

**The Virginia Indigent Defense Commission
Policy and Procedure Committee Meeting
1604 Santa Rosa Road, Suite 109
Richmond, Virginia 23229
November 19, 2009**

Committee Chair, David Walker called the meeting to order at 11:10 am. Other committee members in attendance were Carmen Williams, Dr. Renee Fleming Mills, designee for Karl Hade, and Kristen Howard. With four committee members in attendance, quorum requirements have been met. Administrative staff included, Amy Williams, Diane Pearson, Executive Director, David Johnson; and Deputy Director, DJ Geiger.

Mr. Walker noted that some section numbers from the previous policy and procedure manual have changed.

The first item on the agenda was to approve the meeting minutes from the November 13, 2007 meeting.

Ms. Howard made a motion to approve the November 13, 2007 meeting minutes. Ms. Carmen Williams seconded the motion. The motion carried.

The next item on the agenda is to review the policy changes.

Page 2, Chapter 1, OVERVIEW:

No substantive changes, just restructuring for easier readability.

Page 6, Chapter 2, PROFESSIONALISM Paragraph E:

There is an ongoing concern with investigators adequately identifying themselves or failing to do so. The current language reads: No employee shall intentionally mislead any witness or potential witness as to the employee's identity or role in a case.

Two other options were provided for consideration.

The first option reads: No employee shall fail to properly identify themselves to any witness or potential witness if asked.

The second option reads: No employee shall fail to identify his or her role in a case to any witness or potential witness if asked.

There was discussion regarding these options.

Ms. Howard moved to recommend Option 1, which reads: No employee will fail to properly identify themselves to any witness or potential witness if asked. Ms. Carmen Williams seconded the motion. The motion carried.

Page 10, Section 2.3, Case Assignment and Client Contact:

- iii. Change the first sentence to read: If the client is incarcerated, whether in the local jail or a facility outside the location of the public defender office, the attorney for that client shall contact that client within two business days of any trial or hearing in the client's case in circuit court...

iv. The attorney shall also meet with the client again on the day of trial of a felony in circuit court when the plea is not guilty.....

Ms. Carmen Williams moved to accept the proposed amendments. Ms. Howard seconded the motion. The motion carried.

Page 13, Section 2.5, Professional Organizations:

In Paragraphs C and D, we've changed the language from authorizing to reimbursement the payment of fees.

Page 15, Chapter 3, Section 3.0 Employment at Will:

There were no substantive changes; we just reorganized this so it reads more clearly. The section clarifies the at-will employment language includes that an employee may be terminated at any time for any reason that is not in violation of the law.

Page 16, Section 3.1, Hiring:

This is a new policy which is a hiring procedure so the Public Defenders will now have a blueprint of the proper way to recruit and select candidates for all positions in their offices.

Ms. Amy Williams added that the first part provides definitions within the hiring policy. We moved to a recruitment management system (RMS). We have defined the active applicant period, the application closing date, competencies and under filling, which is a process we use when we are filling a position at a lower level than is actually allocated. We also defined job announcement, equal employment opportunity, and the procedure for posting the actual positions.

The public defender needs to request that a vacant position be filled through the use of a request to fill vacant position form and on that form they indicate the length of time they want the position to be posted. Five consecutive work days is the minimum requirement for the position to be posted.

The second section on page 17 outlines how multiple vacancies can be filled from one recruitment. If they post a position, for instance, an APD I position and a month later another APD I position becomes vacant, they can go back into that existing recruitment and fill that position. This has to be done within ninety calendar days of the closing date of the original ad.

We require each applicant to submit a state application which has not been the process in the past. They also may submit résumés and cover letters. The Public Defenders are in control of determining their appropriate recruitment source. They will notify human resources when they want their job postings placed beyond the RMS, in other sources such as Lawyers Weekly.

One of the major changes is a structured screening process. We are requiring the public defenders to identify screening criteria for their positions at the outset of each recruitment. All applicants must be screened against the same criteria for consistency purposes, then the public defender or the executive director will determine from that screening which applicants should receive an interview. No applicant will be selected for a position without first being interviewed. This does not apply to promotions.

There was discussion regarding hiring criteria.

Page 18, Interviewing Applicants:

All interviews must be completed before the final selection and job offer are made. The Public Defender or Executive Director may conduct the interviews or select a panel to assist with the interview process. Renumber paragraph 5 to 4.

All interview panel members have the responsibility to hold all information confidential.

Selecting an Applicant:

Reference check requirements have been added in an effort to improve the actual process of checking references.

Background Investigation:

A background investigation should be completed for all new hires.

Employment Offers:

Employment offers will be extended in accordance with the background investigation policy and we will make offers of employment contingent upon completion of a successful background check.

There was discussion about employees moving from one public defender office to another and communication between the two offices. Within our system there needs to be free exchange of information because we do not want to pass a bad employee from one office to another.

Ms. Howard made a motion regarding reference checks that once a selection has been made, the Public Defender or the Executive Director shall attempt to check references with the current supervisor and at least one former supervisor. In the event the applicant has ever worked in the public defender system, that Public Defender will be contacted. Also a review of any performance evaluations that are available with Human Resources should be conducted. Ms. Carmen Williams seconded the motion. The motion carried.

In Item #3 Employment Offers:

Change as follows: Employment offers should be extended in accordance with the Background Investigation policy contained in Section 3.2.

Ms. Geiger said the reason the background investigation is being proposed is the Information Technology Security Standard. There is a requirement that anyone who has access to a sensitive or confidential system has to have a background check. Our case management system has been determined to be sensitive and pretty much everyone in the system has access to it. Our financial systems are also sensitive.

Ms. Geiger suggested that in place of the terms "candidate" "applicant" and "potential candidate", we use "selected applicant". This only applies to the person who you want to hire, not all applicants.

Mr. Johnson suggested in our ads we include that a record check will be performed.

Ms. Amy Williams said that a standard background investigation would be processed through the state police and in order to do the investigation we need a completed state application and two finger print checks as well as computer checks with VCIN and NCIC. The Public Defenders will submit the fingerprint checks to Human Resources, who will then send it to the state police.

We will change the language to consistently use "selected applicant" which is an applicant that is provisionally selected for employment with the VIDC. Human Resources will coordinate the process. The Public Defender, Appellate Defender, or Capital Defender will request the background investigations and

ultimately make the decision to hire the applicant. The requirement for the standard background investigation is required for each applicant that is being considered for employment and is not required for promotions or transfers within the agency. Backgrounds for new hires who have received their law license within the last year may be waived and the Executive Director may waive the required standard background investigation if one has been completed within the past ninety days. There is a records retention requirement for keeping the background investigations on file.

In requesting a background investigation after it has been determined that a viable candidate for employment has been selected but before offering the position to the individual, the Public Defender will complete and forward a request for the background investigation along with the completed state application and two sets of fingerprint cards to Human Resources. The candidates are required to complete the fingerprint cards, which can be obtained at the local jail or state police office. If an applicant determines they do not want to be employed they need to let us know so we can notify the state police so the background investigation can be discontinued.

Human Resources will review the entire state application for accuracy, and because the applicant needs to take the fingerprint cards to the state police, we need to review the fingerprint cards, which are very detailed. If anything is missing they will send them back to us. We will also forward to the state police a release of information. There is another release of information that is separate from the application that will have to be completed. Human Resources will also receive the completed background investigations from the state police. We will then forward that completed background investigation to the Public Defender or hiring authority.

Under number 2, delete e. and change f. to e.

Reports of Investigation:

We will compile the background investigation with the fingerprints, VCIN and the completed criminal record report. The state police will send back a report. We will indicate any noted discrepancies from the state application. For confidentiality we will scan and then email the background investigation report to the Public Defender. The language in item 2 will be changed to add the word "scan".

In some instances the state police will realize that the background investigation will need to be discontinued or there is not enough information. At that point we would communicate that with the Public Defender. Once the Public Defender has the completed background report he/she will be responsible for reviewing it and determining the candidate's suitability for continued employment, because in some cases they have already been hired, contingent upon receipt of the report. We listed some suitability factors that should be considered. We will retain the completed background report for one year and then destroy it. The Public Defender will also need to certify that their background reports have been destroyed because the Human Resources copy of the background report will be the official copy.

Page 22, Item 4 add the language "If any" to a. b. c. d.

There was discussion regarding the time frame of a background investigation and the security of scanning documents and sending via email.

Offers of Employment:

In the fourth line "the candidate is notified in the offer letter that continued employment is within the discretion of the Public Defender and contingent upon receipt."

I-9 forms are assurance that new employees are eligible to work.

Page 35, Section 4.1 Inclement Weather and Emergency Closure Policy:

The current policy is that for scheduled leave taken on a day that a weather emergency causes the closure of an office, annual leave is not charged because even if you were not on annual leave you would not be able to come to work. Research into the DHRM policies on the state level for the Executive Branch indicates that any pre-approved leave is charged to that authorized closing except in instances if an employee is on short term disability.

Page 46, Section 5.8 Holiday Pay:

When salaried employees are required to work on a holiday, they will be paid eight hours for the holiday or the equivalent of their FTE percentage and in addition, will be credited with compensatory leave for the hours actually worked. For non-exempt employees who work on a holiday, the number of hours worked during the pay week will be computed to determine whether overtime rate is applicable.

Page 53, Section 6:

This is the traditional version of sick leave where an employee can accumulate hours instead of being in the short term disability pool. If there is a brief disability or a death of an immediate family member the maximum amount of sick leave an employee may use is 48 hours per leave year. We just want to clarify that this is based on leave year.

Page 57, Section 6.4 Donor Leave:

Eligible employees may use up to thirty workdays of their available leave balance in any calendar year.

Page 69, Chapter 7, Benefits:

We removed the vendor names and listed other third party vendors so we do not need to change the policy every time there is a vendor change.

Page 78, Chapter 9, Grievance Procedure:

This is all the same language but has been reformatted. We stress the fact that employees are employees at-will and the grievance procedure is available to all employees except the Appellate Defenders, Capital Defenders, Public Defenders, Executive, and Deputy Director.

Page 79, Section 9.1, Confidentiality:

The only change is the last sentence that requires the HR manager to retain all grievance related materials in confidential files that are separate from their personnel files.

Page 80, Section 9.2, Grievability of Complaints:

This has as been reformatted for clarity.

Page 81, Section 9.3, Complaint Content and Deadline Compliance:

We have provided a clearer format. We listed where the grievance initiation form is available to employees.

Page 82, Section 9.4, Determination of Grievability:

Under the old policy, the Deputy Director determined grievability; this proposes that the HR Manager determines whether something is grievable. The determination made by the HR Manager will be final. If the Manager says it is grievable then it goes on to the next level, if it is not grievable then it is done. If the complaint is against the HR Manager then the Deputy Director will do the grievability determination.

Page 83, Section 9.5, Management Review:

In the event the grievance is determined grievable, and if the complaint is within a public defender office, it would mean someone is grieving against an Office Manager, Supervisor, or Deputy, this is

handled by the Public Defender. The HR Manager sends the determination of grievability along with a grievance initiation form to the Public Defender and the Public Defender has to investigate and meet with all involved to try and solve the problem if they can, and then make a finding. They cannot make a finding that exceeds their authority. Generally the remedy will fall under Chapter Eight which is discipline; no money could be awarded as that is beyond their scope. Their decision is final, there is no appeal. All of the documentation is forwarded to the HR Manager.

The complaints that are against the Public Defender will be sent to the HR Manager but the grievance is actually pursued through the Deputy Director. The Deputy would do an investigation, attempt to resolve it and within ten days of conducting the investigation provide a written recommendation to the Executive Director. The recommendation would outline the nature of the grievance, the findings, or the proposed findings and then any action or solution that is recommended. Within ten days of receipt of the Deputy's recommendation, the Executive Director would issue a final determination with his findings and relief. His determination would be final and a copy would go to the employee and the Public Defender and the official records would be forwarded to the HR Manager to keep.

If the complaint is against the Executive Director all documents would be forwarded to the Deputy Director who would contact the Chair of the Commission. The Chair would then direct the Deputy to refer it to the Personnel Committee. The Deputy would investigate it and attempt to resolve it and then within ten days at the end of the investigation provide findings to the Personnel Committee. The Personnel Committee would then meet and decide how to go forward. They would have a copy of the referral from the Chairman, a copy of the written recommendation, and determine how to proceed.

Change the language in C. to read:

The last sentence: Upon receipt of the notice the Deputy Executive Director shall:

1. Notify the Chairman of the Commission, who shall direct the Deputy Director to refer the complaint to the Personnel Committee of the Commission;
2. May direct Deputy Director or such other person or persons as deemed appropriate..... (the end of the last sentence) if any, and remedial action to be taken, or notify the Personnel Committee of a personal conflict of interest.

Page 85, Section 9.6 is substantively the same.

Page 86, Section 9.7, Procedural Compliance:

The HR Manager is required to address any questions of compliance with the grievance procedure. In the event there is an investigation or additional information is needed for the determination of grievability then the HR Manager has the ability to determine if that person is in compliance. One of the requirements is that the grievant has to provide documents within certain deadlines and if they do not, the grievance can be dismissed.

Page 99, Chapter 10, Section 10.11, Mileage:

We clarified that interns and volunteers are also covered by the policy. We also clarified what is considered to be a short term trip vehicle, which are rental cars.

We have clarified what needs to be done to receive the full mileage reimbursement, to include:

1. Determine that the state vehicle is unavailable
2. Determine that the rental car cost is not more cost effective or a rental car is not available to them
3. Meet car pool requirements, if applicable.

The theory is that it is more effective to rent a car, and if that is available that is the option to take.

Ms. Carmen Williams made a motion to accept the changes and additions that were made. Ms. Howard seconded the motion. The motion carried.

Ms. Geiger said that a report of the committee and a recommendation to make all changes that we discussed today would be sent to the Commission members for review and additional comments.

The Policies and Procedures manual is sent electronically to all employees and is also posted on the Knowledge Center.

Mr. Johnson added that when the Public Defenders are here in January for training, a significant portion of the training will be going over the new policy changes. The Office Managers will also be here in January, and we will go over this with them as well.

There was no further business.

Dr. Mills made a motion to adjourn. Ms. Howard seconded the motion. The motion carried.

The meeting adjourned at 12:40 pm.

Respectively Submitted:

Approved By:

Diane Z. Pearson, Administrative Assistant

David J. Johnson, Executive Director