

The Virginia Indigent Defense Commission
Commission Meeting
1604 Santa Rosa Road, Suite 200
Richmond VA 23229
March 20, 2014

Judge Alan Rosenblatt (ret.) called the meeting to order at 11:05 am. Other Commission members in attendance were Tom Chaffe, Professor John Douglass, Karl Hade, Judge Edward Hanson, Kristen Howard, David Lett, Delegate Randall Minchew, Carmen Williams, and Kristi Wooten, Administrative staff included Executive Director, David Johnson; Deputy Director, DJ Geiger; Incoming Deputy Director, Maria Jankowski; and Administrative Assistant, Diane Pearson.

Quorum requirements have been met.

Judge Rosenblatt welcomed Maria Jankowski as the new Deputy Executive Director. Being that Ms. Jankowski is now a member of the executive staff, there are only thirteen Commission members. We are waiting to hear from the Speaker of the House to appoint someone to her position.

There are a couple Commission members who are up for reappointment.

Ms. Geiger said that the Senate switched majority so they may designate someone to replace Senator Stuart. There are co-chairs serving on the Senate Courts Committee, Senator McEachin and Senator Marsh who have generally delegated a designee. Senator Stuart is a designee. Currently they have not removed Senator Stuart.

The first order of business is to approve the agenda and minutes.

Mr. Chaffe made a motion approving today's agenda and the December 12, 2013 minutes. Judge Hanson seconded the motion. The motion carried.

Judge Rosenblatt said that because of Ms. Jankowski's new position we need to reconfigure the Commission. The proposal is that Mr. Lett be nominated and elected to be interim Vice Chair and Budget Committee Chair and Professor Douglass be nominated and elected as Personnel and Training Committee Chair.

Judge Hanson moved that Mr. Lett be elected to serve as interim Vice Chair of the Commission and Chair of the Budget Committee and Professor Douglass be elected to serve as interim Personnel and Training Committee Chair. Ms. Howard seconded the motion. The motion carried.

One of our former Public Defenders, John Youngs, passed away recently. Mr. Youngs was the public defender in Arlington for many years.

Every year Lawyers Weekly has an 'Influential Women of Virginia' award. The award recognizes the outstanding efforts of women in the commonwealth in all fields. This year one of the honorees was Sharon Eimer, the public defender in our Lynchburg office. Ms. Eimer is one of our best public defenders. She is very positive and upbeat. There is great morale in that office and Lynchburg is not one of the easiest places to be a public defender. This is a great recognition for Ms. Eimer.

Mr. Johnson said we had the management conference the past two days and the other public defenders were happy that Ms. Eimer was honored.

The next item on the agenda is the budget update.

Ms. Jankowski said that the first item behind the budget tab in the meeting materials is the FY14 Budget Status Report. Under Personal Services, the 1100 series, is a little high because we only have one pay period in June. That also reflects the central appropriation. Under Cont Charges, building and equipment leases, the 1500 series, is also a little high because we prepaid rent last year. Generally speaking, we are on budget.

The next spreadsheet is the FY14 budget projections.

Ms. Jankowski said that in the last Commission meeting, after a lot of work by both the Personnel committee and the Budget committee, it was voted on to address salary compression. It would have adjusted salaries for employees who had been with the agency five years or more. We were going to be able to use money we had, we were not going to the General Assembly asking for additional money. At that Commission meeting we had visitors from House Appropriations and the salary compression decision was not well received.

In the House version of the budget a \$350,000 reversion was added to the already built-in \$200,000 reversion. In addition a \$300,000 reversion for the next two years was added to those budgets. This makes it impossible to implement the compression adjustment.

We need to ask the Commission today to rescind that vote from the last meeting. The vote would be to retract the compression adjustment that was implemented.

Mr. Chaffe made a motion rescinding the previously approved alternate staff proposal of five or more years of service at \$100 per year of service at an estimated cost of \$375,922 annually and a FY14 cost of \$187,961. Judge Hanson seconded the motion. The motion carried.

Ms. Jankowski continued with the budget update. This will leave us with a projected balance of \$1,353,787. Subtract \$27,000 for the Front Royal Satellite office, \$30,000 for the Lexington Satellite office, \$42,900 for recording and projection equipment, \$20,000 for fellows and \$400,000 for prepayment of two months for rent in FY15. This leaves a balance of \$833,887 for FY14.

Delegate Minchew arrived.

Mr. Johnson gave Delegate Minchew a recap of the previous meeting and what has been covered thus far.

Ms. Jankowski continued. We have an alternative proposal, Plan B. This is a one-time retention bonus and not an on-going expenditure. We have done similar retention bonuses in the past. The first time was at the suggestion of the APA (Auditor of Public Accounts). In the past, retention bonuses have been well received.

We have two proposals.

Option 1

A. Fixed rate retention bonus to all employees meeting the following:

- Employed at least one year with the IDC.
- Received at least a “meets expectations” on the most recent evaluation.
- Sign an agreement to continue employment with the IDC for six months, or repay a prorated amount based on the pay periods worked upon termination.

The possible rate of retention bonus: 2%, 2.5%, or 3%

B. Same as A, with the following exception:

- Employed at least two years with the IDC.

Option 2

A. Fixed rate retention bonus to all employees meeting the following:

- Employed at least one year with the IDC.
- Received at least a “meets expectations” on the most recent evaluation.
- Sign an agreement to continue employment with the IDC for six months, or repay a prorated amount based on the pay periods worked upon termination.

The possible rate of retention bonus: 2%, 2.5%

B. Same as A, with the following exception:

Employed at least two years with the IDC

Mr. Lett arrived.

Option 2 is the same except there is no 3% rate. This is because under this option the difference, depending on if it is 2% or 2.5%, would be given to the Public Defenders to award discretionarily. The Executive Director and the Chief Public Defenders will have

discretion to provide an additional performance retention award to select employees in their offices subject to the following additional requirements:

- The Public Defender would have to provide a justification/reason for the performance retention award
- The employee would have to sign a retention agreement

A form will be supplied by HR indicating the recipient, the amount, and the reasons/justifications for the performance retention award. This must be completed and returned to the HR Director for approval by the Executive Director prior to the established deadline.

The retention agreement would be signed to continue employment with the IDC for six months after payment of bonus or repay a prorated amount based on the pay periods worked upon termination.

This can be given to one person or multiple people. It may be awarded to someone who because of years of service did not qualify for the across the board retention bonus.

Mr. Johnson said we once had something called pay practice and we used turnover and vacancy savings to distribute to employees who did an exceptional job. This was at the discretion of the chief defenders. This was a great way to reward people. The problem with the across the board bonus is that it is given to people who may not be as deserving as others.

Ms. Jankowski said that the Chief Public Defenders and the Executive Director are not eligible because they are the decision makers.

No employee will receive an amount greater than \$3,499 for the retention bonus, the performance retention award, or any combination thereof.

There is a chart in the meeting materials showing the breakdown amounts of the FY14 retention bonus as of May 10, 2014. For example if the retention bonus was for one year at 2.5 percent the cost would be \$666,486. The next page shows what it would be for the individual offices. The chart gives the office name, the number of positions, and the amount that the public defender would receive to use at his/her discretion to divide among any employee they deem appropriate. The amount on average, per allocated position is \$471.22.

Mr. Johnson added that the public defenders can choose their exceptional employees and give them the \$471 or they can double or even triple that. This is only one-time but it does address compression. The money is important but it is also the acknowledgement of a job well done. He said when the economy crashed we had to do away with the pay practice and is a tool we have not had in years.

There was discussion regarding the two options.

Ms. Jankowski said that this projection of \$833,887 takes into account the House reversion. Line item 1124, salaries full-time, in the FY14 budget projections chart includes the \$550,000 reversion. This reflects the original \$200,000 plus the additional \$350,000 added by the house. The \$550,000 is built into the \$833,887.

Ms. Geiger said additionally, prior to anything being paid, our Budget and Finance Director will check the current balance and run this formula one more time. The amounts may change based on what is actually available at the time we are ready to distribute the money. The \$833,887 is the projection right now.

This is based on allocated positions and not all of the positions are filled.

Mr. Hade said that House Appropriations staff heard your last proposal and took \$350,000 and now you are coming back with a different angle and staff will eventually hear about it depending on when the caboose bill is passed, you are giving them another opportunity to grab another \$800,000 out of your budget and or punish you next year for not getting the message. He suggested adding a sentence that included subject to funds available in case they were to take that action in the caboose bill.

There was discussion regarding empowering the Budget Committee to handle this.

Mr. Johnson said that this is the most appropriate and responsible way to spend this money. He does not want to just dump the money on "stuff" he would rather put it toward something useful. He said that he does not want to be in a position that because we have been very conservative, to get punished for that long term. There are a lot of things we have done without for a long time.

It would be crushing for us if they took the money assuming we do not need it going forward.

Ms. Geiger said that none of the hot button issues are involved in the caboose bill so it is easier.

Judge Rosenblatt said that if the General Assembly returns Monday and they pass the caboose bill we will know what our bottom line is for this year. However this concern is not going away once they pass the caboose bill.

Ms. Howard asked if an explanation letter has gone to House Appropriations so they understand that this is something that is not going to happen every year and it is a one-time true occurrence.

Ms. Geiger said that Michael Jay sat in on the last Commission meeting. At that time we carefully went back to when the economy fell through and the reversion of nearly \$1 million and the shutdown of the appellate office. We explained that we were trying to make permanent adjustments in funding so we would not have balances left at the end of the year while trying to address compression. We laid it out, not once, but twice, in

September and December. What was heard was we are giving raises. She did not see the value in an additional letter of explanation.

Judge Rosenblatt asked for a show of hands in reference to Option 1 and Option 2. The options are different because Option 1 is across the board retention and Option 2 gives a partial across the board but it also gives an additional discretionary amount to the public defenders.

Option 2 is clearly the favorite option.

Because we would like the discretionary piece to be a thoughtful decision there is a real time issue if we do Option 2. A decision would have to be made by the 5th of May to pay May 16th. This is because HR will need to get forms back from the public defenders indicating the employee and amount. That will take some time.

This would need to be done at the latest by April 25th.

Mr. Johnson said he is open to any and all suggestions. He appreciates that everyone wants to do something for our folks but he does not want to be penalized for years to come.

Ms. Hudson expressed concern over prepaying more than four months of rent.

There was discussion regarding other options.

Delegate Minchew said he believes the state will have a budget before May 15th.

Mr. Chaffe said that he favors a two percent bonus for two years of service.

Judge Rosenblatt said that we have all agreed on the two year, two percent bonus. The total amount is \$470,732.

Mr. Johnson said that the Budget Committee could do one of two things. Either the discretionary piece with the two percent for two years or not do it at all and just do the two percent for two years of service.

Ms. Geiger said that there is a substantive side of what we are discussing here and then there are dollars. The dollars are what they are interested in. The explanation behind the dollars has not been a factor in those discussions.

Judge Rosenblatt asked members if there is only a caboose bill and there is not a budget, do you all want to leave it to the Budget Committee to make this decision? Or do you want to say now, that we do not want to do this unless the budget passes?

Mr. Johnson added that the other alternative is whether or not the budget passes; do you want to do the two percent, two years? The discretionary part is dependent on whether there is a budget.

The decision was made for the Budget Committee to meet April 28th at 11:00.

Judge Hanson moved to empower the Budget Committee to approve, if they so desire, the retention proposal. Ms. Wooten seconded the motion. The motion carried.

The next items on the agenda are several IT proposals.

Ms. Jankowski said the following expenditures have already been approved but are working out in a slightly different way. As you may recall, it was approved to spend between \$88,000 and \$205,000 for new file servers. We discussed a desire to move to the Cloud and what type of server would be needed. Google Drive is the network storage to the Cloud and that annual contract is \$3,600. The PC Device, which is a less robust server that would have to be in every office, is \$59,500. This is a three year total cost of \$70,300. That has already been approved.

Staff is requesting an additional \$23,000 one-time expenditure for another device that would be in every office. It is called a Patch Distribution PC Server. This plus the \$70,000 is still within the \$88,000 to \$205,000 range but is different enough that staff thought it warranted a vote from the Commission. Combined the total is \$93,300.

Judge Hanson made a motion approving the one-time, Patch Distribution PC Server. Professor Douglass seconded the motion. The motion carried.

Ms. Jankowski continued. The next two items are new expenditures. The first is an expanded 24 hour network monitoring. This is an outside contract. It notifies us if there is a problem and also does the compliance report when we need it. This is part of the security standard. It is a \$135,000 annual contract.

Ms. Geiger said that we currently have a company doing that but they do not have the capability to provide the additional reporting and logging that VITA is now requiring. We need to upgrade the version we have in order to comply with the new requirements under the standard.

Ms. Wooten moved to approve the expanded 24/7 monitoring. Ms. Williams seconded the motion. The motion carried.

Ms. Jankowski said the next item is a new IT expenditure. This would be a maximum one-time expenditure of \$145,000. This is a business impact analysis and risk assessment contract. We have to look at our business processes, see what processes we perform and then conduct a risk assessment in the event there is a problem. This contract will also evaluate Continuity of Operations Plan and Disaster Recovery.

Mr. Johnson added that this is a continuation of what we have been struggling with for years to meet the security standards with VITA.

Ms. Wooten moved to approve the risk assessment/BIA contract. Judge Hanson seconded the motion. The motion carried.

The next item is the ISO (Information Security Officer) position. Many of you will recall that this is the third time we have mentioned this position. We first tried to contract out to fill this position, the second time we requested for money for a part-time position.

Mr. Johnson said that this position cannot be part of IT and as such we believe we might not have enough work for a full-time person. These people have really high levels of certifications. We are trying to find a way to meet that requirement plus get some other work accomplished. We need to have someone in this position.

The proposal is to make it a full-time position called an ISO compliance officer and give them more duties. We are hopeful that if the position is full-time and carries benefits, someone might actually apply for it.

In the last meeting, the Commission approved \$46,800 for a part-time ISO. We are proposing a salary range of \$56,000 to \$65,000 with benefits. At the low end with no benefits it would be \$73,183 and at the high end it would be \$93,728. This would be an additional, annual expenditure of \$46,928.

Judge Hanson made a motion approving the ISO position. Mr. Lett seconded the motion. The motion carried.

Ms. Geiger said that in September the Commission approved three proposals for legislation.

1. HB80 was carried by Delegate Hope for us. It was a proposal to expand conditional guilty pleas from just felonies to misdemeanors and felonies. It is already signed by the governor and waiting to become law on July 1st.
2. HB704 was carried by Delegate Gilbert. This bill is to allow recording misdemeanor trials in circuit court when the court refused to grant a court reporter or the use of recording equipment. The purpose of the recording is just to write a statement of facts or transcript. It has also been signed by the governor and is waiting to become law on July 1st.
3. The third proposal was to address the Stokes case and was carried by Senator Stanley. Currently you can move to have your sentence modified prior to your transfer to DOC. Once you are transferred, all bets are off even if there is a lawful court order to not transfer that person.

What happened in the Stokes case is that everyone thought this person should have a sentence reconsideration; however he was transferred despite a lawful order. Unfortunately for us it was similar but not completely similar to Senator Stuart's SB146. Senator Stuart's bill had no time limit, allowed modification of sentence whenever he wanted so long as the prosecutor and defense attorney agreed. While that bill was in Senate Courts, the chairman asked Senator Stanley if he would want to roll it into Senator Stuart's bill and he agreed. Senator Stuart's bill was broader and was actually killed in House Courts Committee.

Two out of three passed into law.

The next item on the agenda is the Capital Counsel Qualification Standards.

Mr. Johnson said that a couple years ago the Virginia Criminal Justice conference wrote a letter to us, the Supreme Court, and the Virginia State Bar. We are by statute the people who formulated the qualification standards for capital appointment. The letter requested us to look at the standards because they had not been reviewed in ten years. The capital offices had not come into existence. The irony was that in Virginia you have to do certification trainings to qualify to take misdemeanor cases but to take a capital case there was no training requirement.

Each of the agencies involved appointed five people to a study committee that produced this capital counsel qualification standards review committee report. Judge Roush was the chair. The Supreme Court has endorsed the report; the Virginia State Bar's counsel did the same on February 24th.

We are asking the Commission to vote to approve the report and then to direct staff to work with the State Bar and the Supreme Court on a plan for implementing the report. It is a lot of work. Both of those agencies have offered to help us.

There is a huge training component. The State Bar suggested getting some grant funding to get it started. David Bruck at Washington and Lee has offered assistance. There are pretty comprehensive recommendations.

Judge Hanson made a motion adopting the recommendation of the capital counsel qualification standards review report and instruct staff to work with the State Bar and Supreme Court on a plan to implement the recommendation. Professor Douglass seconded the motion. The motion carried.

The next item on the agenda is the training update.

Mr. Johnson said that for the past couple days we have held our appellate training. A few years ago when we closed the appellate office we decided to focus on appellate training. All new attorneys coming into the agency have a mandatory orientation training that includes a review of the appellate policies and procedures. The Commission approved the updated version at the last meeting and the appellate standards of practice.

The Certification training we just re-recorded this year now has a specific appellate section. All attorneys, ours included, get that training before they are certified. Within the VIDC there are two new trainings that all new hires receive. One is when they start and then when they get their first appeal there is additional training.

Our new attorney trial skills boot camp now includes almost a full day dedicated to appeals. There are a couple lectures on writing to win and oral advocacy and a half day appellate workshop where they do some appellate writing in small groups.

In addition, the annual public defender conference includes two sessions on appellate topics.

Last week we finished the annual two day appellate conference for the supervisors. Every office now has a designated appellate supervisor. We also have a training that we require the appellate supervisors and the chief public defenders to attend.

We had presentations at the training by Judge McCullough of the Court of Appeals, another presentation by Judge Decker. We had Gregory Lucyk who retired after twenty years as the chief staff attorney for the Supreme Court. We also had John Tucker who has been the chief staff attorney for the Court of Appeals for twenty years.

Each of them independently went to great lengths to talk about the consistent quality of the work coming from the public defender offices, how superior it was to the private bar. This is not something we were hearing four or five years ago. When we had to eliminate the appellate office there was worry about the quality. This emphasis is really paying off.

Catherine Zagurskie and Rebecca Norris prepare case summaries of all of the appellate cases and send them to the offices where they do in-house reviews of them.

We do late day lecture series that now include appellate topics. We also have a mandatory web base training for our office managers and appellate support staff.

The staff attorneys and judges took questions from the audience during their presentations and often times when they were asked questions they would turn to Catherine Zagurskie, our senior appellate coordinator, and ask if they were right.

We set a record on February 27th with our late day lecture series. Craig Cooley did an hour lecture and it was standing room only. We recorded it and sent it to our offices. We are going to continue doing this.

We had our management training in Staunton with all of our public defenders and supervisors the past two days.

May 13th to the 16th we will have our semi-annual boot camp training for all of our new attorneys.

The DNA Notification Project has located 365 locations. We have two retired homicide detectives and a young attorney working on this project. They work closely with Christina at the Crime Commission.

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 Incoming Deputy Director because it is reasonable to believe that their presence will aid the Commission in its consideration of the matters which are the subject of the closed session.

Professor Douglass seconded the motion. The motion carried.

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

Judge Rosenblatt said this is a bittersweet day as this is DJ's last Commission meeting. We are happy to have Maria take her place but we are sad to see DJ go. The Commission presented her with a plaque for her years of service with the VIDC. It is a small token of our appreciation.

Judge Rosenblatt said that no one took us seriously in the legislature and DJ changed all of that and now we are considered a real professional organization or state agency within the Commonwealth. He said Dave is wonderful but DJ has been our front person all of these years.

Judge Rosenblatt said, "DJ Geiger, in grateful appreciation for your outstanding service and dedication to the cause of indigent defense with the Virginia Indigent Defense Commission, March 2014."

There was no further business.

Judge Hanson made a motion to adjourn. Ms. Williams seconded the motion. The motion carried.

The meeting adjourned at 1:15pm.

Respectfully Submitted:

Approved By:

Diane Z. Pearson, Administrative Assistant

David J. Johnson, Executive Director