

Virginia Indigent Defense Commission  
Personnel and Training Committee Meeting  
1604 Santa Rosa Road, Suite 200  
Richmond, Virginia 23229  
October 24, 2013

The meeting was called to order by Chair, David Lett, at 11:02 am. Other committee members in attendance were Carmen Williams, Kristen Howard, Tom Chaffe, and Judge Alan Rosenblatt. Administrative staff included Executive Director, Dave Johnson; Deputy Director, DJ Geiger, and Administrative Assistant, Diane Pearson.

Quorum requirements have been met.

Judge Rosenblatt made a motion approving the November 13, 2012 Personnel and Training Committee meeting minutes. Ms. Howard seconded the motion. The motion carried.

Judge Rosenblatt moved that the Virginia Indigent Defense Commission's Personnel and Training Committee convene in closed session to discuss personnel issues pursuant to the personnel exemption contained in §2.2-37 (11) (A) (1) of the Code of Virginia.

This meeting will be attended only by members of the Personnel and Training Committee, however, pursuant to §2.2-37(12) (F) of the Code of Virginia, the Committee also requests the attendance of the Executive Director and the Deputy Executive Director, because it is reasonable to believe that their presence will aid the Committee in its consideration of the matters which are the subject of the closed session.

Ms. Howard seconded the motion. The motion carried.

After reconvening into open session, Judge Rosenblatt called for a roll-call vote asking that each Committee member certify to the best of his or her knowledge, during closed session the Committee 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. Geiger said that after the discussion during the September Commission meeting, staff reviewed some of the concerns heard from Commission members about reducing attorney caseloads, addressing salary compression issues, acknowledging the employees who have been doing a good job for years, rather than rewarding every employee.

In developing some proposals for presentation today we looked for some specific ways to impact workload or caseload of the attorneys, quality of client representation, salary compression, and what we are calling career defender or career employee development. We pulled data on staff and supervisor allocations, workload and caseload numbers, employee years of service, and turnover. We talked with the public defenders during their evaluation meetings to determine what they felt would be priorities. Then we determined what adequate ongoing funding would be sufficient to support each of those proposals.

We have proposals for new positions, reclassifications, satellite offices, and compression base pay adjustments.

Ms. Geiger said, specifically we wanted to propose a retention bonus that would require an employee to be with our agency a year and be required to stay for six months. During the September Commission meeting there was discussion whether that rewards the people who have been with the agency longer and have been doing a really good job.

We explored a couple of different options but then looked at the proposal contained in the House Appropriations budget this year to address compression for state employees. Our Human Resources Director pointed out that the two-year mark becomes pivotal; employees are deciding whether to stay or move on. Then there are the people who have been here five years or longer who we are pretty sure we want to keep because they have been progressing and doing a good job.

Mr. Johnson added that state employees received a two percent raise this year. We have a group of employees who have gone almost six years without raises whose salaries are compressed. People who have been here a year received a two percent raise. They are now going to be compressed with new employees. A discussion with the public defenders found that they want to promote their people. The problem is that the people who have been in a position for five or six years are stuck in an entry level position and are making the same amount of money as a new employee. What we are trying to recognize as a continuing obligation is the compression. It would be an acknowledgement of the long term employees.

Ms. Geiger added that this would be in addition to the \$65 for state service and the two percent raise. Every state employee who met the criteria of five years of service and received at least a "meets expectations" on his or her annual evaluation received the adjustments and the raise. There was no retention component; this was aimed at addressing compression. The adjustment took effect in July. What we are asking for is separate.

Mr. Johnson added that the problem is for people who have been here five years and have not moved in the last five years. We have people who have been here for five years and are making the same amount as a new employee.

Ms. Geiger continued. The proposal provides if an employee has been with us for a minimum of two years, but less than five, they would receive an additional \$100 per year of service, added to their base salary. If an employee has been here five years or more he or she would receive \$150 per year of service.

Mr. Johnson said that the big problem is that if someone has been with the state for five or six years, their base pay has not gone up and this impacts their retirement. That is the problem with the retention bonus; it does nothing to the base pay.

Ms. Geiger said that if an employee moves from one public defender office to another, this would move with the employee. The years of service would have to be with the VIDC because we are trying to keep people in this agency not in another state agency. The employee must have received at least a "meets expectations" in his or her most recent evaluation. We would start the clock for the two-year period on January 1, 2012 and payment would be made in the February 1, 2014 pay check. So January 1, 2014 would be the two year mark and it would be added to the base pay and does affect their retirement.

We have calculated the costs if this proposal were to become effective this year. The cost for FY14 would be \$249,975 and the annual cost after that would be \$599,939. That is based on our fiscal department going through each employee's records for date of employment, number of years specifically with the VIDC and calculating the benefits involved. We are looking for about \$600,000 annual cost added to the budget.

Mr. Johnson said that this would be a Commission decision but we want to reward time with our agency.

There was discussion regarding the employees who have been here two or more years. Once in an agency for two years employees are getting more experience, getting more comfortable, and that is when employees are starting to look to move up or taking on more responsibility, and since we do not have a lot of vertical movement, this would be helpful for those folks.

If someone is here a year and six months, when their two year mark comes up, they will not receive the compression. This is a one-time compression.

The people coming in the door just received a two percent raise with everyone else. So we are really trying to address the two-four year folks, whose salaries are compressed and the five year or longer career folks.

Mr. Johnson added that there has been a six year period without a raise and there has been a compression issue. Hopefully the state will get to the point where they will start giving raises again. In the future, if we are getting to the point where there is another long drought that can be revisited because we know we have a process in place. We are confident that we can save the money every year to do this.

There was discussion regarding the compression.

Ms. Geiger said that we want to do something permanent rather than temporary so the long time employees continue to receive the benefit.

Mr. Johnson added that we have been fortunate in that we have not had to lay anyone off, but now six years into it has been difficult for everyone.

There was discussion regarding the fact that this is an ongoing commitment and a huge obligation.

Ms. Geiger said that in FY13 we prepaid four months of rent totaling \$800,000 and this more than pays for the proposed adjustment. We do not ever have to prepay rent. We have been doing this for years because we have always had money left over. As a way of spending down, this is what we have been doing. This is a better investment and is probably better for the agency to not be prepaying that amount of rent.

Discussion continued about the compression. If there had been continual increases the past six years, it would be comparable. This would be like getting a three percent raise one time instead of six. It is a great way to say thank you to the long time employees.

Ms. Geiger said that the House and Senate have recognized the need to do something for state employees; they just went about it in a different way. The Senate wanted a higher raise and the House wanted a compression adjustment.

This is less than the cost of the Appellate Office, and we currently do not have a million dollar reversion. If something terrible happens it can be undone. However, we do have the funding now and we have options available to us in the event the General Assembly decides to reinstitute a reversion or make a cut to our budget.

Mr. Johnson said he would rather spend the money on the compression than buy furniture or something else.

Mr. Chaffe moved to recommend the compression base pay adjustment to the full Commission. Judge Rosenblatt seconded the motion. The motion carried.

#### Page 1, Caseload/Workload Information and Proposals

Ms. Geiger said there is a chart in the meeting materials with caseload information for each office. We have been tracking this information for about six or seven years. We wanted to provide you with the high and low for the last five years and a six year average.

We have also indicated if we have reallocated positions. In our Hampton office there has been a fair amount of turnover and vacancy and that may account for that office having its lowest year so far. The Fairfax office has had a two year increase. For our system the average this year was 312 cases but the average over the six years was 325. This year was a bit of a decrease.

The chart shows the allocation of attorneys for each of those offices. We have 311 full time positions allocated.

The next group of columns shows more detail of the case information and the actual number of cases. One client equals one case regardless of the number of charges. Our new case management system allows us to break down violent vs. non-violent felonies. There is also a percentage for the ratio of misdemeanors to felonies.

The highest felony caseloads are in Danville and Fairfax. Arlington has the highest misdemeanor caseload at 76 percent. The last column contains our proposed adjustments based on these caseload numbers. Senator Stuart and Steve Benjamin both indicated a concern for bringing down the caseloads of the individual attorneys in the offices. The current range of caseloads goes from a low of 210 in Alexandria to a high of 426 in Danville. That is a 216 case spread. We are working on proposals to reduce that to a caseload range of 231-373, or a 142 case spread. Considering felonies vs. misdemeanors and multiple jurisdictions that is probably not a bad range.

Looking at the last three columns, the first is "Add APD" position. Fredericksburg still has one of the highest caseloads. We would propose allocating a position to that office to take them to 19 attorneys. Based on the 2013 fiscal year caseloads, this would take them down to approximately 358, but still leaves them in the top ten for caseloads. They do have a 57 percent - 43 percent misdemeanor vs. felony split and they have multiple jurisdictions, so we think that providing them with another attorney would ease the caseload.

We are also proposing to add one APD II position to Danville. Danville has had the highest caseload for several years. They were the highest again this year and are also doing 50-50 felonies to misdemeanors. They cover one jurisdiction, but have a heavy caseload per attorney. Adding one attorney will take them to 355 which is still a very solid caseload for them.

The Richmond office is always in the top five and we have reallocated to them before. The caseload is currently at 382. Richmond is the largest office we have, and we are proposing to reduce their caseload down to approximately 369, which would still be higher than the other two offices we just listed.

Unlike Fredericksburg, the Richmond office is centrally located within walking distance to the court. Richmond and Fredericksburg have existing space for the lawyers. Danville is moving in January and will have an extra office.

It looks like only a .5 position is recommended for Staunton but the reconfiguration actually entails a merging of part-time and full-time positions. This will be a net increase of a .5 position for that office.

That will reduce their caseload from 395 to approximately 373. That will still keep the office at the high end of the caseload range, but will give some relief.

The Virginia Beach office also received a reallocated position previously; however, they are still one of the top five. We propose providing them with an additional attorney. That will reduce their caseload to approximately 353 and leave them at the higher end of the caseloads.

For Winchester, we are proposing one additional attorney position. Winchester covers six jurisdictions that are geographically spread out. They had their lowest caseload this year but there was a death in the office and a fair amount of turnover. We expect their caseloads to go up. Even if it does not, the per attorney caseload of 284 keeps them in the top two thirds of the caseloads.

Alexandria has had a decrease in caseloads for five years and they have a heavy misdemeanor vs. felony caseload. Removing one position from their office would put their caseload at approximately 231 per attorney. The office would remain at the bottom of the office caseloads. Arlington has made some increases, but is still the second lowest and has the highest misdemeanors vs. felonies ratio. Removing one position from their office would put their caseload at approximately 237 and would still leave them at the bottom of the office caseloads.

In Franklin, we think we may be able to remove a .5 position but that might be needed just for coverage of courthouses because they have several jurisdictions. One of the part time positions is used to cover that.

Mr. Johnson said that some issues in Franklin are due to demographics. The paper mill closed and took jobs from there.

Ms. Geiger continued with the Norfolk office. It is an urban office with a single jurisdiction. Their caseload has decreased for five years. Removing one position would take their caseload to approximately 271 and would put them closer to the middle of the pack.

We are not necessarily recommending removing these positions but wanted to get that on the radar as if we wanted to reallocate further within the agency. Those are the offices that have hit the radar already.

We are not necessarily recommending removing these positions but wanted to get that on the radar in the event we need or want to reallocate further within the agency.

Mr. Johnson said that he has notified the HR Director that if any of these offices has an attorney position vacancy to let him know and he will freeze the position until the next Commission meeting. He does not want to vacate a position but if it is vacant, let's freeze it and discuss it.

Ms. Geiger said that based on the information on this chart, we would like to propose new attorney positions for four offices; an APD II in Danville, an APD I in each of Virginia Beach, Richmond, and Fredericksburg.

#### Page 3, New Positions/Reclassifications

The costs of the four positions we just discussed are listed and include benefits.

Mr. Johnson said that the Personnel Committee tells us what is a good idea and then we take it to the Budget Committee and explain it to them. It will be up to the Budget Committee to make the recommendation to the full Commission that we have the money to do it.

There was discussion regarding funding for these positions.

Ms. Geiger said the new positions are proposed because we believe we have the funding to do so. Going into the spring we may want to recommend a further reallocation.

We do not want to vacate positions prior to determining where they will be reallocated because it will start to generate turnover and vacancy savings and for this fiscal year we do not need more savings. Therefore the one-time funding issues are, once again, somewhat tied to the ongoing expenditures being proposed.

#### Page 4, Startup Costs

When we create a new position, there are startup costs. We will not have any construction or office moves. The offices can accommodate these positions within the space they already have. There are some costs of putting in a phone line, desk, chair, computer, licenses for software, etc. This chart shows the one-time startup costs of \$5,206 for those positions.

There was discussion regarding office furniture and cost.

#### Page 5, Ongoing Costs

Ongoing non-personnel, licensing costs are \$164 per position.

The second proposal is for the four new positions; APD II in Danville and APD I's in each of Richmond, Virginia Beach, and Fredericksburg.

Judge Rosenblatt made a motion to recommend to the full Commission to approve four new attorney positions and freeze three vacancies in Alexandria, Arlington, and Norfolk. Ms. Williams seconded the motion. The motion carried.

#### Page 2, Supervisor: Attorney Ratios

There are seven offices currently that do not have deputy public defenders. They function much like deputies but are classified as seniors. We had the same situation with the office managers a couple years ago. Some secretary II's were working in the capacity of office managers but were not recognized as office managers. We made the adjustment for that.

Converting the deputy public defender positions was something we wanted to do before the economy turned.

The offices that currently have a senior, rather than a deputy public defender are Petersburg, Suffolk, Martinsville, Pulaski, Franklin, Danville, and Bedford.

#### Page 3, New Positions/Reclassifications

The Cost to reclassify the incumbents in these offices from seniors to deputies would be \$98,944. Offices would no longer have a senior position. They would have a deputy position.

The difference in salary between a senior and deputy is \$7,000.

Mr. Johnson said that this is money we have every year and for the last five years we have been concerned about what the General Assembly would be doing at the end of the year. We keep generating money that is left over at the end of the year. We would like to direct this money to where it is needed.

Judge Rosenblatt made a motion recommending to the full Commission to change the seven senior positions to deputy positions. Ms. Howard seconded the motion. The motion carried.

#### Page 2, Supervisor: Attorney Ratios

Ms. Geiger said that the Richmond office has twenty eight attorneys and six supervisors. Virginia Beach has twenty five attorneys with seven supervisors and Norfolk has twenty three attorneys with six supervisors. Fairfax has twenty one attorneys with six supervisors. Richmond is a little light on supervision, especially if we are going to allocate a new position. The cost to reclassify one APD II position to a Senior APD position is \$14,302.

Judge Rosenblatt made a motion to recommend to the full Commission to reclassify one APD II position to a Senior APD position in the Richmond Public Defender Office. Ms. Howard seconded the motion. The motion carried.

Ms. Geiger said that the last two items are a little more complicated. Staunton and Lynchburg have nine attorneys and Arlington has ten. Staunton has two supervisors; Lynchburg and Arlington have three. We are proposing a third supervisor for the Staunton office. Further, Staunton covers multiple jurisdictions. Two of the jurisdictions are fairly far away, Lexington and Buena Vista. The Public Defender feels he is not getting all of the cases he could be getting from those areas because he has part time attorneys covering cases here and there. One of the part time attorneys had a founded Standards of Practice complaint this year. He would like to eliminate three of the part time attorney positions and have a satellite office in Lexington to cover Lexington and Buena Vista.

There are four part-time attorneys in the Staunton office. Three cover Lexington and Buena Vista; the other part time attorney is in Staunton and is not part of this proposal. We would like to merge two of the part time attorney positions into one full time APD I. There is very little cost to that because the three part time attorneys are each receiving office allowances totaling \$15,000. Merging the two part time positions, eliminating those office allowances into an APD I would be pretty close to even.

We would also like to add a new position; a senior APD, using that other part time APD I, so that person could supervise the APD I position. There would be a more experienced attorney handling cases in that area. The public defender feels like they would be able to take more cases with two full time attorneys and an actual presence and an office. One concern is that the part timers currently have their own offices and the Public Defender has no control and is somewhat blindly trying to supervise them.

There was discussion regarding the location in Lexington that would cover Buena Vista as well.

There would be a senior attorney and an APD I in that satellite office.

The total costs, over and above what we currently expend are approximately \$44,971. The startup cost for Staunton with two new attorneys and IT equipment, the licenses, furniture, etc. is \$19,967. Also, there is a \$750 fee from the Department of General Services (DGS) for security a lease. The ongoing rent and IT costs we estimate to be \$27,443-\$38,443. We do not believe the cost will be that high.

Mr. Johnson said that there will be a Budget Committee meeting between now and the December Commission meeting.

There was discussion regarding the Staunton Public Defender office and the compression costs.

Ms. Geiger said that the total costs of the proposals we are making is \$1.13-\$1.15 million. Last year we ended the fiscal year with \$123,000. We also prepaid four months of rent at a cost of \$800,000. The two items total a million dollars. We are projecting \$393,000 in turnover and vacancy savings in the current fiscal year. Even if it is \$300,000 the total is \$1.3 million which covers these costs.

We do not have any big IT issues this year and are looking to head off IT costs by exploring the Treasurers equipment lease program that spreads the costs over up to four years. The challenge has been every year that we do not have a big item to pay for, we are left scrambling to figure out how to spend some money at the end of the year. Instead of just buying "stuff", we are trying to address it on a permanent level by addressing the needs of the system, including lowering caseloads, addressing compression, and rewarding career defenders. We propose that we make these adjustments and see where we land next year. We still have mechanisms in place if we do have a problem, such as hiring delays and other options that we can adjust. The problem we are going to have is if the General Assembly keeps looking at us and wondering what we are buying with all this money and asking why we are prepaying rent. This is because we have not used the money to address our biggest needs.

For several years we had to pay a \$944,000 reversion and the costs of an Appellate Defender office. We have made some adjustments, but the cost of those two items was \$1.5 million. We might get a reversion this year, and if we do, then we will make adjustments.

We put off action waiting to see what the General Assembly will do every year and it keeps us from making the improvements we need to make and it makes us a target. Yes, the General Assembly might do something, but we have been saying that, and hesitating to take action. One year we ended up with \$1 million and they wondered why we had it.

We will have two meetings after the General Assembly to make adjustments and do whatever we need to do to counter any potential cuts.

There was discussion regarding the General Assembly and the changes that have happened.

Mr. Johnson said he does not want to have money left at the end of the year especially when there are needs that impact client representation. Every one of these items is going to improve the representation of our clients. If we have to adjust, we will adjust. For too long we have had to put this on hold because we were just too afraid of what might happen. It will make us a target because we do not spend what we have.

Mr. Johnson went on to say that we are going to have trouble spending what we have this year. We have put off spending.

There was further discussion about spending this much money.

We want to see how we are doing with the obligations we propose taking on. If two years down the road we are comfortable then we will try to make another move. If two years from now we are struggling then we will realize we got ambitious.

Mr. Johnson said that this was us reigning ourselves in, we started big and worked back to this. This is accomplishing what we have put off for the last five years.

There is still work to be done on the caseloads where we might start reallocating positions because there are still offices that are high and offices that are low. We still have half dozen offices without sentencing advocates. We want to see how we do with these new obligations we are taking on for a year or two. If in two years we are comfortably paying for this then try to make another move.

There was discussion regarding the money left at the end of the year.

Ms. Geiger said that it had put us in a vicious cycle and the reversion had us worried. There wasn't a true understanding of how much money we had because we did not have confidence in our ability to project the year end balances and to determine our exact financial position throughout the fiscal year.

We have more confidence now. We have been locked in this cycle of not knowing what the General Assembly was going to do and we were afraid to do anything. Not doing anything could have been a detriment and could be setting us up for a cut because we are not using the funds we have and are not doing what we need to do.

Mr. Johnson added that if something bad had happened it would have set things off so he gives credit to the Commission. It was the right way to go, but we cannot do it forever because we are kind of withering on the vine here.

He asks the public defenders every year what they want and they tell him what they need. If we do not do anything about it, they are going to stop telling me what they need.

Ms. Geiger said that the negative impact depends on how deep the budget cut is. If the General Assembly did cut us, we could impose a hiring delay of up to ninety days. We have done that before. Our turnover was nineteen percent for attorneys and twenty percent for staff last year, but the problem was that the positions were filled almost immediately so there was not a savings. If we delay hiring for thirty, sixty, or ninety days, we have a mechanism that will help us generate funds if necessary.

There was discussion about turning everything over to the Budget Committee and then the full Commission.

Judge Rosenblatt moved to approve funding for a Staunton satellite office. Ms. Howard seconded the motion. The motion carried.

The next item on the agenda is a satellite office in Winchester.

Ms. Geiger said the Winchester Public Defender is looking for an office to cover the Front Royal and Page county areas. That office has six jurisdictions right now. The public defender would like to create one new position that would be a Senior APD. He would move two of the existing attorneys to the satellite office along with a part-time secretary and request the secretary to become full-time.

The cost for the senior would be \$73,458. The increase from the part-time secretary to full-time would be \$17,231. Startup costs would be a little less than Staunton because the public defender is going to take his existing people, furniture, and IT equipment to that office.

The ongoing office cost would be \$29,000-\$35,000. The staffing would be \$90,600 and the startup would be \$19,000.

The total startups of everything would be \$60,167. The ongoing costs for non-personnel would be \$57,000-\$75,000. The ongoing personnel costs would be \$475,959. And the career defender compression would be \$600,000 ongoing.

Judge Rosenblatt made a motion to approve funding for a Winchester satellite office. Ms. Howard seconded the motion. The motion carried.

There was no further business.

Judge Rosenblatt moved to adjourn. Ms. Williams seconded the motion. The motion carried.

The meeting adjourned at 1:30pm.

Respectfully Submitted:

Approved By:

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Diane Z. Pearson, Administrative Assistant

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David J. Johnson, Executive Director