

The Virginia Indigent Defense Commission
Commission Meeting
1604 Santa Rosa Road, Suite 239
Richmond VA 23229
December 8, 2011

Judge Alan Rosenblatt (ret.) called the meeting to order at 11:10am. Other Commission members present were Steve Benjamin, John Douglass, Karl Hade, Maria Jankowski, Stewart Petoe, (designee for Delegate Rob Bell), David Lett, Kent Smith, David Walker, Carmen Williams, and Judge 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 agenda.

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

The next order of business is the approval of the September 21, 2011 minutes.

Mr. Petoe made a motion to approve the minutes. Mr. Walker seconded the motion. The motion carried.

The next order of business is setting meeting dates for 2012:

March 15th
June 14th
September 20th
December 6th

Judge Hanson joined the meeting.

The next order of business is the budget update.

Ms. Geiger reported that in the meeting materials is a budget update tab. The first quarter expenditures are on the first sheet and are broken down by program area. At the top is the entire agency and then Public Defender offices as a group, Capital Defender offices as a group, Regulatory, which is the Standards of Practice, and the Administrative.

The expenditures are broken down by sub-object codes which are the categories, by month.

The overall agency expenditures are listed on the first page. We are a little bit higher in Personnel expenditures in the first quarter because we had three payrolls in July. We will have only one in June so that is not a concern.

Contractual Services are running slightly under and that is because several of those such as our Bar dues are not due until the end of the fiscal year.

Supplies are running about average.

The Transfer Payments are running high. This category includes unemployment compensation. We believe that the length of the benefits being paid out and the job market itself is affecting that. We are monitoring it.

Continuous Charges are under because we prepaid three months of rent. We only started paying last month.

Total Equipment is slightly under because two of our IT projects have not yet been invoiced. The first is the conversion of our case management system from server driven to web enabled with a time frame of January, February, or March. The second is the replacement of our financial system (IDSS), which is going out of service, so it is necessary to replace it.

Personnel Costs:

Sub-Object Code 1149 is IT wages. We had a wage/hourly person help us with the conversion from our old servers to Google. She has been helping with programming. She was needed longer than we thought initially. The costs that have been running over on that can be transferred from other line items. We are almost completely converted to Google.

Sub-Object Code 1153 is Disability Benefit Payments. We budgeted \$49,000 and have already paid out \$38,000. This is not a cost we can control but we are watching it because it is running higher than it did last year.

Sub-Object Code 1162 is Annual Leave Balances. Annual leave is not something we can control either. When someone leaves and they have accumulated huge amounts of leave we are required to pay them. We have had a fair amount of retirements recently of people with quite a bit of leave remaining. We have a few more who will be retiring soon.

The longer an employee has been with the agency the more leave they acquire and therefore the more they can carry over each year.

There was discussion about leave and hours being carried over each year.

Mr. Hade said that there is much speculation that there will be changes during the upcoming General Assembly session regarding annual leave.

Sub-Object Code 1163 is Sick Leave. This is a similar issue but on a very small scale. Sick leave balances get paid out only to those employees who did not move to Virginia Sick leave and Disabilities Program (VSDP). They stayed in the traditional sick leave program and earn sick leave the same way they earn annual leave. There are only three or four people still in this program.

Vacancy Savings. This is our turnover. The first chart is by pay period. The budgeted amount is \$1.6 million. The actual is what we paid out in payroll each pay period so far this year. The savings is the difference between the two. Starting with pay period seven there has been a downward trend. We are projecting if things stay similar the rest of the year, an estimated savings of \$2 million in turnover and vacancy.

We have been tracking our turnover and vacancy since 2009 by pay period. Starting in FY2012 we are seeing an increase in the amount of savings. In FY2011 we generated \$3.2 million in turnover and vacancy. This is a significant uptick, which could account for our balance at the end of the year. In FY2009 and 2011 it was in the \$2 million range and this year it is tracking similarly to FY2009/2010 so far. There is a page showing what we have graphed so far. The graph illustrates that in FY2010 and FY2011 there is a huge spike at the end of the fiscal year that was not attributable to people leaving but due to the action that was taken by the General Assembly and the Governor of not paying some of the fringe benefit costs for the last five pay periods of the year. It just looks like there is a lot more turnover.

In FY2011 the rate of turnover was consistently higher. The other three years are fairly consistent. In FY2012 we started on a downward trend, which should continue with the retention bonuses. There is a six month required retention period for anyone who accepted the bonus. In theory the downward trend should continue. The hiring freeze has been removed.

Mr. Johnson added that the goal is to not have a lot of money left at the end of the year. That is why we hired a budget analyst.

Retention Bonuses:

Eligibility for the one-time, five percent bonus is that employees must have met each of the following requirements:

Employed by the VIDC at least one year prior to award – on or before
November 25, 2010

Current written performance evaluation with minimum rating of
"Meets Expectations"

Continued employment for a six month retention period, which ends
May 24, 2012.

If an employee leaves before that date they will be required to pay the entire amount
back.

The Chief Defenders were not advised of the above criteria prior to the date that the
employee performance evaluations were due.

Retention Bonus Statistics

We have 540 full time authorized positions, with 533 on the payroll at the time the
bonuses were provided. Of the 533 employees, 462 met all of the requirements, 63 are
ineligible because of their length of service and 8 are ineligible because of their
performance rating.

We have 445 employees who will be receiving a bonus on December 16, 2011 and 2
employees who are out on disability and have neither accepted nor declined. There are
15 employees who have declined the bonus.

Authorized retention bonus payments for December 16, 2011:	\$1,230,139
Carryforward balance returned:	\$1,350,920
	<u>- 1,230,139</u>
	\$ 120,781

There was discussion about the performance evaluation, indicating that it is not an
annual event but rather is expected to be monitored throughout the year.

The next item on the agenda is the policy update.

Ms. Geiger said that we only included in the handouts the sections that are proposed for
amendment. The effective date would be amended to February 1, 2012. The second
page is an update of the page numbers in the Table of Contents.

Page 52, Section 6.0 The eligibility date for the Virginia Sickness and Disability Program
(VSDP) coverage does not make sense any more because the General Assembly changed
when an employee is eligible. The effective date is different depending on your date of
hire or whether you transferred in from another agency and depends on a couple of
other factors. It was more confusing to employees to have it in there. We cover this in
the employee orientation. We are suggesting taking it out because it is more confusing.

Page 92, Section 10.4 Expenses Authorized by Court Order

A couple of years ago we changed our policy to require capital and public defenders to submit monthly expenditures or requests for reimbursement for case related expenses. The proposed change is to avoid situations in which such submission would reveal a trial strategy.

Chapter 11

We made small tweaks to keep current with the changes to the state IT Security Standard. These changes are not very substantive but we are trying to keep it updated.

Page 114, Section 11.5 E-mail

Taglines, personal mottos and quotes are prohibited in the signature line of emails. These can offend people or give unprofessional impressions.

There was discussion about policing and monitoring this.

Judge Hanson made a motion to accept the policy amendments set forth. Mr. Walker seconded the motion. The motion carried.

The next item is the training update.

Mr. Johnson introduced Sue Tilbe, our new Training Manager.

We had our regional appellate training December 6th. This was the extension of boot camp for our forty new lawyers. We did the jury trials in July; the attorneys lost their cases and had to appeal. They went through the process, noted the appeal, ordered the transcript, and met all the deadlines. No one defaulted. This is also a test for the internal office tracking systems and the office appellate supervisors.

All participants filed their petitions timely. Joe Sadighian went through the petitions with them and made suggestions. This is the first time we've done this. We're having the same type of training in Virginia Beach today. Roanoke and Fairfax trainings are also scheduled. This is a cost effective way to provide this type of training and a lot of work for the appellate coordinator.

Of the training evaluations we received from the participants, eight rated it excellent and two rated it good.

Joe Sadighian, our Appellate Coordinator is leaving to go to work for the Supreme Court as a Staff Attorney. He will finish up the trainings on December 13th and 15th.

We will be interviewing next week for his replacement.

January 5th and 6th we will hold our management conference at the University of Richmond Law School. We have a variety of topics planned including: time management for supervisors, a workshop on harassment, another on effective communication for supervisors, and an update on the available tools and resources. We are bringing in an outside speaker to present an employment law review. This is new for us but it is the next step for our public defenders and for the people they rely on to assist them in managing their offices. This training will include their Deputies and Senior Assistants for the first time.

We will be adding more training programs next year.

Our annual conference that we hold in September will be held in Tidewater this year. Because we have eight offices in that area, it is cost effective to have it there. That area has more lodging options for large groups.

We have a couple of positions that have been vacant for a while. One is the Standards of Practice attorney. We will be interviewing for that position next week. We had a second position approved as an appellate coordinator at a Senior Defender level, but we have found that the Senior Coordinator position is sufficient to provide the appellate services being provided or planned. We would like to use the second appellate position instead for a resource attorney position.

North Carolina has a community resource board website that directs you to the type of service you require for your client depending on the county or city. This is a very cost effective way of raising the bar. We want to use this position to recruit someone who can get that started for us here.

Since the position was previously approved as an appellate position, we need the Commission's approval to make the change to a resource attorney position.

Mr. Benjamin moved to approve the second appellate position reclassification to a resource attorney position. Ms. Williams seconded the motion. The motion carried.

There was discussion about the North Carolina attorney who developed the website and what a great resource tool the website is.

The website address is: www.ncids.com

The next item on the agenda is the informational items.

Ms. Geiger said that the Mario Turner case was a Newport News case where one of our public defenders was actually called to testify about what happened at the preliminary hearing and the judge required him to do so. The case has been appealed to the Supreme Court. The Writ argument was two days ago.

Mr. Johnson said that what the Court of Appeals focused on was that the witness said he saw the defendant fire a shot but when he got to Circuit Court he said that he did not. It wasn't that he didn't remember; it was that he testified differently.

The defendant was the public defender's former client. There was discussion about the Mario Turner case.

Mr. Johnson said that there is an ongoing issue regarding habeas petitions. When the public defender offices get a letter from the Attorney General's office saying they need an affidavit and information on something, the attorneys take the position that ethically they cannot do that outside of a hearing; it is privileged information. An American Bar Association opinion agrees that it should not be done. We asked for an opinion from the State Bar about a year ago that they are circulating now for comment. The draft opinion is that the attorneys should not be giving out that information until they are put on the stand. In the past some of the attorneys have given out information.

Mr. Johnson recently received a letter from the Attorney General's office complaining that one of the public defenders did not give out the information. Mr. Johnson is planning to send them a polite letter stating that we have an ethical obligation not to do this, and we intend for our attorneys to follow their ethical obligations. It will be very specific and applicable to what we do.

There was discussion regarding the issuance of privileged information to the AG's office.

The next item is the legislative update.

Ms. Geiger reported that there is not a whole lot on the horizon. So far there are 1800 Bill requests. The Governor's budget will be introduced January 19th. This is going to be a long General Assembly session. The Senate is 20/20 and the Republicans have indicated they are the majority, and the Democrats are saying they are not. There is the question about who will be the chairman of Senate Courts. There are several key retirements in the Senate on both sides so that will have a domino effect on the chairmanship of Courts. The next Republican in seniority on Courts is Senator Norment. If he decides to take a different committee or if he is eligible to be chairman elsewhere, the next chair becomes Senator Obenshain.

Mr. Johnson returned to the budget and the retention bonuses advising that he got a call from Lawyers Weekly regarding the retention bonuses. He sent them a nice response explaining the justification of the bonuses and that the money was intended for personnel.

The next item on the agenda is the IT update.

Ms. Geiger said that we will be preparing a Request for Proposals (RFP) to replace our financial system that has gone out of service. We hope to have the financial system replaced by next fiscal year.

The data for the case management system has been scheduled for conversion from January through March. Once the data is converted, we will be ready to Web enable the system and can begin to eliminate our individual office servers. This will allow employees to access the case management system from anywhere and also eases our disaster recovery efforts.

All but two offices are now on Google mail and Broadband. The two remaining offices are Warrenton and Staunton. We had some complications with those based on the facilities and vendors.

Mr. Johnson said that the Newport News lease has been signed. April 1st is the targeted move date.

It looks like the administrative office will be moving to the second floor of this building. The landlord has a tenant looking at our current space. This will allow the staff to be together in one location. It is smaller by about 100 square feet but it flows better.

Ms. Geiger reported that in June the Commission updated the Records Retention schedules for keeping our case files. We had the office manager training in November that included a section on records retention. The Library of Virginia has updated their system with a new electronic program called Infolinx. All of the office managers needed to register as records officers, and we had to file new schedules for each type of case that we have. We sent all of our draft schedules to our analyst. There is a committee that meets in December and January to approve the schedules. By mid January we should be official with new schedules and the offices can start shipping boxes to the Library.

CLOSED SESSION

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.

*At the conclusion of the closed session, the Commission shall immediately reconvene 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.

Ms. Jankowski moved that the Commission amend and reinstate the authority delegated to the Executive Director pursuant to Section 192-163.01 (B) to allow the Executive Director to utilize the provisions of Chapter 8, Employee Discipline, of the Virginia Indigent Defense Commission's Policies and Procedures with the exception of termination of employment, in the supervision of the performance of the Chief Public and Capital Defenders. Mr. Walker seconded the motion. The motion carried.

There was no further business.

Mr. Walker made a motion to adjourn. Judge Hanson seconded the motion. The motion carried.

The meeting adjourned at 1:28pm

Respectfully Submitted:

Approved By:

Diane Z. Pearson, Administrative Assistant

David J. Johnson, Executive Director