

The Virginia Indigent Defense Commission
Commission Meeting
1604 Santa Rosa Road, Suite 200
Richmond VA 23229
December 6, 2012

Judge Alan Rosenblatt (ret.) called the meeting to order at 11:10am. Other Commission members in attendance were Steve Benjamin, John Douglass, Maria Jankowski, Kristen Howard, David Lett, Pat Davis (designee for Karl Hade), Senator Richard Stuart, David Walker, Delegate Randy Minchew, and Judge Hanson. Administrative staff included Executive Director, David Johnson; Deputy Director, DJ Geiger; and Administrative Assistant, Diane Pearson.

The first order of business is to approve the agenda.

Mr. Lett moved to approve the agenda. Senator Stuart seconded the motion. The motion carried.

The next order of business is the approval of the September 20, 2012 minutes.

Senator Stuart made a motion to waive the reading of and approve the minutes. Mr. Lett seconded the motion. The motion carried.

The next order of business is setting meeting dates for 2013 and the following dates were determined:

March 14 th	June 6 th
September 19 th	December 12 th

Mr. Johnson welcomed Allen Bareford, Public Defender in Fredericksburg; Todd Petit, Public Defender in Fairfax; and Lauren Whitley, Senior Assistant Public Defender in Fairfax.

The next order of business is the budget update.

Ms. Geiger said the first item in the budget tab is a spreadsheet that shows the expenditures from July through October 2012. We have four service areas.

Service Area 32701 – Public Defender Offices
Service Area 32702 – Capital Defender Offices
Service Area 32703 – Standards of Practice Enforcement
Service Area 32722 – Administrative: Covers HR, Training, Fiscal and everything that's not included anywhere else.

This represents about a third of our fiscal year. We are about on track for the year. We have divided this among the six main expenditure accounts that are given to us by the Department of Planning and budget (DPB). All of the expenditures are in one of the listed categories. Payroll services is going to be a little more than a third because July has three payrolls and June has one payroll.

Additionally in the 1500 series we have not spent much on rent so far. The reason is that in FY12 in order to defray the costs in FY13, we prepaid rent so that our rent expenditure would not be as high this year. We did this so we could put more funding into our training budgets.

The IT costs are mostly captured in the 2200 series. We will have a desktop computer refresh in the spring as well as an operating system refresh.

In turnover and vacancy savings we are running under the budgeted amount. When we prepared the budget for this fiscal year, we looked at the history of turnover and vacancy savings. Historically we have realized about \$2 million a year in turnover and vacancy savings. The amount in FY12 was significantly lower, so we lowered our projection to about \$744,000 in FY13. We have not hit \$62,000 a month yet. Our savings is about 51 percent of what we had budgeted and projected.

Our Budget and Finance Director, Jewell Hudson, has come up with a projection of about \$400,000 remaining at the end of the fiscal year based on current expenditures. This does not include items we normally pay at the end of the year like the State Bar dues and rent. This also does not include any emergencies like a phone system going down. We have been informed that it is likely we will be able to keep the carryforward money which is about \$260,000. We are not panicking, yet, and there is sufficient reserve or sufficient projected balance that we are comfortable right now. We continue to monitor it monthly. This shows that our turnover remains down; we are at about thirteen percent. It has decreased significantly and leveled off.

Mr. Johnson said that one of the reasons we have \$400,000 is because we prepaid some of the FY13 rent charges.

Ms. Geiger said that she and Mr. Johnson met with Senate Finance Deputy Director Dick Hickman and Reginald Thompson, our Department of Planning and Budget Analyst, about the coming General Assembly session and what to expect. It was a very good meeting in many respects. We provided them a lot of data. They basically said it will be a terrible budget year. They are waiting for what they are going to do on a congressional level on the fiscal cliff. There is an ever increasing cost in the criminal fund and they have not been able to figure out what is driving that. There was a good discussion on possible effects or impacts. There was a focus on a significant decrease in the number of cases that are charged as capital cases since the opening of the capital defender offices. If there are fewer capital cases, the question is, do we really need all those people? This caused our radar to go up. We will be meeting with Doug Ramseur and Dick Hickman Tuesday to walk through what goes into a capital case.

Mr. Johnson said the reason there are fewer cases being charged capitally is because we have well equipped capital offices that take on the cases. They file hundreds of motions and litigate them. We are pointing out to them that if there are no capital offices the cases will go back up.

Ms. Geiger said the biggest concern is that we are going to be fighting to keep the funding we have this year.

The next item on the agenda is the policies update.

Ms. Geiger said that the VIDC is mandated to adopt policies and procedures for the operation of the agency and to maintain and update those. David Walker is our Policy and Procedure Committee chairman. Each year the committee meets and goes over each chapter to make corrections and changes.

Delegate Randall Minchew joined the meeting.

In the Policy tab of your binders we have a copy of the proposed substantive changes in the policies. The changes are underlined. We are asking you to approve the substance today. We know the formatting is a little off. The policy changes would go into effect February 1, 2013. We would like to upload this on an intranet to be electronically available to all employees. This is more comprehensive in that it includes policy and also includes procedures.

We are working to finalize one document that we will then use to divide the policies from the procedures. There was concern about not initially having the procedures separate from the policies. We checked with the Attorney General's office and our counsel, Guy Horsley, advised he did not believe it would be an issue. We will be working on separating the policies from the procedures, creating checklists, forms, and desk procedures, etc., to make the administrative requirements easier for the field. There will be links to click on to go to procedures. What we have here is an interim step going toward that. There are not a lot of substantive changes but more formatting changes.

Mr. Johnson said that we are mandated by statute to have policies and procedures and to update them every year.

The first change is on Page 1, the Mission Statement
This was approved by the Commission.

Page 35 - Teleworking

We added some language to this section to provide that in the event there is an emergency and an office will be down for a while, employees would be able to telework in that situation.

Page 61 – Administrative Leave

This is a slight amendment to the Executive Director’s authority for administrative leave. Previously the duration was two weeks. We are asking to change it to up to thirty days with two week extensions, up to sixty days.

Page 85 – Chapter 10

Travel Reimbursement to Employees

This Chapter has been the most complicated and frustrating chapter in our Policies. No one likes it or wants to deal with it. We completely reformatted the Chapter. A lot of the same provisions are included, but there are a couple of policy changes that we would like the Commission to consider.

Page 86 – Definitions

We are adopting the terms and definitions the state uses, including capital and operational and trip pool rate and business standard mileage rate. These are standard definitions used by the Executive Branches.

Pages 88 and 89

There was a state increase in the amount of parking and tolls cases from \$10 to \$20 for which a receipt is no longer required.

Page 91

Previously when an employee attended a training that approached or exceeded \$1,000 there was a retention agreement required for one year. The proposal is to clarify that 1. The amount will exceed, not approach, and 2. Increase the amount to \$2,000.

Page 94

There is a flat rate of reimbursement for meals that is based on location. There are different rates for different parts of the state. There is also a \$5 per diem to include tips, faxing, incidentals, etc. This is more streamlined and user friendly.

Page 69

Performance Management

We reworded this section to indicate that the preference is for performance problems to be addressed immediately. The Commission retains the at-will status of employees and allows for employee termination for specific causes or when appropriate, but we want to encourage progressive discipline.

Page 110

In the Code of Virginia there is a provision that prohibits state employees from using agency computers to access sexually explicit material. This section requires that agency approval be given in writing by agency heads if such approval to access that information is needed.

We are proposing a standing approval when such access is required for client representation.

The last page contains a proposed new chapter. The Virginia Information Technology Agency (VITA) has to approve an IT Security Standard. The current Standard requires agencies to develop and adopt information management security programs and policies. This new chapter basically says that we will do that and there are four provisions that state what it will include.

Ms. Jankowski made a motion to adopt the changes to the policies and procedures. Mr. Lett seconded the motion. The motion carried.

The next item on the agenda is the legislative update.

Ms. Geiger said that the Executive Committee serves as our Legislative Committee and they met earlier today.

The first item is a proposed change to the Rules of the Virginia Supreme Court. The Indigent Defense Task Force of the Virginia State Bar is proposing amendments to the discovery rule of the Virginia Supreme Court that would expand discovery for defense attorneys.

Mr. Johnson said that he is on the Task Force and this has been a three or four year project. The Task Force has a couple of Commonwealth Attorneys on the committee and is a very diverse group. This was actually a product of acknowledging the objections of the Commonwealth Attorneys representatives. We finally came up with a product that everyone agreed to but when it was brought to the full group they realized they would never get a consensus to support it. The Indigent Defense Task Force Leadership said that any statutory proposal will die in House Courts, so perhaps a rule change would be the logical way to proceed. It is now at the point where it is open to public comment. One of our Public Defenders, Todd Petit, of our Fairfax Public Defender Office, asked if the Commission would be making a comment during this public comment period.

Ms. Geiger said that based on Todd's request she sent an email to all of the Public Defenders asking for input on the draft. The responses indicated that it is not perfect, but is a step forward. One concern is with subsection (e) the forty-five day time-frame. Currently the time-frame is ten days prior to the trial. Several public defenders think this will be unworkable based on the way the courts set their trials. The other concern is that it seemed a bit unfair to defense counsel because subsection (b) and (c) are out of sync with what needs to be provided to the other side. The Commonwealth requirement to provide information has a qualifier that limits it to a material fact that tends to negatively affect the credibility of the witness, but the defense for alibi purposes must provide to the Commonwealth all the information on all alibi witnesses.

Mr. Johnson said that another concern with the Indigent Defense Task Force is that there are a number of defense attorneys who think that if there is a rule change then it's done. The consensus from the public defenders is that this is a good first step and not an end.

Ms. Geiger said that we have this under the legislative update and so far we have not asked the Commission to step into the rule process so this is a different issue than our normal General

Assembly items. This involves the Indigent Defense Task Force plans to propose a rule change to the Virginia State Bar Executive Committee in February. The public comment period runs through January 15th. This is why it is on the agenda today.

There was discussion regarding discovery.

Judge Rosenblatt said that before we get into the specifics of this proposal we need to decide whether we need to take a position. The Executive Committee discussed this earlier this morning and for a variety of reasons that we will discuss, decided to recommend against the Full Commission taking a position.

Mr. Johnson said there are several concerns. One concern is that there are some things about this that the public defenders like, but there are some things they do not like. It does not look anything like the original proposal.

Judge Rosenblatt said that the Executive Committee did not see this as offering meaningful discovery reform. We felt that this could be seen as an attempt to get around the problem of getting the legislature to pass this. Another issue is that for us to take this kind of position, what are we getting in exchange? We did not see this as offering much to our defenders. There is a lot of disparity in the jurisdictions as to whether or not we need this.

He understands Mr. Petit's position. His problem in Fairfax is very different from maybe a problem in Roanoke. One committee member suggested that this means they may not create police reports anymore. This requires the commonwealth attorney to give the police report to the public defender. So this is apparently a fairly common problem. The committee just did not see that the proposed Rule change in its current form was worth the battle. There was also some concern as to whether this is something we should get involved in at this stage because this is a very preliminary stage.

Senator Stuart said that he is not enamored with the work product and understands that the work product was a compromise. He thinks we can do a lot better than this. As a commonwealth attorney he had open file policy and did not want to withhold anything, and that is what we should be moving towards. This has reciprocal responsibilities. The first thing he noticed is that you are allowed to copy a police report. The police are deathly afraid to let you copy their police reports and finding a mistake they made.

He said that if the State Bar or the Chief Justice asked for the Commission's input he would feel compelled to comment, but he is not sure we should comment on something with which we are not in strong agreement. He is not sure this gets us where we want to be and feels there is a sense that if this is in place, it will not be necessary to go further.

Mr. Petit told the Commission that he agrees that there are a lot of things that he does not like about the current proposal. He does not like the fact that he has to give up his alibi witnesses, their names, addresses, phone numbers, and his entire defense. Right now in Fairfax they get

nothing. They do not get police reports. He would love to be in a jurisdiction with discovery. Judges in Fairfax would look at a police report and comment that it is police notes, so you won't get it. As far as police not writing police reports, or leaving things out, then it is his job as an attorney to point that out to the jury.

When he does get a police report, he asks the police officer if he knows that this is what they base the prosecution on and whether he writes every single thing in it and everything that is important. If he gets a police officer that writes a two sentence police report on a murder or rape or grand larceny, the jury is not going to believe that police officer. He believes the police officers don't want you to know what they've done wrong or how they've done something, but he thinks our attorneys can point that out to a jury. He is not concerned about the police reports being fair or non-existent. The fact that he can finally not have to rely on the commonwealth attorney's office to give him what he is supposed to get under Brady is the most important thing to him.

He just had a prosecutor found guilty by a three judge panel of using perjured testimony. Two or three years ago there was a senior prosecutor whose witness in a murder case was arrested the night before she was supposed to testify. She was found with drugs on her. The prosecutor destroyed the drugs and told police officers not to mention anything. That witness happens to be the defendant's wife. They were separated and got back together, and a new attorney found out that is what happened. The murder conviction was overturned, and that was just by sheer luck.

He said he is not here to bash the Fairfax prosecutor's office, but that is not inconsistent with what he gets on a daily basis.

With CPS (Child Protective Services), the commonwealth's office does not even look at the records, even though they are agents under the case law, when there are child abuse cases. Mr. Petit has to issue a subpoena, in order to get the motion to quash by the county attorney. This in turn gets the matter into court. Mr. Petit can advise that he has sent three letters asking the commonwealth to look at the documents which they never did. He inevitably then gets twelve inches of documents. These are the things he deals with on a daily basis because he has to rely on the commonwealth.

He feels very strongly about this and understands that other jurisdictions have it much easier and much better and may not want this because it may be a regression. That is the difficulty of having a commission. In Fairfax this crumb is so much more than anything he has ever had. He does not see the legislature doing anything anytime soon. His experience is that we get new laws making texting a criminal offense, but we do not get anything that actually helps defendants in Virginia. Perhaps that will change, but he doesn't see it happening any time soon. If he has to deal with this change in discovery and will have to give up his alibi, once in a blue moon when he actually has an alibi case in order to get police reports every single day, he will do it. If he has to deal with this imperfect discovery rule change for the next ten years before we are able to change it, he is willing to do that.

He really hopes the Commission supports this.

There was discussion regarding open file discovery and the different jurisdictions that have open file discovery.

Mr. Petit said he knows that in Arlington they have open file discovery, but it is not the entire police file. So if you ask for a discovery order, you only get 3A:11 information. If you don't ask for a discovery order, you get what they give you, and they will hold back information.

Alexandria has better open file discovery. Prince William County has problems, and he is sure it is not only in capital cases.

Mr. Allen Bareford, Fredericksburg Public Defender, said he is in a regional office that represents four different jurisdictions and it varies from one jurisdiction to another. In Spotsylvania they do have open file discovery. In Stafford County, the most northern Virginia jurisdiction, everything is by order. We don't get anything from that office, including exculpatory information, often without going to court and getting an order from the court to turn over the information.

He sees this as a positive step forward as well. The question of whether or not you endorse it as a group, he guesses he would be in favor of the Commission doing that. He feels that sometimes the defense bar feels like we don't have a lobby in the General Assembly or with the Supreme Court. To see a unified body, the Indigent Defense Commission, commenting on this, he thinks would be a positive step. He would be in favor of going forward with these amendments.

He does not see how they can do business without the production of police reports. The prosecutors are too busy, just as we are, to meet personally with witnesses far in advance. They are relying on the police to complete the reports so that they know what the case is about. He can't imagine how they can do business if they aren't doing reports.

Mr. Johnson said that his sense would be that the public defenders and lawyers in the public defender offices would very much like us to support this. It would be very hard to explain not doing so.

Mr. Benjamin said that he would like to see us support this for two reasons. One is a very important symbolic reason, because it is important to our defenders both public and court appointed attorneys knowing the Commission is willing to step forward and support something that advances our ability to do what we do.

He agrees with the comments that this could be improved. He was on the Task Force when it was trying to create something that could be done by statute, and it became very obvious that it could not be because the commonwealth attorneys correctly understood they could simply

withdraw their support and legislative reform would not occur. He believes this is a political reality. So the only way it could happen at this point is through a Rule amendment by the Supreme Court. Although we could work on this all day and do better, this is a very important beginning in a couple material respects.

He said when he has talked with citizen groups or law students or lawyers in other states and he told them we are not entitled to witness statements, they were absolutely shocked. They do not understand how you can go to trial and defend someone's life or their liberty without knowing what the witnesses are going to say ahead of time. You cannot possibly prepare. The current rule makes it very clear that statements by commonwealth witnesses are not discoverable. In many jurisdictions he has been told that he cannot have the witness statement. It is the same with police reports.

His discovery style has been to go hat in hand, meet with the local prosecutor or assistant and "sweet talk" them into letting him please read the police report. Sometimes he is successful. You can never make copies of it. Now, the liberal jurisdictions in which he practices, he is allowed to make notes of the police report; this can take several hours. This is a waste of attorney time. Especially since what we are talking about are the facts. He never understood how the police or commonwealth attorneys believe that they own the facts. He believes the facts belong to the public, and the facts are essential to the fair resolution of a criminal trial, but they act like they are the sole proprietors of the facts and we get to see them only by their good grace.

This is the first time he has seen a provision that would permit a court to order the production of police reports and just that is remarkable. He believes all the facts should be out on the table. His practice is to give all of the facts to the prosecution in an attempt to resolve the case.

He also likes the provision that certain Brady obligations kick in upon indictment. Right now you have to litigate first, your right to Brady material, and then second, the timing of the Brady disclosures. This makes it very clear that it is upon indictment. That is very helpful.

This is not perfect, but it does do some very important things that we need and that the citizens we represent need. He would like to see the Commission voice its support.

Judge Rosenblatt said that as he understands the process. They just released this to the public for comment, and once they get that comment, if it follows the usual procedure, then the Task Force will reassemble, and work on its document more before coming up with a final proposed rule that they will submit to the Supreme Court.

It will still need to go to the Executive Committee of the State Bar.

Mr. Douglass said that if this body sits on the sidelines it will send the wrong signal to the folks overseeing this proposal. There are some substantial questions about the document and some of the details that easily could be debated, and probably should and would be changed in the

process that would ultimately lead to rule making. He believes we ought to say something about the concept of meaningful discovery reform and what we think is good about this proposal.

If he could identify one thing in Virginia law that stands in the way of the fairness of the process, above anything else, it is trying to defend a case when you do not even know the witnesses who will walk into the courtroom. People in the federal system who look at the way the state system works are appalled, as are people in other states. Knowledgeable people are surprised at how limited Virginia's discovery is. If you look at what other states do, we are very limited. We are way behind the curve on this.

That was point number one.

Point number two is this is an issue that just doesn't affect criminal defendants. It is not trying to tilt the scales toward the defendant. This really affects the administration of justice. We see a lot of cases that are reversed on Brady violations. We see a lot of appellate issues that wouldn't be issues if this stuff was hashed out before trial. It makes the process of arriving at a plea bargain simpler and more efficient. It probably, at the end of the day, saves resources. He believes there are a lot of reasons why we should support it. He thinks we can support the concept without necessarily agreeing to everything that is in the document.

Ms. Jankowski proposed that we would comment, that we as a commission, very much support significant, meaningful discovery reform in the Commonwealth, and we could end there or we could go as far as to say that the Commission sees meaningful discovery reform to include the disclosure of witness statements, the disclosure of police reports. She said there are a lot of different ways to go with this, from no comment, to we disagree, to we like the idea.

There was discussion about commenting now or later.

Judge Rosenblatt said that he applauds everyone who has worked on this and acknowledges the difficulty in getting this document, but as the Virginia Indigent Defense Commission he does not know that it is our role to take a position at this level. His guess is that we will be asked by the Supreme Court for input. At this stage we do have a proposed Rule change, and we can certainly indicate our support for meaningful discovery and reserve our right to comment on the final Rule where he thinks the Commission's voice would have more impact than it would have at this stage. At this stage, it will just have one more voice in the public comment process. Down the road when the Supreme Court is actually looking at the proposed rule change, we could meet again and come up with a detailed statement and really put our weight behind it.

Ms. Geiger said the deadline for public comment is January 15, 2013. The Executive Committee of the state bar is to meet in February.

Judge Rosenblatt continued that this is still being worked on within the Task Force.

There was discussion regarding the Commission's stand on this.

Ms. Jankowski proposed language that would read, and we see meaningful discovery to include police reports, witness statements, and then kind of end it there. Some of the things that are appalling to even the average citizen. Who can't get on board with that, without in the public eye, looking like they are trying to hide the facts that they are afraid of the truth? Is it so absurd that we might like to know what the witnesses are going to have to say or have said in the past, that we have what should be a public document, a police report?

She said that her experience is very unique. When she was in the Richmond Public Defenders office working for Mr. Johnson, the police department was fighting with the commonwealth attorney's office. In an effort to irritate them the police gave us the police reports. We would just go to the police station and get the police reports. To this day she still goes to the police station to get her police reports. Depending on who is running the computer on any given day determines how much information she gets.

These reports are invaluable even if they have deleted the social security number. Without this information she would not have even known for example, the location of an alleged larceny.

Delegate Minchew asked whether Paragraph three of the proposed Rule change is written broadly enough that it covers anything discoverable by the defense under Brady.

Mr. Petit said that he thinks that it covers all of Brady. The problem with Brady is that it requires the commonwealth to make a determination as to whether the information is helpful to the defendant. Each statement is slightly different when a witness adds other factors. When a client says that she was raped and later adds information, it does not mean she is changing her story, she is adding to it. This is the reason we need police reports because it is the only way we can find out what exactly was said from the beginning and what they said all along. Paragraph three of the proposed Rule change covers that.

Mr. Benjamin said there are one or two possible motions. One motion would be that we issue a statement similar to this, "the Virginia Indigent Defense Commission supports the effort of the Virginia State Bar Indigent Defense Task Force to achieve meaningful discovery reform."

If we were to take that position, then we are doing what he believes is absolutely essential and not sitting on the sidelines. We are commenting, yes, we need reform, but we are not doing what some members of the Commission find to be disquieting, taking position on a document that may change.

We could also go a little further than that statement and add to it some of the fundamental aspects of discovery reform that we are looking for, but he does not know if that is necessary. Instead of just blurting out a motion, he would like to just give that possibility to the Commission.

Judge Rosenblatt said, what if we added to the first sentence, words to the effect of “look forward to the opportunity to comment on the final version or the proposed Rule as proposed by the State Bar?”

Ms. Jankowski said that in the interest of the administration of justice, this is not just that we want more, but there is a certain fundamental impact that it will have.

Mr. Benjamin said, “The Indigent Defense Commission supports the effort of the Virginia State Bar Indigent Defense Task Force to achieve the meaningful discovery reform necessary to the full and equal administration of justice.

Mr. Douglass said to break it into two sentences. Use your first sentence and the second sentence could be something like: We believe discovery reform is critical not only to the fairness of criminal trials, but to the fair and efficient administration of the justice system.

There was discussion regarding the wording.

Mr. Benjamin suggested: The Virginia Indigent Defense Commission unanimously supports the need for and believes that meaningful discovery reform is necessary for the accurate, fair, and efficient administration of justice and accordingly supports the efforts of the Virginia State Bar Indigent Defense Task Force to achieve meaningful discovery reform.

A draft of the above will be written up for approval by the Commission.

Ms. Geiger continued with other legislative items.

What we have used as the legislative approach since 2007 as the legislative approach has been to take positions on legislative bills only when there is a direct affect or impact on (a) the ability of our attorneys to represent clients, or (b) the operations of the agency. Previously we have used the Executive Committee as the Legislative Committee if there are a number of bills that we believe we need to take a position on or need to have the members review. The Commission has generally approved a three prong approach to the General Assembly.

1. Is there a direct impact on the ability of our attorneys to represent their clients?
2. Is it a public policy question that is within the bailiwick of the General Assembly? The General Assembly is elected by the public to determine what public policy they are going to adopt.
3. Is there some room for education or to inform people of possible consequences on legislation?

Generally, we use those three questions. We have taken positions on the direct impact bills and generally have not taken position on matters of public policy. One example of public policy is the increasing penalties of a crime. If a crime goes from a misdemeanor to a felony, that is

usually public policy, and we generally do not take a position on that. If it is on discovery, we would take position on that because it deals with the actual representation of a client.

For the third category, we do not really have a position, but we feel there is information out there that is helpful to the process or helpful to the patrons.

That position or approach has generally served us well. There was a comment made that there generally doesn't seem to be a voice for criminal defense and the agency has shied away from that and the Commission has shied away from that because of this public policy component and the role of the general assembly. By taking the approach we have, has served the agency well. We have watched other agencies take on more of the public policy fight, and the reaction was not pleasant.

Barring any concern from the Commission, we ask that we continue to approach to the General Assembly session as we have done previously.

No vote is necessary, this is just legislative information.

Ms. Geiger said that we reviewed with the Executive Committee this morning, the only bill that had been prefiled that we find objectionable based on the legislative approach that we are taking. HB1325 is a juvenile deferred disposition bill. Basically it would eliminate the ability for judges to defer disposition on cases that are either automatically transferred to circuit court or where the Commonwealth can transfer a juvenile to circuit court. The recommendation of the Executive Committee was to oppose the legislation.

There was a similar bill last year, HB750 which sought to eliminate deferred disposition completely unless the Commonwealth Attorney agreed. We opposed that. The Senate agreed with our position, and they actually killed the bill. We believe that this is similar. It may be more narrow in scope, but we do believe it is the same premise and that it would harm our clients and our ability to represent them.

It would be the recommendation of the Executive Committee to oppose that bill.

There was discussion about the bill.

Mr. Walker made a motion to oppose HB1325. Judge Hanson seconded the motion. The motion carried with Delegate Minchew, Mr. Benjamin, Ms. Howard, and Ms. Davis abstaining.

Ms. Geiger said the last item is new as of this morning. Senator Petersen is apparently planning to propose legislation that would amend our statute to establish an appellate defender office. This is out of concern for closing our appellate office a few years ago because of the reduction in our turnover and vacancy savings. He is also planning to introduce a corresponding budget amendment in the amount of \$275,000 for two attorney positions and a staff position.

The Executive Committee met and discussed it. The concern that we have is that based on our discussions with our budget analyst, we will probably have to fight to keep what we have this year, and while we appreciate his support, there was concern that at some point we would have to choose among resources. There is concern that we do not have enough attorneys in our public defender offices and concern about the capital offices positions. This would add a third component.

Mr. Johnson said this is a little unusual. We had an appellate office years ago. Sandy Sanderson was the original appellate defender. He explained to Sandy that this was not something we were going to ask for and that we have changed our appellate process. We have appellate supervisors along with an appellate position in the administrative office. The bottom line is, to actually have an appellate defender section is not a \$275,000 piece, it is about a \$6 million piece.

When we had an appellate office that was staffed with double the number of people proposed here, they maxed out at handling about nine percent of our appeals.

Mr. Johnson believes they mean well, but this was not an idea originated by us. There may be a time when we want an appellate defender office but it is not a three position office, it is a huge undertaking.

The Executive Committee voted to oppose this even though there is no bill yet.

Senator Stuart said that unless this is in the Governor's proposed amendments it will not be going anywhere this year and we will be fighting to keep what we have.

The next item on the agenda is training.

Mr. Johnson said that there is a training calendar in the meeting materials. Last year was the first year that we included our supervising attorneys in our management training. We have a program planned for the chief defenders and their supervising attorneys to include deputies and seniors. This is a two day program in January.

January 23rd is first of our regional appellate boot camp sessions. We added this to our trial skills boot camp last year. This is for new attorneys. They go through training for a week and at the end of the week there is a mock jury trial. We stage it so they lose and need to appeal. They go through the exercise of filing the appeal, meeting all of the deadlines, writing a petition that gets graded and then they do an oral argument. When the appellate office closed we decided to upgrade the training to raise the bar. We believe we have been making meaningful progress.

We hold certification trainings in the administrative office every month. This is for attorneys looking to get on the list to accept court appointment. We are in the process of updating the training because it is old and outdated and have put together a work group to organize a new two day training.

We also conduct the certification trainings in Roanoke with the Salem Bar Association. We are going to expand that throughout the state so people will not have to travel so far. This is a big project but we are excited about it.

In March we have the Investigator Conference. We have sixty-three investigators in our system and they will be coming here for a two day training. We had a work group here yesterday to plan the speakers and the agenda. We rotate this training every other year with the sentencing advocates.

Boot Camp is our big training for new attorneys. We have this every year in July. It requires about 300 people to put it on because we stage the mock jury trials, and for that reason we have only been able to do it once a year. The problem with that is a large number of lawyers have already been with us several months and this is a little late for them. Having a four or five day training is exhausting. We also found that learning how to do a jury trial is not high on their list of training needs. It is a lot more basic than that.

We put together a work group of public defenders to revamp the boot camp. It will be held twice a year with smaller groups of maybe twenty-five participants instead of forty. This will give us the opportunity to do more hands on. We are trying to time it so it is about six to ten weeks after the bar results. We will hopefully be getting people within the first month of being in their offices for a multi-day training.

The annual public defender conference will be coming up in September.

Many of the public defenders are doing really good trainings in their offices. Their self evaluations this year were really inspiring regarding these trainings at the office level.

We have made a major move in our training in the last year or two and hope to keep going in that direction.

We have the NACDL forensics conference coming up in February. We have seventy-one people attending this.

The discussion returned to the Supreme Court making rule changes.

Mr. Benjamin said a couple of years ago the Supreme Court proposed a modification of the twenty one day rule. After they did it, the General Assembly said instead of you doing this, it is a job for us and hence came the writs of actual innocence. The Court has Rule making authority, and the Court can properly amend its own discovery Rule. The General Assembly can also act. Ms. Davis said that the judicial counsel has a Rules committee and they propose Rule changes and put them out for comment on a regular basis. So the Supreme Court, once they get the proposal from the Virginia State Bar would determine what language they wanted to adopt and

then would probably seek comment further. She is not involved in this process and this is her best description of the process.

Mr. Benjamin added that we can change this to say it might be proposed to or by the Virginia Supreme Court.

Senator Stuart said that you are going to upset some people especially if you came out in support of this. You are going to make some of the folks on the House side very mad and a few on the Senate side mad, but probably not that many. That is why he thinks this is a much better approach.

Even if you look at that proposed discovery bill in retrospect now, it contradicts or conflicts with the Freedom of Information Act (FOIA), for example, where the police report is specifically excluded in FOIA. Is the Supreme Court going to want to get into that when there is going to have to be legislative action anyway?

Mr. Benjamin said that his recall of FOIA is that while it exempts police reports from being mandatorily disclosable to the public, it does give police agencies the authorization to release them.

Senator Stuart asked if the Supreme Court, through a Rule change, can over-rule that statute. He doesn't think they can, he thinks the legislature has to do that.

Mr. Benjamin said what the Rule change would do is provide the Court the authority to order the police report.

There was discussion regarding police reports, disclosure and discovery reform.

Senator Stuart said that something needs to be done, and it is lopsided at this point.

Ms. Jankowski said that she has an alternative version of Mr. Benjamin's proposal.

The Virginia Indigent Defense Commission supports meaningful discovery reform in the Commonwealth. The Commission recognizes that full discovery in every criminal case throughout the Commonwealth is essential to the fair, accurate, and efficient, administration of justice.

Judge Rosenblatt suggested typing this up and voting on it after closed session.

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, the Deputy Director, and the Human Resources 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.

Mr. Walker seconded the motion. The motion carried.

After reconvening into open session, Judge Hanson moved for a roll call vote asking that each member remaining 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.

Mr. Johnson said he received a letter from four judges in Hampton. The letter stated that they were distressed about Mr. Watkins decision to abandon meaningful participation in Hampton drug court and wanted to know if the Commission had a position on this. There was discussion regarding drug court and the letter. The Commission directed staff to send a letter in response supporting Mr. Watkins. Staff was also asked to encourage Mr. Watkins to try to reach a mutually acceptable arrangement with the Court.

Discussion from earlier on discovery reform continued. The end result being:

Mr. Douglass said that we are not in a position to comment in an hour or two in detail on the substance of it. We should not be sitting on the sidelines. We should say something that, in fact, encourages the effort.

Judge Rosenblatt added that we are endorsing the concept without getting into the weeds of the details.

The Virginia Indigent Defense Commission supports meaningful discovery reform in the Commonwealth and the efforts of the Indigent Defense Task Force to bring that about. The Commission recognizes that full discovery in every criminal case throughout the Commonwealth is essential to the fair, accurate, and efficient administration of justice. The Commission will review and comment on any amendments that may be proposed by or to the Virginia General Assembly or the Virginia Supreme Court.

Mr. Benjamin moved to adopt this language as amended by Mr. Douglass. Ms. Jankowski seconded the motion. The motion carried with Ms. Howard, Delegate Minchew, and Ms. Davis abstaining.

Mr. Benjamin said the annual meeting of the American Academy of Forensic Science will be held in February. This training is available to all of our attorneys and as Mr. Johnson said, there are seventy-one defenders who will be attending.

There is going to be a meeting of the National Association of Criminal Defense Lawyers at the same time as the Academy meeting, across the street. The focus is going to be on how to affirmatively use science in the defense of our cases either to prove actual innocence, to prove the existence of a reasonable doubt, to prove an affirmative defense, or to prove a mitigating circumstance.

The Academy has offered to our first 200 registrants a complimentary badge that will give our attorneys access to everything in their entire program. In addition, they will have access to the exhibition hall filled with all of the latest forensic technology.

Everyone is invited to attend the Board of Directors meeting on Saturday.

Delegate Minchew said there has been an interesting trend with summer associates in private law firms applying for and being awarded unemployment compensation when they return to their third year of law school. Firms are now moving to requiring. There is now a waiver to be signed.

There was no further business.

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

The meeting adjourned at 2:00.

Respectfully Submitted:

Approved By:

Diane Z. Pearson, Administrative Assistant

David J. Johnson, Executive Director