

The Virginia Indigent Defense Commission
Commission Meeting
1604 Santa Rosa Road, Suite 109
Richmond VA 23229
December 2, 2010

Chairman Judge Alan Rosenblatt (ret.) called the meeting to order at 11:15 am. Other Commission members present were Kristen Howard, Steven Benjamin, John Douglass, David Lett, Maria Jankowski, Eddie Macon (designee for Karl Hade), and Judge Edward Hanson. Administrative staff included Executive Director, David Johnson; Deputy Director, DJ Geiger; General Accounting Manager, Janice Johnson; and Administrative Assistant, Diane Pearson.

Quorum requirements have been met.

The first order of business is to approve the proposed agenda.

Ms. Jankowski moved to approve the meeting agenda. Mr. Lett seconded the motion. The motion carried.

The next item on the agenda is to approve the September 23, 2010 meeting minutes.

Ms. Howard made a motion to waive the reading of and approve the September 23, 2010 meeting minutes. Mr. Douglass seconded the motion. The motion carried.

The next order of business is setting meeting dates for next year:

1. Thursday, March 17
2. Thursday, June 9
3. Thursday, September 22
4. Thursday, December 8

The next item on the agenda is the budget update.

Ms. Geiger reported that expenditures are being tracked monthly and right now we have four months that we are tracking. October is a month that has average expected expenditures. Last year we prepaid three months of our rent in order to head off some shortages or concerns for funds this year. October represents the first month that we resume the rent payments.

We highlighted the major areas of expenditures like personnel, contractual, etc. We track the expenditures in the major object codes that the Department of Planning and Budget (DPB) and the Department of Accounts (DOA) require. There are about 10-20 sub-object codes used for a majority of our expenditures.

The current balance of cash is \$26,604,331. We have expended 35.4 percent of our budgeted funds so far for the year and have eight months remaining this fiscal year. That averages to be about \$3.3 million per month for expenditures. Our October expenditures are slightly higher than that. If you extend that over the eight months we are projecting a shortfall of about \$½ million. We designated unallocated funds in the amount of \$484,000. So far, out of that for the ongoing costs of shutting down the Appellate Office, we have spent about \$21,600. The Appellate budget was about \$600,000. Everything has been shut down except the rent. We anticipate the rent will cost an additional \$18,400. That leaves us with about \$444,000 and subtracting that from the projected shortfall leaves us short just under \$100,000.

We paid three payrolls in July, but only one in June. We estimated the average payroll at about \$1.5 million so we are anticipating a savings of \$1.5 million in the last month. That allows us to cover the \$93,000 that we are projecting to be short.

One of our landlords has notified us that he will not renew our lease for the SW Capital office and our Newport News office is on a ninety day notice. They do not have enough space. We anticipate two office moves before the end of the fiscal year. We have done estimates for each of the offices. A small office generally costs about \$22,800. The larger office and Newport News falls into a large office category, generally cost about \$41,000.

Using those estimates, which we deduct from our payroll savings and that leaves us with about \$1.3 million.

We have been watching Senate Finance and House Appropriations and found that FY2011 will be hard but FY2012 is probably going to be worse. They left some holes in the budget, things they did not fund which will need to be corrected this year. The federal stimulus has gone away and while there will be growth it will not be at the rate that they think they need it.

We would like to do what we started last year, looking two years out and project where we think we will be in FY2012.

Every year we try to prepay and head off costs for the following year. Traditionally we prepay state bar dues for our attorneys, some postage, copier maintenance fees, and if we get the statements in time, the small purchase charge cards. Based on the past of couple years of costs, the prepayment is about \$264,000. We have taken the leases that we have in place and the escalations that each of them has and projected the rent for the first three months of FY2012 to equal just under \$600,000.

If we pre-pay those items in FY11 to cover costs in FY12 it would leave us with an estimated projected positive balance of \$488,000 to cover whatever else might come our way before the end of the fiscal year.

Mr. Johnson added that the Danville Public Defender office has the number one case load in the state. This office never complains and there is unbelievable morale among

the staff. He visited the office and found that the building is very old; it has an elevator that is hand cranked by a man who doubles as the maintenance man. The carpeting is at least twenty five years old and needs to be replaced. The furniture is also old and there is no fresh water. They will be getting new carpet and the Appellate office furniture. We need to get a waiver from the state for a water cooler.

Ms. Geiger said that if all of our projections run true, we have some room. However, we also have several IT projects that were approved by the Commission this year, that we want to finish before the end of the fiscal year.

HR compared the turnover and vacancy of the first four months of last fiscal year with the same months this fiscal year and we are running at a lower rate. Last year at this time we had twenty seven positions turn over and this year we have had nineteen. We generally have a bit of a spike in January. We will continue to track that as well as the expenditures.

These are the best numbers that we have and the projection that we have. While it looks like we are going to have a shortage, with that extra pay period not being paid in June it will allow us to have a little bit of a contingency fund.

The annual leave payout last year was about \$179,000. This included layoffs and people leaving that had accumulated time. This is a cost that previously we did not track but we want to keep an eye on it because it is a liability.

We have filled only one of the two appellate positions. We are keeping these separate.

The \$2.3 million for rent is an increase of \$47,000 that shows what our requirements are under the leases for FY2012. If we pre-paid the three months in FY2011 it would drop down to almost \$1.8 million.

All of the other items are basically what we spent last year with the exception of transfers. Our unemployment compensation jumped fairly significantly last year. That is the majority of the amounts for transfer payments the remainder is insurance premiums about \$60,000 a year. That appears to be tracking the same as last year based on our first payments for the year.

The continuous charges are premiums. We took a fairly large hit in our workers compensation insurance. It went from \$12,000 to \$90,000. There is a lag in the workers compensation premium and apparently we had several claims in FY07-08 that are showing now in our premiums.

We added those anticipated expenditures to the tally leaving a balance, depending on whether or not we pre-pay three months of rent of \$185,000 or \$779,000.

We are assuming the judicial reversions will continue at the level they are now. If you subtract those out it leaves us with a deficit. The turnover and vacancy savings are not

shown in there. Last year we had about \$1 million which would give us a little bit of play in the FY2012 budget. Without the pre-pays it makes it a little rougher.

Under the judicial reversion funds are the positions we have held vacant. The total for positions held open since FY09 is \$455,481. We added additional positions for FY11-12. The savings generated from the positions is about \$800,000. We also cut travel, training, subscriptions, we did the ninety day hiring delay, and there is now a thirty day requirement to submit travel vouchers or there is no reimbursement. We have done all these extras to get to the \$144,000.

Paving the judicial reversions has come at a cost of frozen positions. We think we are okay with the numbers as projected but at some point we are concerned about the quality of the representation at the levels of funding we have maintained for a couple years. This is showing only one administrative office position in the frozen positions; however, we have not filled positions in the administrative office. We eliminated a part-time fiscal technician position. We have had an accountant position frozen for several years and the director level position has not been filled. We are hoping Janice Johnson will be moving into that position in a couple months, but then her position will be vacant. We eliminated the part time accountant position that Bonnie Farrish held. The standards of practice attorney position is currently vacant. We have not filled these and that is generating some of the turnover and vacancy. This is at a cost of some of the employees putting in extra hours or taking on extra tasks.

We think we have a good handle on what our funds are and what our projections are and think we are in a pretty good position but any of these vacancies that are filled will reduce that. We are mindful in planning for next year.

The Governor's budget will be announced December 17th and at this point we have not heard anything. We do not know what to expect, we have not been asked for two, four, or six percent in cuts. We also have not been given any assurance that we won't have any cuts.

If we are required to have a cut we will need to get the Budget Committee together to look at any proposals to meet that cut.

Mr. Johnson said that we would ask the Commission to empower the Budget Committee to make decisions that might need to be made prior to the next meeting. This is so it will not be necessary to pull a full Commission meeting together.

Judge Hanson moved to empower the Budget Committee to act instead of the full Commission regarding any necessary amendments to the budget. Mr. Benjamin seconded the motion. The motion carried.

The next item on the agenda is the policy and procedure update.

Ms. Geiger reported that the changes were sent to Mr. Walker who is the chair of the Policy and Procedure Committee, he approved the changes.

The only changes made were in Chapter 10, reimbursement to employees, generally for travel.

Section 10.8 Lodging

We initially had listed a website where employees could get current hotels that offer the state rate. DGS kept moving the website so we will add it to the Knowledge Center. One change is that we increased the distance for an additional overnight stay from 200 to 250 miles.

Section 10.11 Mileage

In the first paragraph we changed "Director" to "Department"

The next change is in iii. Paragraph 1, change "and" to "or".

We are trying to avoid the \$.50 per mile reimbursement and with carpooling it effectively cuts it in half.

Generally these changes go into effect February 1st of the following year.

Mr. Benjamin moved to accept the policy and procedure changes as proposed. Judge Hanson seconded the motion. The motion carried.

The next item on the agenda is the training update.

Mr. Johnson said that we have dates for the proposed training events along with the continuation of the certification training courses that we sponsor every month. We have partnerships with Roanoke and Alexandria. We recently did another live training to create an updated version of the DVD's.

Each month we have trial practice series courses scheduled. We get practitioners to come in and speak on certain topics. The sessions are recorded on DVD. These DVD's are then sent to the field offices and bar associations with whom we have partnerships.

We are proposing to move the annual conference from March to the fall. One practical reason for this is the signing of contracts prior to knowing what the General Assembly is going to do. It is a very cost effective way to get training for our people but it still is a lot of money.

The appellate training is going to be a one time, two day training for the appellate designated supervisors in each office.

The boot camp next July will not be held at UR because of the remodeling. The new attorneys spend a week learning trial skills and it culminates in a mock jury trial. This

time at the end we will say they lost and they will need to note their appeal. They will then have three or four months to go through the process of what they would do. It will get into PDCIS, filing notices, and requesting transcripts. We will give them the opportunity to default and if they do they will have mock sanctions. They will write the petitions. We will bring them back for training on what they have written and have them do a mock oral argument.

By moving the annual conference to the fall we think we can piggy back this on the end of the conference for a couple days that will save money on travel. It might turn out that the fall is a better time to have the conference moving into the future. It makes financial sense to move the conference into the next budget year.

Mr. Benjamin made a suggestion for the boot camp. Incorporate into the program several issues that should be raised, pretrial. For example, a Miranda issue. Give them a transcript of interrogation that includes a Miranda problem to see if they detect it and to see if they properly object and preserve so if they do not, after they have lost, see if they identify that it was an appellate issue and realize what they needed to have done.

He volunteered to be included in the planning and to help.

There was discussion regarding the trial practice training and other trainings offered. All are on the VIDC website. Some of these trainings are also listed on the VACDL list serve.

The next item on the agenda is the IT update.

Ms. Geiger said the Auditor of Public Accounts does a report on agency IT security. We did very well. We hit all of the markers they expected us to hit so far. We have done some training for our employees through VITA. We have submitted all of our corrective action plans in a timely manner.

We are required to audit our IT systems that are sensitive or confidential. The auditor (Matt Teasdale) who works for another state agency is doing this on a part time basis for us and is hoping to give us his final update this month. We are hoping to get a corrective action list which will include everything he finds that we need to update. Some of these items are more integral than others and some are suggestions that are not necessarily problems but things he thinks we can do as a best practice response.

There is a list of items that need to be done every year so we can schedule them more efficiently and not completely exhaust our IT department. He has made some field office visits and has submitted seven requests for information. He has been very complimentary of how quickly our IT department has responded to those requests and how well documented the information was that they provided. He thinks he will finish his report about thirty hours under what he estimated, which saves us a little money.

The audit is across the agency. There will be a training piece for us. This has been very valuable to us. Matt has been very responsive and concise with his time and his findings.

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 and the Deputy 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.

All members so certified.

Mr. Johnson reported that the John R. Justice Prosecutor and Defender Loan Forgiveness Act has been enacted and funded by Congress. DCJS is the agency that is administering it. The first year will mean that nineteen of our assistant public defenders and nineteen assistant commonwealth attorneys will get \$5000 paid toward their student loans and is renewable for three years. If they stay for three years they will receive \$15,000.

The program would allow, if the funding gets to that point, for attorneys to receive up to \$10,000 a year for six years of employment. That could mean up to \$60,000 off of their student loans. The deadline for applications is January 30, 2011. We do not have any determination as to who gets it. DCJS has guidelines based on need and debt. They take your adjusted gross income relative to your qualified debt.

The next item on the agenda is the informational update.

Mr. Johnson said that he visited about twenty field offices. He commented on several offices and conditions in some. He will visit several more next year. He covered the annual performance evaluations with the public defenders.

We have been impressing upon the public defenders that we want to raise the bar on representation, case by case. This has to be driven by the public defenders. It is great to lead by example but the missing piece for some of them is to also actively manage, teach, be in court observing, and supervise.

Pete Legler who has been the Virginia Beach public defender for 37 years does not resist change. He is the appellate coordinator for his office and takes a very rational approach.

He takes the transcripts and uses them as teaching tools. To do this he needed to free up his own time. Many of the public defenders are reluctant to give up their case loads.

Our appellate coordinator, Joe Sadighian has been on the road meeting with support staff in the field offices. They see him as a resource and so far this is going well.

Human Resources is now putting out a quarterly newsletter.

There was discussion about the capital defender offices. The four offices are doing well. Doug Ramseur who is the capital defender in Tidewater has taken the lead for training in the offices. The capital defenders are pooling their collective knowledge and meeting regularly. The central capital office has not gotten any new cases this year. They are not charging capital murder in the central region. Mr. Johnson was not sure why this is happening. There has not been a capital case that has gone to a jury in three years.

Mr. Johnson feels the capital offices have had a tremendous impact.

There was discussion about the commission opening the capital offices and Senator Stolle being instrumental in getting the job done.

The next item on the agenda is the legislative update.

Mr. Benjamin said that several decisions by the Court of Appeals have gutted the relief that we had obtained legislatively for appeals that are defaulted because of attorney error, He has asked the Commission to look at it and determine if we should make a legislative request. The memo that has been supplied notes that a case is pending before the Virginia Supreme Court which may remedy the unfortunate result of the Appellate Court. The memo also suggests that we not seek legislation while a judicial fix is pending because of a hesitancy of the General Assembly to act when the Judicial Branch may correct the problem. However, the next opinion date is January 9, 2011. The case has already been argued within the court and they may deliver an opinion on or around that date. If the opinion does not resolve the problem, he does not want another year to pass before legislation is introduced which then again would not be effective for another six months. We would be looking at an eighteen month potential delay if the problem is not resolved.

Mr. Benjamin moved that the agency request, by the pre-filing date, legislation designed to make whatever amendments necessary to preserve the original intent of the appropriate section of the bill.

We do not need to draft the proposed legislation; we just need to make the request of legislative services by that date as he understands the protocol there. It could be a complete fix. In making the request we should assume that there is no pending court decision and get a bill in that does what needs to be done under the current existing law. Then in January when we see what the Virginia Supreme Court has done, the bill can be withdrawn or amended but at least it will be a bill.

The reason for his motion is so there will be a bill that can be withdrawn, amended, or enacted.

Judge Hanson seconded the motion. The motion carried. Mr. Macon abstained. There was discussion regarding pre-filing legislation. The deadline for that is Monday, December 6th at 5:00 pm. After that date it would have to be a legislative member request. Ms. Geiger can request it. We could put it in as a pre-file. A pre-file bill can be filed either by 10:00 am the first day of the General Assembly session and then it does not count toward the limited bills. It can also be introduced before the 21st before the session starts and then it would count toward the limited number of bills. We would need to explain that to the patron at the outset so they would understand that this is one of the counted or limit bills.

Ms. Geiger will look for a patron who is on the Courts committee.

Mr. Benjamin made a motion to authorize the Executive committee to make the determination to proceed with pre-filing. Judge Hanson seconded the motion. The motion carried. Mr. Macon abstained.

Ms. Howard announced that the DNA notification subcommittee that the Crime Commission has been assisting in for the Forensics Science Board will be doing a training for volunteers who will assist with that effort to be held here December 15th at 12:30.

Mr. Benjamin announced that April 29th is the Chief Justices Advanced Indigent Defense Training Seminar. One of the speakers is Brian Stevenson.

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