

The Virginia Indigent Defense Commission  
Commission Meeting  
1604 Santa Rosa Road, Suite 200  
Richmond VA 23229  
June 5, 2014

Judge Alan Rosenblatt (ret.) called the meeting to order at 11:05 am. Other Commission members in attendance were Steve Benjamin, Tom Chaffe, Karl Hade, Kristen Howard, David Lett, Senator McEachin, David Walker, and Carmen Williams. Administrative staff included Executive Director, David Johnson; Deputy Director, Maria Jankowski; and Administrative Assistant, Diane Pearson.

Quorum requirements have been met.

Judge Rosenblatt welcomed everyone and introduced Senator McEachin who is the newest member of the Commission, this is his first meeting.

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

Mr. Benjamin made a motion approving today's agenda and the March meeting minutes. Mr. Lett seconded the motion. The motion carried.

Mr. Johnson said that there are a few notes of recognition in the meeting materials. Sharon Eimer who is the long time Public Defender in Lynchburg has been named one of the most influential women in law by Lawyers Weekly.

Edwin Wo who is a Portsmouth Assistant Public Defender has been named Young Lawyer of the Year by the Virginia State Bar. He is a very impressive young man both in the office and outside of the office and we are proud to have him in our system.

The NLADA has named Ed Ungvarsky as one of two honorees of the 2014 Kutak-Dodds Prize. Mr. Ungvarsky is honored for his prestigious 20-year career as a public defender and is recognized for his remarkable compassion to clients and innovative thinking in litigation.

Mr. Johnson added that there is an email from Craig Cooley who was co-counsel with Ronilee Gomez, a public defender in our Suffolk office. He raved about her preparation and professionalism. Mr. Cooley was very impressed with her.

There is a nice article about our Charlottesville Public Defender office. Several years ago the General Assembly passed legislation allowing localities to give supplemental compensation for public defenders. It does not require them to, but it does allow them to do this. Alexandria was the only locality up until now that was allowed any kind of supplement, although very small. Mr. Hingeley has managed to get a supplement package to Charlottesville and Albemarle. It is a great article because it points out the disparity we deal with because of the supplements to prosecutors.

Mr. Hingeley has spent years working on this; it has been a slow process. The article mentions an increase of twenty one percent but it might actually be closer to ten percent. This is great news for the Charlottesville public defender office and other public defenders working on their own.

It is ironic that the two offices, Alexandria and Charlottesville already have the lowest turnover because they are very nice places to work.

Mr. Johnson introduced Ed Ernouf who is retiring as our IT Director the end of August and has been with the IDC for fifteen years. Mr. Johnson has referred to Mr. Ernouf as MacGyver because he has been amazing at fixing things. He has a four person IT department responsible for our 544 employees who are spread over 33 offices.

Recently Virginia Interactive, the company that hosts our website, our on line certification program, and our case management system, is considering nominating us for several IT industry awards. They stated that our IT department's efforts to streamline our managed IT services by implementing a secure staff for Gmail by replacing Lotus Notes and standardized web based case management system, essentially bringing twenty five public defender offices into the Cloud are exceptional and noteworthy accomplishments that should be recognized.

Mr. Johnson added that he has been doing it with basically no budget. To say that Mr. Ernouf is going to be missed is an understatement.

The Commission members applauded and thanked Mr. Ernouf.

The next item on the agenda is chair elections and committee assignments.

Judge Rosenblatt said that the Executive Committee met prior to the Commission meeting this morning and has recommendations for the Commission.

Mr. Hade made a motion to nominate Judge Rosenblatt as Chair and Mr. Lett as Vice Chair. Mr. Benjamin seconded the motion. The motion carried.

Mr. Lett made a motion approving the proposed committee assignments as outlined in the meeting materials. Ms. Williams seconded the motion. The motion carried.

Mr. Johnson said that the subcommittees meet and make recommendations to the full Commission and we would like to reaffirm the authority of the committees.

Mr. Lett made a motion to adopt the authority of the committees as outlined in the meeting materials. Mr. Benjamin seconded the motion. The motion carried.

Mr. Johnson said that every year he provides a copy of the deficit provision to the Commission members. This is a document stating the agency carries no debt. Every agency must inform their Board as such. We do not have that document because the form has not been released by Department of Planning and Budget (DPB) because there

is no budget yet. When we have the form, we will mail a copy to each of the Commission members and that will satisfy the requirement.

The next item on the agenda is retirement and recruitment.

Mr. Johnson said that this is a very challenging year and the first hurdle we have successfully cleared, that was DJ Geiger, our long time Deputy Director left and Maria Jankowski joined us.

Ed Ernouf, our long time IT Director, is retiring in August. We have begun the recruitment for his position.

Jewell Hudson, our Budget and Finance Director has been with the state for over thirty years, and will be retiring in December.

Joe Vigneri, our Capital Defender in Richmond who came to us from Atlanta and is doing a great job, will be going back to Atlanta. We have begun the recruitment for his position. The capital defender positions are hard for us to fill. In the interim his deputy, Karin Kissiah, will fill in as acting Capital Defender.

One of our ongoing challenges is a requirement from VITA that we have an Information Security Officer (ISO). All agencies are required to have one. The problem is that an ISO is someone who has a significant amount of knowledge and certifications. When the new VITA standards came out, we noticed it did not say that your IT Director cannot serve as ISO. We discussed this with VITA and we can do this if the IT Director has the proper certifications and we make sure to have an outside auditor do audits to mitigate the conflict.

Mr. Ernouf is retiring at \$105,000 per year. We posted the position changing all of the requirements. It now requires everything Mr. Ernouf has plus all of the certifications that allow that person to be an ISO, which is a lot of educational requirements. We are posting it at \$110,000-\$130,000 salary range. We will have to pay \$25,000-\$30,000 a year for the outside audits however; we will not fill the originally approved ISO position. We are hoping this will get us a good applicant pool and we have had over one hundred applicants. This is actually a net savings due to the merger of the two positions.

There was discussion regarding the number of applicants with all of the requirements.

Mr. Johnson said that he and Ms. Jankowski will be doing the interviews. We will have two people with IT backgrounds from other agencies to help with the interview process. One of the panel members will be the ISO from the Supreme Court

There was further discussion regarding the audit aspect of the IT Director/ISO position. Mr. Johnson said that for the audit we will find a vendor that is approved by the state.

We will start recruiting for the Budget and Finance Director the end of summer.

The next item on the agenda is the budget update.

Ms. Jankowski said there is a budget tab in the meeting materials. The Commission met in March and there were a fair amount of issues and uncertainty relating to potential judicial reversions and what the budget next year would look like. The Budget Committee met in April and has seen the budget projections for the end of this year and the proposed budget for next year. The proposed budget for next year is based upon what we believe the appropriation will be, based on last year's appropriation. Obviously, that could change before the end of the month. We feel like any changes can be addressed in the Commission meeting in September. The budget update is based on what we know as of today.

Mr. Johnson added that we would rather not call an emergency meeting and would like to update the Commission in September with information on what happened with the state budget and the adjustments that were made.

Our agency is lean. We are 94-½ percent personnel and rent.

One of the issues the Budget Committee was to address was proposed retention bonus. The Budget Committee took no action. They had been delegated the authority if the Budget Committee deemed appropriate to take action.

Mr. Johnson said that one of the reasons they took no action is because we had \$300,000 removed from our available funds through a reversion and that left us with not enough money to do it. The other reason is the lack of a state budget. It just was not the time.

The FY14 projections reflect amounts we have paid but because May closed just last Friday it takes until June 10<sup>th</sup> for the reports to come back from the state.

We have fellows whose terms expire May 30<sup>th</sup> and the estimated balance of \$28,690 has been paid to them. Additionally the prepayment of the four months' rent that was approved by the Budget Committee in the amount of \$848,000 is approximate. To be safe and very conservative, we paid three months' rent just to make sure we would have enough money in our budget to get through June. With the caveat that assuming all was well, we could then pay the fourth month.

Mr. Johnson added that the \$848,000 remaining is because we prepaid four months' rent last year. We carry this from year to year in case of extreme emergency.

Ms. Jankowski said every year our rents go up, we have escalation clauses in many of our leases, sometimes offices have to move and that has associated cost. Every year our rents and related costs go up but we never see an adjustment in our general appropriation to make up for the increased cost. Additionally, there are mandates from VITA which can result in added costs but none of those additional costs are reflected in our general appropriation.

We have close to a \$45,000,000 budget and about \$42,000,000 of that covers personnel costs and buildings.

Mr. Johnson said, for example, the Richmond office opened in 1986 and when it opened there was a specific amount appropriated for rent and that amount does not change. There are escalators of two–three percent per year and that is what eats up our unspent money.

Ms. Jankowski continued. The next page in the meeting materials is the proposed FY15 budget. This is the same data as usual but streamlined to include all of the offices and is not broken down by office.

The dollar amount is what we perceive to be the appropriation based on what happened in the past General Assembly. The 1100 Series (sub-object codes) are all personnel costs. Salaries alone are almost \$30,000,000. Retirement, social security, health insurance, etc., all of these are a big part of our budget.

The 1500 Series includes all of the agency rents at almost \$2.5 million.

Some of the numbers are rounded because we have taken amounts from previous years and have come up with an estimated amount for FY15. The amounts are based on four years of data.

There was discussion regarding health insurance predictions.

Mr. Johnson said that the FY15 budget is very conservative and the only change is that we moved around some money for the new IT Director/ISO position.

Ms. Jankowski continued with the budget update. For clarification, there are some years that have no amounts in certain areas. In some instances it is because there was a change at the state level. In some other cases, when Ms. Hudson came in and started looking at our budgeting, found that certain things were better appropriated in different sub-object codes. So it does not mean that the expenditure no longer exists, it means it is being accounted for in another sub-object code.

Mr. Benjamin moved to approve the FY15 budget. Mr. Walker seconded the motion. The motion carried.

The next item on the agenda is the training update.

Mr. Johnson said we had our boot camp for new lawyers last month. This is held twice a year. With the job market the way it is we only had ten new lawyers. Usually we have 25-30. It was amazing how good this boot camp was, it was almost a one-on-one training for a week. This was the best program we have ever had.

Our next big initiative is the annual Public Defender conference in September. All of our lawyers need their CLE hours and this is a great way for them to get seven hours and also

very cost effective. Commission members are invited to attend and we will send out invitations for those of you interested. A couple years ago we partnered with the Maryland Public Defender system in a training partnership. They attend some of our trainings, we attend some of theirs and we share speakers. This is going to be a great program. We have a litany of great speakers from various states this year.

We started our Late Day Lecture series again. This is one way we provide training to the private bar. We secure a speaker, record the live lecture on DVD, then send the DVD to various bar associations and to the Public Defender offices across the state. We will keep expanding these lectures. This is in addition to our certification training that we have every month.

Ms. Jankowski has reached out to the Institute for Law of Psychiatry and Public Policy at the University of Virginia. They are interested in doing some trainings with us. The first is October 17<sup>th</sup> and is going to be on ethical challenges, representing the mentally ill in criminal cases.

Mr. Johnson is very pleased with the way training is going and welcomes any members of the Commission in September for the public defender conference. It will be a great conference.

Ms. Jankowski said that in the meeting materials is a copy of the 2014 General Assembly Wrap Up that was produced by Jae K Davenport, our Standards of Practice and Certification Attorney who also serves on the legislative team. She put this together for all of our employees. This is to give you an update of what we do to keep the public defenders informed. In addition to this, Catherine Zagurskie, our Senior Appellate Coordinator, keeps the attorneys updated on case summaries.

There was discussion regarding the subcommittee meetings and how often they meet.

Judge Rosenblatt said that we need to reopen the vote on the committee assignments in order to add Mr. Chaffe to the Policy and Procedure Committee.

Mr. Lett made a motion to reopen the committee assignments. Mr. Hade seconded the motion. The motion carried.

Mr. Walker moved to add Mr. Chaffe to the Policy and Procedure Committee. Mr. Lett seconded the motion. The motion carried.

Judge Rosenblatt added that for clarification, even though we have people assigned to each committee, any member of the Commission is welcome to attend any of these meetings.

Mr. Chaffe made a motion when a subcommittee meeting is called and scheduled that all Commission members be notified by the Executive Director, two weeks in advance. Ms. Williams seconded the motion. The motion carried.

Ms. Jankowski added that the Budget Committee almost always meets at the end of the fiscal year to look at the next year's budget. Some of the other committees meet at the direction of the Chair or when something arises at a Commission meeting that needs to be deferred to a subcommittee.

Mr. Johnson continued with other business.

To bring everyone up-to-date, the DNA Notification Project that we worked on with the Crime Commission ended May 30<sup>th</sup>. We had a few folks camped out in our conference room for several months. There were two retired homicide investigators and an attorney who helped find people who were supposed to be notified but had not been found. They found 483 people. Ms. Howard agreed that this project was extremely successful. She said she would like to express her gratitude for the assistance because it made a big difference in their project. Catherine Mullins, our Legal Resource Attorney, oversaw that project and did a great job.

Mr. Johnson said that Catherine Mullins has been working on our Resource website. This will be resource first of all to our attorneys and eventually to all attorneys. Catherine is here to give you a preview at the end of this meeting for anyone who is interested.

Mr. Benjamin mentioned that the nominating committee of the National Association of Criminal Defense Lawyers met to consider nominations for officers. He stated that a number of attorneys from across the country sought the open executive office position of secretary. The nominating committee nominated Bonnie Hoffman as a candidate for secretary of the NACDL. This will be a contested election but the nomination alone is a big deal. If she is elected, which is in no way certain because it is very competitive, she would then be on the executive officer track and ultimately she would be the first public defender president of the NACDL.

Mr. Johnson added that Bonnie is our outstanding deputy in the Leesburg PD office and a terrific trainer.

Senator McEachin mentioned that he would like to see our Mission Statement. Ms. Jankowski offered to send him our Annual Report.

There was no further business.

Mr. Lett moved to adjourn. Mr. Benjamin seconded the motion. The motion carried.

The meeting adjourned at 12:00pm.

Respectfully Submitted:

Approved By:

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Diane Z. Pearson, Administrative Assistant

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David J. Johnson, Executive Director