that they should be doing Commission work. They must take leave if they will be doing that.

We added that not only is it unacceptable to use Commission resources, you cannot use Commission time.

Section 3.11, Nepotism

Ms. Geiger reported that she has spoken with Guy Horsley in the Attorney General's office. His opinion is that as written, it is okay, it does not contradict the Attorney General's opinion and he thinks that what we have is acceptable. There are a few changes that might help.

In the third paragraph "In all cases, no employee shall be in a supervisory capacity with another employee (we would insert 'in the same office') with whom there is a relationship." In the last paragraph we would insert the same language "in the same office" "An employee and a member of the employee's immediate family may only be employed in the same office of the Commission so long as the member

does not exercise any control over the employment conditions...” and after Conflict of Interests Act, strike the rest of that sentence because it is not needed. This was one of Mr. Horsley’s suggestions.

Section 4.1, Inclement Weather and Emergency Closure Policy

Instead of the Public Defender determining when an office would be closed, it would be based on whether the courts in that jurisdiction have closed. If all of the courts have closed, the Public Defender’s office is closed. If some of the courts have closed, it would be left to the Public Defender’s discretion.

Section 5.3, Acting Status and Pay

Because of the sensitivity of the word “bonus” we’ve changed that to “temporary salary increase”.

Section 5.6, Direct Deposit and Payline

With the change from doing payroll in-house to having Payroll Services Bureau do it, we are also going to switch to Payline, which is an on line payroll service. Everyone will use Payline to check their W-2’s, direct deposit amounts, leave balances, etc. We won’t receive the pay stub anymore. This change is effective January 1, 2008.

Add paragraph B and strike paragraphs C and D.

Section 5.8, Holiday Pay

Ms. Geiger said that a couple of changes were made so that it reads more clearly. Under Religious Holidays, the word “legitimate” was added.

Section 5.9, Attendance/Leave Records

This is just incorporating the language that we will be using Payroll Services Bureau.

There is a transitional meeting set for November 20th with Payroll Services to get some of the logistics of how it’s going to happen and what we need to do. There will be additional information going out to the field offices once we have all of that figured out.

Section 6.1, Traditional Sick Leave

The changes in Paragraphs A and C were just clarification and drawn from the Executive Branch Department of Human Resource Management manual. Item G – this is a policy issue for the Commission. The executive branch has a leave sharing program. This program is only for the employees who are not in the short term disability program, who were hired and on the payroll prior to 1999 and were earning leave under the traditional sick leave program. This applies only to those who did not transfer into the new short term disability program.

The state allows for leave sharing programs which allow employees to donate earned annual leave into a leave share pool and allows people to request leave for FMLA and other kinds of sick leave when they have exhausted all of their leave.

It is not a requirement to provide leave share programs but if you do provide leave share programs, you can provide in any form you want. Under the executive branch, you can request leave from the leave share pool for family members as defined under FMLA or for your own injury or illness.

We have some concerns about abuse. If someone worked the system right, he could be out for several months a year, every year under the leave share.

The question is, do you want to have a leave share program and if so, in what form do you want it? Do you want it only to apply to individuals or to their family members and do you want to limit the number of hours they can use permanently or on a temporary basis.

There was discussion about the program and the problems it would entail. We are an independent agency and as such, we do not have to follow the leave share at all, and if we do, it can be in any form we want. The discussion continued with the fact that this applies to very few employees. Anytime you treat people differently there is potential for problems. It is a small group of people and they would have to exhaust all of their other leave first. We have also narrowed it to an employee's own personal illness; it's not for everyone in their family. One consensus is this could work, with parameters.

Mr. Johnson suggested that there are three options. The first is to do something that is similar to what is in there now, the other is to do nothing, or do a program that includes everyone, hopefully with a limit, a time limitation.

Mr. Walker added that there will always be people who are going to be unhappy, who will have a problem. If you had a big Human Resource Department, it would be one thing, however, we do not.

He went on to say that his suggestion would be to email the leave share information to the Commission Members, asking them to read it and state that this is what we are recommending be taken out.

Mr. Hade made a motion to email the leave share information to Commission Members and this committee recommends striking leave share from the employee manual. Ms. Williams seconded the motion. The motion carried.

It was decided to strike the above motion.

Mr. Hade made a motion to recommend to the Full Commission that leave sharing be stricken from the policy manual in its present form and if there is going to be a leave share policy, and it included all employees, there will be limitations on it. Ms. Williams seconded the motion. The motion carried.

Section 6.2, Family Medical Leave Act (FMLA)
Just clarification.

Section 6.3, Short Term and Long Term Disability
Additional clarification from our HR and Fiscal people who thought it would be helpful to have the additional language from the DHRM policy.

Section 6.9, Compensatory Leave
We further defined compensatory leave, to make it clearer.

Section 6.11, Community Service Leave
iv. We took out "community service" in the beginning of the sentence.
vii. This was something that leave could not be granted for so we moved it into a new paragraph.

Section 6.12, Educational Leave
This section has been amended so that an employee would need to describe how the degree, certificate, or course would substantially benefit the Commission. The concern is that when you are hired, you theoretically are hired with all the qualifications that you need and any ongoing training or updates are going to be provided through Commission sponsored training or Commission paid training.

There was discussion regarding the need for an employee to take classes or earn a degree that would only benefit them to get a job different from the one they already have, and is it necessary to have an educational leave policy.

Mr. Lett made a motion to recommend striking the educational leave section. Mr. Hade seconded the motion. The motion carried.

Section 6.15, Hardship Leave

There was discussion regarding the need for this section.

Mr. Hade made a motion to recommend striking Section 6.15. Mr. Lett seconded the motion. The motion carried.

Chapter 9, Grievance Procedures

Ms. Geiger reported that she spoke with Mr. Horsley regarding the third resolution step and in his opinion; we do not need the whole third resolution step at this point.

The decision was made to strike the third resolution step.

Section 9.6, Time Limitations

Ms. Geiger said that basically if the deadlines are not met by the complainant they get five days to correct it or suffer dismissal.

She went on to say that she will rework and make changes per Mr. Horsley's suggestions.

Section 10.0, Travel Reimbursement

In paragraph B, the second paragraph we changed just a little because case related expenses are not only related to travel. We changed the word "travel" to "incurring the case-related expenses."

Paragraph E, 1, a, this is just to help the administrative office help identify when you're staying in a conference hotel.

Mr. Johnson added that the state rate for reimbursement has changed; the state hotel rate went up. The conference rate often does not cover the total charge of the hotel room. Instances like this, the rate can be pre-approved.

Section 10.2, Conference Registration Fees

Paragraph A, the second paragraph we changed that it must be submitted to the Executive Director with an explanation of why it is late.

Paragraph B, we re-titled this to "Retention Agreement Required".

Section 10.3, Non-Conference and Non-CLE Education

We had a request for educational assistance which is only for non-agency initiated courses.

There was discussion about educational courses.

Mr. Lett made a motion to eliminate the non-conference and non-CLE education section. Ms. Williams seconded the motion. The motion carried.

Chapter 11 – Computer Use Policy

Ms. Geiger reported that there will be some procedural changes but not to the policy. Mr. Ernouf is working on the VITA guidelines and the APA standards. There are some ARMICS requirements that feed into the IT section as well.

Mr. Walker suggested having a specific checklist and have it initialed. He would like to take out “Public Defender shall advise” throughout the policies. He would like to have the specific section written out and to make sure everyone gets the same language and everyone reads it and everyone says they understand it.

Mr. Johnson advised that all of this information is in the new Public Defender Manual. There are checklists for new employees, new attorneys, etc... part of the review process is to go over the employee manual with each new employee.

There was discussion about relieving the Public Defenders of the duty to advise each of their employees when it should be the responsibility of each individual to read and understand the policy manual themselves.

Ms. Geiger agreed to take out all of the “Public Defender shall advise” phrases.

Chapter 15, Media Policy

This is a new chapter. This just requires the attorneys to follow the professional rules of conduct when they deal with the media. It also says that the Executive Director, or in his absence, the Deputy Director, will serve as the official spokesperson for the Commission but only with specific reference to positions that the Commission has taken.

There is a requirement of the attorneys to report to the Public Defender what they have spoken to the media about.

There was discussion to remove paragraph B. Everyone agreed with this.

Mr. Lett made a motion to recommend to the Full Commission the changes to the policy and procedure manual as discussed, with the exception of the piece that Ms. Geiger will change and email to the Commission members. Ms. Williams seconded the motion. The motion carried.

There was no further business.

Mr. Lett made a motion to adjourn. Ms. Williams seconded the motion. The motion carried.

The meeting adjourned at 1:25pm

Respectively Submitted:

Approved By:

Diane Z. Pearson, Administrative Assistant

David J. Johnson, Executive Director