

The Virginia Indigent Defense Commission  
Policy and Procedure Committee Meeting  
1604 Santa Rosa Road, Suite 200  
Richmond, Virginia 23229  
November 8, 2012

The meeting was called to order at 11:05 am by Committee Chair, David Walker. Other Commission members in attendance were John Douglass and Karl Hade. Committee members not in attendance were Kent Smith and Carmen Williams. Administrative staff included Executive Director, David Johnson; Deputy Director, DJ Geiger; and Administrative Assistant, Diane Pearson.

With three committee members in attendance, quorum requirements have been met.

The first order of business is approval of the agenda.

Mr. Douglass made a motion to approve the agenda. Mr. Hade seconded the motion. The motion carried.

The next item on the agenda is approval of minutes.

Mr. Douglass made a motion to approve the May 12, 2011 meeting minutes. Mr. Hade seconded the motion. The motion carried.

#### The Mission Statement

Mr. Walker suggested that because of the budget problems we need to get it across to the General Assembly that we actually save money by having public defenders and we save money by training court appointed lawyers.

Ms. Geiger said that it would be easy to add a second line in the mission statement. We would need to take this back to the full Commission because this was adopted as the strategic plan and mission statement. It would be fairly simple to add on the second line of the mission statement, "who are accused of crimes and unable to hire an attorney through the efficient administration of a state public defender system."

There was discussion regarding the mission statement and our statutory responsibility with regard to certification.

Ms. Geiger said that the strategic plan gets inputted to the performance budgeting system that is operated by the Department of Planning and Budget (DPB) which is the Governor's budget writers. The people who see it would be any member of the public who would go on the Internet and the state site, search for strategic plan, and then find our agency. Anyone who reads the policies will see the mission statement. Beyond that we don't hand it out to the legislators, it's not contained in the annual report.

There was discussion regarding what is contained in the strategic plan.

The efficiency for budget purposes is emphasized when we met with staff of the money committees and our agency budget analyst at DPD. This year their questions were about the cost per charge for private court appointed attorneys, how many charges per case, and the number of cases. They are going to go to our data to search for the efficiency.

The next order of business is the policy and procedure changes.

Ms. Geiger said that the title sheet has changed from 2012 to 2013 and the changes are effective February 1, 2013.

We have not changed the Table of Contents only because with the corrections it may need to be reconfigured, and we will just need to change it again.

Page 2

We propose to change the background information that was previously contained in Paragraph A that basically said the Commission was established, etc. We removed it because it is already in the statute. We also added the title "Suppression" to Paragraph B.

A suggestion was made to add the statutory reference into Paragraph A.

Page 3

We added a few new general definitions:

- Capital Defender
- Commission
- Executive Director
- VIDC

We revised the public defender definition to clarify who we are talking about in each of the sections.

We also moved into this section from previous section 1.0 the requirement for the Executive Director to be the interpreter of the policies that he may designate.

Page 6

We removed items that were redundant and reorganized the subsections so they flow a little better.

In sub paragraph (i) we added the Fair Labor Standards Act reference for non exempt employees.

We merged paragraphs B and C and added (i) and (ii) to break it up, but they both address client representation.

Page 35

This is the teleworking section

We added that in the event we need to activate our COOP plan, which is our emergency plan, is activated after 48 hours of closure of our offices, we will allow people to telework.

There was discussion regarding the implementation of the plan and how it works.

If it is a state wide emergency, it will be the Executive Director's call, when it is localized the chief Public Defender decides.

This will be more meaningful when we move from servers in the offices to the Google cloud. All documents will be accessible remotely to employees.

Page 39

In Paragraph C we took out "or by pay practice funds." We eliminated pay practice a few years ago.

Page 61

Subparagraph B (5) previously the Executive Director was able to place someone on administrative leave for two weeks. The recommendation is to increase that to thirty days with two week extensions up to sixty days.

Mr. Johnson said that this is a logistical issue. We had a situation where we had to put someone on administrative leave. When it is a Chief Defender, we need to go through the Commission. It is not easy to pull together a personnel committee meeting in a short amount of time. This gives a little more flexibility and still gets it resolved as soon as possible.

There was discussion regarding the different reasons to be on administrative leave and what qualifies as administrative leave.

Item #5

A proposal was made to take out the “up to 30 days...” and end the sentence after Executive Director.

A separate sentence is added after #5 which reads:

The Executive Director may approve up to 30 days administrative leave with two week extensions not to exceed 60 days.

Page 69

We reconfigured the third paragraph by rewording the second sentence and rewording it to say “Nothing in this policy modifies the status of employees as employees-at-will or in any way restricts the Commission’s right to bypass the disciplinary procedures suggested in this Chapter.” A proposal was made to move this sentence to the top, and to move the first sentence of the third paragraph to the second paragraph.

There was discussion about the wording of the section.

Page 70

Paragraph A, we added volunteers. We have had so many interns who have not found permanent employment that are willing to give their time. We want to make sure they understand all of these provisions apply to them as well.

Page 71

The utilization of discipline – we reworded to eliminate redundancy.

Page 77

We moved the confidentiality section from 9.1 to 9.0.

Page 78

We reworded Paragraph A to explain what is used to determine what is grievable. This is just for clarification. Additionally we moved B (vi) from Section 9.3 to Section 9.1, which reads “grievances that do not pertain directly to the grievant.”

Page 79

The above information was moved from this page.

There was discussion regarding the grievance procedure and Bar complaints.

Pages 80 through 84

We changed the subsection numbers.

Page 85

Chapter 10 Reimbursement to Employees

This pertains to interns and volunteers as well.

In Paragraph B we propose to remove the second sentence which is:

“Travel expense accounts are open to the public and must be able to sustain the test of public review.” This sentence is unnecessary.

Page 86

We have increased the number of definitions. Several have remained the same.

We added:

E. The Official Station – The area within a 25-mile radius of an employee’s designated work station.

G. Business Standard Mileage Rate is the full reimbursement rate for mileage which is currently \$.55 per mile. The Capital and Operational Rate is half of that.

We changed our terminology to match the state.

Mileage traveled on a daily basis such as by investigators, will continue to be reimbursable.

The non-state employee is any individual who is not employed by the VIDC but is conducting VIDC business and includes a member of any Board or Commission.

“Capital and Operational Trip Pool Rate” should actually be used in lieu of “Personal convenience rate”.

Page 87

Item A is what is required for expense reimbursement.

This was previously contained in a separate document called the Summary of Documentation. We combined the two documents. Each employee is required to complete his or her own form and all forms must be electronically completed within thirty days. The Executive Director has the ability to waive the thirty days in the event there is an extraordinary circumstance. All of that remains the same.

We also pulled from a different section, the requirement that the Public Defender and employee sign it and verify the accuracy and legitimacy of the travel.

Pages 88 and 89

Expenses authorized by the court. We pulled this section in and the language is mostly the same.

Item B, (iii)

The follow up was previously required to be done by the employee who handled the case, but the office manager is actually doing the tracking, so we are changing the policy to reflect that the office manager will be the one who follows up. This is easier for the administrative office and for the field offices.

Another change relates to the situation when initially a court order was approved prior to expenses being incurred, but the subsequent payment is denied. The employee previously went to the Public/Capital Defender and requested reimbursement. Then the request was sent to the Executive Director. We are changing that to just have it sent directly by the Public Defender to the Executive Director.

We have done the same thing in B, (iv) and on Page 89 in C, (5).

The same language adjustment was made when a court order is denied outright.

The last change in that section is: B, iv (1).

The state changed the tolls and parking fees amount from \$10 to \$20 for which a receipt is not required.

Page 90

Paragraph B, the conference registration fees language is the same, no changes. The non-attendance consequences section was previously in another section, but is substantively the same. The new part is in Paragraph A which gives more fair warning to the employees that they have to prepare an estimate of total costs of their trip in advance so their Public Defender can agree to it or when the Public Defender is the traveler, the Executive Director can approve it.

There was discussion regarding reimbursement and training conferences and the purpose of the advance travel estimate.

Page 91

Sections D and E are from the State policies and are basically instructions for when an employee makes travel arrangements including ticket purchasing via the Internet. This is guidance language for what to do when purchasing online. We expect employees to search Expedia or other travel sites.

Also if there are multiple employees traveling to the same place, unless it's one of our conferences, there is a requirement to get it approved in advance.

Paragraph C is the Retention Agreement Requirement. We added this a couple years ago. If the total costs approach or exceed \$1,000 the employee is required to:

1. Apply for a scholarship to help defray costs, and
2. Sign a retention agreement.

The retention agreement period is for one year.

The questions we have for the committee are: Do we want to continue the retention agreement requirement? If so, do we want to continue that same monetary threshold and that same period of time?

It was proposed that the word "approach" in Paragraph C be taken out and change the \$1,000 to \$2,000 in the policies and change the agreement.

There was discussion regarding the retention agreement and reasons employees terminate after signing the agreement.

Page 92

Lodging

We added the State's guidelines. We reconfigured this section to make it more user friendly. We have asked the Budget and Finance Department to determine what is a process and what is a policy so we can split them out and have check lists and references as separate documents. We are also trying to get it into a format that is more acceptable and are hoping to have an Intranet in the next couple months with step by step instructions. For now, this is the first step we are taking in putting everything in one place.

In Paragraph B we have inserted the bolded language which is a hyperlink to the State's guidelines and rates for lodging for in-state and out-of-state.

The second paragraph entitled “Conference Hotels”

Previously we allowed for the standard maximum reimbursement rate to be exceeded on the Executive Director’s discretion by 150% rather than 50%. We think this was an old typo.

Paragraphs C, D, and E include process information or informational items that mirror the Executive Branch policies relative to communicating with the hotel to cancel reservations, what the rules are for more than one person in a room, and reimbursement.

There was discussion about sharing rooms.

Page 94 and 95

Meals and Incidental Travel Expenses

Several years ago we moved from reimbursing actual amounts for breakfast, lunch, and dinner to a flat rate that the State used. We switched back because we wanted to save a little money by requiring employees to report exactly what they spent. The challenge was that it added more steps, confusion, and receipts, and more complications because folks never had all of the right paperwork.

We are recommending that we again adopt the State meal and travel expense language. This provides a flat \$5 per diem amount that is paid for each day of overnight travel for incidental expenses such as bellhop/waiter tips, valet, personal phone calls, laundry, etc. We will also use the State rates for breakfast, lunch, and dinner based on locality. Currently we have the same rates for northern Virginia as in Roanoke or Pulaski. The state uses a guideline for each location. There is a sample table that shows breakfast, lunch, dinner, and incidentals, and also shows the amount for a partial travel day. We would recommend that we go to the flat rates for ease of calculation and time.

There was discussion regarding the reimbursement rates.

Paragraph E contains specific examples of how reimbursement would be calculated. These were pulled from the Department of Accounts policies.

Paragraphs F and G contain the hyperlink for the in-state lodging and meal reimbursement amounts.

Page 96

Paragraphs H and I are very similar to what we had before. We added subparagraph 8, Travel Insurance.

The last paragraph in Section I, we struck the second sentence.

Paragraph J is travel credits. Travel credits must be reported to the Budget and Finance Department and must be deducted from the amount of travel expenses claimed.

Page 97

Transportation

This section is similar to what we had before. We follow the Office of Fleet Management’s policies and procedures issued by Department of General Services regarding state owned vehicles.

We go over the Enterprise rental requirements and when use of a private vehicle is permitted. The cost benefit analysis was in a different section, we just relocated it to this section.

Page 98

Paragraphs E through I have been provided previously in our policies, we just relocated them to this section.

Paragraph J is out of country mileage. We pulled this from the state policies. If there is international travel the office needs to contact the administrative office.

Parking and tolls reimbursement without a receipt has increased from \$10 to \$20 and a receipt is required.

Page 99

Continuation of K, items 2-4 clarify the need to purchase the most economical form of transportation. For hire transportation receipts are required if over \$20, and there is a maximum tip. Again, this is pulled directly from the state's policies. We did not have "for hire" transportation previously.

Paragraph M

Air and Rail Purchase Options

We added a type of payment, travel cards can be utilized

Car rental reimbursement is the same.

Page 101

We added travelers tips in case of an accident or if a car rental agency requires proof of insurance. There is a process for that.

There was discussion regarding Paragraph R and a determination to strike the entire paragraph because it reads as a tip, but could be misconstrued as a commitment to be liable.

Reporting of accidents is the same.

Page 102

International Travel

This provides additional guidance for employees. This may be moved to a process.

There was discussion regarding international travel.

Page 103

Chapter 11 Computer Use Policy

The second to the last paragraph, Websites and Social Media, we added Twitter.

The last paragraph, Mandatory IT Security Training, we added a reference to the requirement that we follow the VITA standard.

Page 104

We changed the title of this section to "Public Records", defined what a public record is, and advise that the information is produced by employees, volunteers, or interns and is not limited by the format.

There was discussion regarding case files and FOIA.

Page 105

We reformatted Paragraph C, and we relocated language from previous section, Paragraph A. The new language is on password management. This is provided from the VITA IT Security Standard.

Section 2.2-2827 of the Code of Virginia requires us to provide a copy of the section to all of our employees. It basically says employees cannot access certain sexually explicit content on agency computers. The section also requires that agency approval be given in writing by agency heads if such approval to access that information is needed. The way we have handled this previously is the Public Defender will go to IT to get access.

Since the language reads that approval can be given by the agency head we are proposing a new paragraph D that says pursuant to that code section the Commission provides approval for the access of such information and content as needed in the representation of the clients of the Commission. So it is an ongoing approval and eliminates the need for that back and forth approval.

There is a new chapter. The IT Director has asked that we do a very brief policy that says we will implement and document an Information Management and Security Program that complies with the IT Security Standards. It covers all of the requirements that we need to comply with under the VITA Security Standards. This section will be inserted either before Chapter 11 or after Chapter 11.

Mr. Douglass made a motion to recommend to the full Commission the changes to the policies and procedures as amended. Mr. Hade seconded the motion. The motion carried.

There was no further business.

Mr. Hade made a motion to adjourn. Mr. Douglass seconded the motion. The motion carried.

The meeting adjourned at 1:30pm

Respectfully Submitted:

Approved By:

---

Diane Z. Pearson, Administrative Assistant

---

David J. Johnson, Executive Director