

The Virginia Indigent Defense Commission
Commission Meeting
1604 Santa Rosa Road, Suite 200
Richmond VA 23229
September 18, 2014

Judge Alan Rosenblatt (ret.) called the meeting to order at 11:05 am. Other Commission members present were Steve Benjamin, Tom Chaffe, Karl Hade, Professor Douglass, David Lett, Karl Hade, David Walker, Kristi Wooten, and Carmen Williams. Members not present were Kristen Howard, Senator McEachin, and Delegate Minchew. 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.

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

Judge Hanson made a motion approving today's agenda and the June meeting minutes. Mr. Chaffe seconded the motion. The motion carried.

Mr. Johnson said that there are a couple items of interest in the meeting materials. One is the Virginia State Bar has awarded the Roger D. Groot Pro Bono Public Service Award recently to Jim Hingeley, who is our Charlottesville Public Defender. This is one of the organization's most prestigious awards. Jim continues to amaze us.

Lawyers Weekly, has named their leaders in the law and two of our attorneys will be in this year's class. Dawn Butorac who is a deputy public defender in Fairfax and Doug Ramseur our Capital Defender in Norfolk will both be honored this year as part of the class.

Mr. Johnson said we are close to having ten public defenders now who have been singled out as leaders in the law. This is fantastic.

Cal Bain, our Virginia Beach Public Defender, has been appointed to the Second District Disciplinary committee by the Virginia State Bar.

This is all good news, we are very proud of these folks.

Mr. Johnson continued. Jewell Hudson, our fiscal director will be retiring December 31st. We will be searching for her replacement and start recruitment soon.

We had two IT professionals from other agencies help us with the screening and interviewing process with hiring our new IT Director. We will follow the same protocol for the fiscal director position.

Joe Vigneri who was our Capital Defender in Richmond left in June to return to Atlanta. Karin Kissiah who had been the deputy capital defender for only a couple months will be acting. We recruited for the position but did not get a qualified applicant pool, three applicants did not yet have a law license, and a couple applicants had just gotten their law licenses. Karin was really the only one who was close to being qualified.

In the meantime, Karin has a capital case going to trial in Henrico next week and has gotten death taken off the table. She also has a case with Craig Cooley in Colonial Heights. Craig went to great lengths to say how impressed he is with the central capital office's hard work and in particular Karin. She is missing the experience piece for qualification. We will see what the recruitment for a capital defender nets us this time. We have the benefit that she has been in the position for several months now that will help us make a fair judgment of her application

The next order of business is to set the Commission meeting dates for 2015. The following dates were determined.

March 5th June 11th September 17th December 10th

Mr. Johnson said that we would like to set the sub-committee meetings as well. All Commission members are welcome and encouraged to come to the committee meetings.

The main purpose of the next Personnel Committee meeting is to focus on the chief public defenders evaluations. We will go through the evaluation of each public defender. This allows us to have a summary for the Commission meeting in December.

The following subcommittee meeting dates have been determined.

Personnel Committee: October 22, 2014 2pm
Policy Committee: January 29, 2015 11am
Budget Committee: May 7, 2015 11am

Judge Hanson moved to approve the meeting dates. Mr. Lett seconded the motion. The motion carried.

Mr. Johnson said that our new IT Director, Maurion Edwards, will be a good addition to our staff. There were over a hundred applicants for this position. We interviewed ten with an initial panel, and then we interviewed four finalists. Maurion spent a lot of time at the Department of Taxation and the Department of General Services where he supervised an IT Department of forty five employees. This will be a little different for him with three employees.

One thing we were looking for is someone who is hands on and Maurion is definitely that. He joined us at the Public Defender conference where he met about twenty of the public defenders individually.

There was discussion regarding the IT Director position and the ISO (Information Security Officer) position. In the past we have had to get a waiver because we did not have the ISO position filled. The problem was that it is not a full time position for us. To hire someone with the required level of certification would cost the agency six figures. We are very pleased with Maurion, this was a big hire for us.

Maurion arrived and introduced himself to the Commission members.

The next item on the agenda is the Annual Report.

Ms. Jankowski said when she first started working on the annual report her single biggest concern was the accuracy of some of the data captured in the case management system. Our case management system is hosted outside the agency with the vendor Virginia Interactive.

We used to be a Lotus Notes email case management system. We moved to this new system and there have been some glitches. Since we are only a year into the new system and all the changes have not been implemented Ms. Jankowski is not confident in the accuracy of some of the details of the data. She does believe we are capturing our total case load, which is all the statute requires us to report annually. She is confident in this because failure to capture a case would mean opening files without entering anything into the system.

There is a chart in the back of the annual report. By statute we have to report total caseload by office. The breakout is; capital, murder, felony, and was once broken out by probation violations. We no longer do that because we were not confident that it was an accurate number and moreover, it is not a statutory mandate. For example the system indicated Franklin had no probation violations and this is not accurate. This break down was driven by the caseload study that was done a few years ago. The reason we have DUI's separately listed is because they can be felony or misdemeanor.

Mr. Johnson added that we will figure out what we need to report statutorily and then simplify it. If it is not getting recorded accurately then we need to figure out what it is that we need to have to meet our statutory reporting requirements to help us distribute our caseloads and simplify it.

Ms. Jankowski said that she suspects having a practitioner engaged in the conversation will improve the quality of the system but that is purely speculative at this point.

Mr. Johnson suggested meeting our statutory reporting requirements by reporting the felonies and misdemeanors in each office this year and when we are confident in the break down then change it.

There was discussion as to how to report the DUI's.

We are in a full year of the new case management system. Some data from the old system has been pulled in to the new system when it was transferred over.

Mr. Johnson said the number of cases is accurate; it is the breakdown that is the problem. We can meet the statutory requirement, the gross numbers are correct. We need to determine how much of the breakdown we need to be doing, what is the purpose of it.

There was discussion regarding the accuracy of the input of the cases. Some of the inaccuracies could be due to a training issue or the complications of the system.

Ms. Jankowski said that we count a case when a new case is opened not closed. The capital cases are not in our CMS system, those cases are tracked differently. A case opening in a capital office is almost an irrelevant factor and in no way reflects the caseload or the workload. In a public defender office there has to be an event to count a case. Some organizations count closed cases and some count open cases. The FBI Bureau of Justice Statistics counts closed cases. We have always counted a case when it is opened.

A capital case can go on for years. The southwest capital office recently resolved a case that they had been working on intensively for four and a half years.

Ms. Jankowski continued. In the capital offices we are concerned with the number of pending open cases for that year. That is hard to report in the chart so we separate them out. Instead of reporting the data as part of the chart it was reported as a narrative.

The total number of cases handled by VIDC public defender offices in FY14 is 97,738. In the past we have not reported appeals but this year we did and had 588 appeals. This does not include the 27 active capital case assignments to the four capital defender offices handled in FY14. That is the number of cases handled by our capital defender offices in FY14 whether they pled, were tried, or whether they are still pending.

Mr. Johnson added that most of the capital offices have between five and seven active cases. That is an enormous amount of capital cases considering the amount of work they put into each one. We have a capital defender going to Alaska next week to interview witnesses.

Ms. Jankowski said that a few years ago some concerns were raised because the Sentencing Commission commented that there were very few death sentences. The extrapolation was that there were very few capital cases in Virginia. This is incorrect. Capital charging is still happening actual death verdicts are what have decreased.

Mr. Benjamin suggested using the term capital offenses rather than capital cases to be able to pick up the number of cases accurately. You could say the capital offices have handled x amount of capital offenses or have been involved with or consulted with x number of capital offenses. Of that number, x number of cases were taken over. That shows the total population that the office was affected to bring that number down.

Mr. Johnson said many of you remember Alex Levay who is the past president of the Hispanic Bar Association and a great attorney. He has spoken at capital programs. Recently he worked on a really bad case with Ed Ungvarsky in our Northern Virginia Capital office. Ed mentioned in his self-evaluation that they had gotten a resolution largely due to the outstanding efforts of co-counsel and the private bar. Mr. Johnson called Alex to congratulate him and Alex said, this was his tenth capital case and he had no idea what he had not been doing. The work the capital office did is incredible.

Ms. Jankowski said that we have to report our ranking amongst the fifty states in indigent defense. This is very difficult because so much of this analysis is subjective. DJ devised this chart which is a good way to handle it because one of the reasons Virginia has always been ranked at the lowest was because of the caps placed on court appointed attorneys that are still some of the lowest in the country. The chart was fairly complex. We took out some of the unnecessary information for assessing the ranking. This is the new simplified chart. Ms. Jankowski has stated what the statute requires. There are no new reports that she is aware of like the original study that triggered the statutory requirement. The ranking is confusing because every state funds

indigent defense differently and they pay differently. We cannot compare with a state that has gone back to an old bidding system.

Finally, we use to report our turnover in the annual report. We could not find anything in the statute that we had to report our turnover. Ms. Jankowski believes this became relevant when our turnover was in the twenties. The turnover for last year was 19.24%. This year it is 13.56% which is we had been seeing in the prior to last year. This will not be reported in the annual report.

Mr. Benjamin made a motion adopting the annual report with the revisions that have been instructed today to include the gross numbers per office and the adjustments made to the report of the capital cases as required by statute. Mr. Walker seconded the motion. The motion carried.

The next item on the agenda is the budget update.

Ms. Jankowski said that in the meeting materials the first chart is the close of FY14. As a reminder, this chart is indicative of the four different fiscal groups. The first is the public defender offices, the second is the capital defender offices, the third is regulatory services (standards of practice enforcement), and the last is administrative services. On page four, total remaining carry forward amount is \$170,675 for the end of the fiscal year. That amount is after prepaying four months' rent for FY15.

On page one in the FY14 budget report the 1100 series is personnel, salaries, etc.; 1500 series is buildings, a large part of this is leases. In May that number is substantially higher than any other month because of prepaying rents.

There is not much to report for September because we are only two months into the new fiscal year. In the 1500 series, building and equipment leases, the numbers are low because we prepaid the rent therefor we do not pay rent for the first four months of the new fiscal year. There are still some charges because we have to pay fees to DGS (Department of General Services) even though we are required to use them. There are also some other charges associated with our buildings. There is nothing noteworthy to report this early into the new fiscal year.

We are providing two formats for the remainder of the FY15 budget. The first is by service areas, the next chart is the agency overall. What we have spent so far and where we are for the balance of the budget.

The last chart is the anticipated rent increases. Our appropriation has never been adjusted for this ever increasing cost. We have a couple offices that will move this year. Charlottesville will move because the landlord sold the building. Charlottesville is not an inexpensive place to find office space and will be a significant increase in rent.

Mr. Johnson added that the leases are bid out and DGS gets involved in finding space. We might look at three or four spaces we like; we end up in the space they tell us, we do not get to choose. They determine what will meet our needs.

Ms. Jankowski said that the Hampton office is going to move and will be a cost savings. Over the life of the lease will be about \$100,000.

Mr. Johnson said our commercial leases escalate about three percent a year. Most agencies are not in our position. We have to rent so much space. Our rents just went up about \$100,000 a year even with the savings. We will work that into the budget.

At some point we will go to the General Assembly with a study showing how much more we are paying compared to five years ago. This just is not the year to do it.

Ms. Jankowski said there was an adjustment made to our appropriation to make up for the some changes at the state level for personnel related cost.

Our Fairfax lease was renegotiated and will be a savings of about \$10,000 this year.

Mr. Johnson said that the state budget is in flux. We have heard about three percent cuts. In the past we have been lumped in with the judicial department because there was nowhere else to put us. The judicial department has a \$700,000 reversion. Michael Jay with House Appropriations has stated that we are not getting anything at this point because we had a \$300,000 reversion. The \$170,000 carry forward has not been taken yet. Mr. Johnson is assuming this will be our contribution. He reconfirmed with Mr. Jay that FY16 will be a very challenging year. Further this is not going to be the final FY15 adjusted budget as more things may be resolved. We are able to absorb what we are being asked for at this point because we planned for it.

Mr. Johnson would like to renew the authority to temporarily freeze hiring if necessary. This is a savings but more importantly it keeps us from going in the hole. If an employee leaves, we have to pay their unused leave; this amount can be significant. He feels this authority should periodically be stated in the minutes. He would also like the authority to continue to identify the offices with the lowest caseload and move positions to offices with higher caseloads. The best way to do that is when a position comes open; freeze it until the next Commission meeting when he can seek permission from the Commission to move the position.

Mr. Walker made a motion granting Mr. Johnson the authority to temporarily freeze hiring if necessary. Mr. Lett seconded the motion. The motion carried.

The next item on the agenda is the training update.

Mr. Johnson said that we have been diligent in cutting back expenses in the last eight or nine years. Mileage reimbursement is about a third of what it once was. We currently conduct our Boot Camp twice a year in May and December. This training is for our new attorneys. To save money we cancelled the facility arrangements for December. We will have Boot Camp here in the administrative office. He believes this sends a good message for cutting back on costs.

Even though we are paying our IT Director more and even with the outside auditor cost, there is a savings of \$30,000 or more per year because we combined the IT Director position with the ISO position.

Our annual public defender conference went well with the exception that our plenary speaker canceled so we were unable to start on time. That would have been our one ethics speaker who we could not replace on short notice. We will get a DVD recorded and sent to everyone. The conference was held at the convention center in Hampton. This conference is seven hours of CLE very specific to our attorneys. This cost is about \$170 per attorney.

Mr. Chaffe who was in attendance at the conference, added that the breakout sessions were led by deputy public defenders and they did a great job. Mr. Benjamin and Judge Rosenblatt were also in attendance.

Ms. Jankowski said that we have two systems, one is CMS (Case Management System) and the other is ACES, the database listing all of the certified court appointed lawyers. We had a business

impact analysis done with outside consultants. We determined that ACES is not a sensitive system so we will not have to spend money doing security audits. We can spend money making it a better functioning system.

Mr. Hade said his agency just went through an AP audit and auditors are going to really be looking at security issues in all agencies this year. Employees have to be trained on system security, password protection, mobile access, and that brings in all kinds of new issues.

Mr. Walker asked about requirements for court appointed juvenile representation.

Mr. Johnson said that a practicing attorney can get a waiver if the requirements are met. Or the attorney can take our four hour certification training specifically for juvenile, assuming he/she is already qualified to do misdemeanors. The first day of our certification training is six hours to qualify you to handle misdemeanors. To get felony qualified there is an experience piece. Day two is a four hour training to handle misdemeanor juvenile cases and there is also an experience piece. If you are an experienced lawyer and can satisfy the waiver requirements there is no need for the training.

The next order of business is the legislative update.

Ms. Jankowski said that the legislative update is minimal. Our subcommittee is back together and on board again. We do not have our own piece of legislation this year but that could change.

There was no further business.

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

The meeting adjourned at 12:00pm.

Respectfully Submitted:

Approved By:

Diane Z. Pearson, Administrative Assistant

David J. Johnson, Executive Director