

**The Virginia Indigent Defense Commission  
Budget Committee Meeting  
1604 Santa Rosa Road, Suite 109  
Richmond, Virginia  
April 29, 2010**

Judge Edward Hanson called the meeting to order at 10:10 am. Other Commission members in attendance were Judge Alan Rosenblatt, Delegate Dave Albo, and Kristen Howard. Administrative staff included Executive Director, David Johnson; Deputy Director, DJ Geiger; and Administrative Assistant, Diane Pearson.

With four Commission Members in attendance, quorum requirements have been met.

The first item on the agenda is to approve the minutes of the previous Budget Committee meeting.

Judge Rosenblatt moved to waive the reading and approve the minutes of the May 21, 2009 Budget Committee meeting. Ms. Howard seconded the motion. The motion carried.

The next item on the agenda is the proposal for the Appellate office alternative.

Mr. Johnson reported that the funding for the Appellate office had run out. The way the Appellate office historically came about was in 1999. A budget analyst recommended that we create some positions to try and utilize all of our turnover and vacancy money. We started a pilot program with three employees in the administrative office to handle some of the appeals. That grew over the years to seven employees. Last year the budget for it was \$610,000. The problem is that the positions were not authorized. These positions were created and paid for through turnover and vacancy. At one point our turnover and vacancy was twenty seven percent and is now nine percent.

We were not going to be able to keep the Appellate office so we started exploring ways to continue to service the clients in perhaps a more cost effective way. The Appellate office did a fantastic job under Jane Chittom on the appeals they handled which was about nine and a half to ten percent of all our appeals. They did all of the appeals for two of our smaller offices and our offices that do not have heavy caseloads. We are not sure how that came about historically. Maybe the bigger value of the Appellate office was a resource to the other offices. They did the appellate decision case summaries every month, helped with complicated appeals, and were involved with some trainings.

Our thought is to keep that resource piece and improve it. We are proposing a couple of positions. One would be an Appellate Coordinator. This person would travel to the offices doing hands-on appellate training and making sure there is compliance with the appellate policies and

procedures. We have always needed a brief bank; the problem with a brief bank is that it needs to be maintained constantly to be worth anything.

The second position would be an assistant position. We will continue to do the caseload summaries and continue to be a resource both for our attorneys and members of the private bar.

Develop training for our new attorneys and training for our boot camp and annual training for our offices. If we can find a way to pay for it, we can actually raise the bar in the long run and try to make something good out of a bad situation. We're hoping to head off the appellate defaults by doing better training.

Mr. Johnson added that Jane Chittom, the Appellate Defender, was planning to retire the end of this year which made this situation a little easier. The staff from the appellate office will probably remain with us, and therefore we will be able to keep their expertise.

Ms. Geiger added that the senior position would also be a liaison to the appellate courts.

There was discussion regarding the demise of the appellate office.

We took a general fund hit as part of the judicial reversion and our turnover and vacancy has dropped. We have artificially increased the turnover and vacancy savings by implementing a ninety day hiring delay for all of our positions. Holding positions open generates savings. We also have a specific amount of positions that have been permanently frozen for part of the judicial reversions.

There was discussion regarding closing the appellate office, other options, the ninety day hiring freeze, and appellate defaults.

Mr. Johnson said the cost of an appeal is enormous. It is about \$4000 per appeal. To do all of our appeals would mean about a \$6-7 million addition to our budget, which won't happen. We think the resource part is valuable and that is what we will try to maintain.

The next item on the agenda is the proposal for FY10 year end and FY 11.

Ms. Geiger reported that the proposal for three new public defender offices has been eliminated. The funding was reverted.

Our starting balance will be \$42,637,377. There may be additional adjustments. We are not sure how the Department of Accounts and the Department of Planning and Budget are going to coordinate that. Some of the benefits are not being paid by the agencies. It is a type of cost savings and is very accounting driven. It is not being pulled from the paychecks but eventually it will be recollected. This adds up to about \$56,000 per pay period. We are not sure if it will be taken the end of this year or the end of next year. It has already happened with an April pay period.

The next item on the chart is the judicial reduction. Previously we had been giving back \$544,000. There was an additional \$2.3 million for the judicial branch, taking the total up to \$5.3 million each year of the biennium. We talked with the Supreme Court and agreed that we would add another \$400,000, so our total give-back each year is \$944,000.

There was an additional judicial reduction which does not affect our money but may affect some policy issues or have an effect in the next year or two. The waiving of jail time on misdemeanors would reduce the number of cases for which court appointed counsel is necessary. The language that was left in the budget requires the Supreme Court's Committee on district courts to meet with the Commonwealth Attorneys and the VIDC to try to come up with policies and put something in place that would reduce the cost to the criminal fund for these cases in the amount of \$3.5 million a year.

The next item is furloughs. Governor Kaine's budget only applied furloughs to the executive branch and the governor's amendments added a furlough day to legislative and judicial branches. Because of the lack of timing that we have left in the fiscal year to accomplish that, the language was left broad enough that if we had some one-time savings and could pay the amount it would cost us for a furlough day, we can do that and not require the employees to take the day without pay.

The last item doesn't affect the VIDC but it did retain the waiver fees for private court appointed counsel.

The Department of Planning and Budget has done an assessment on our administrative office. We had them come back to revise all of our processes so we would be more efficient in what we do. They determined that we are doing things more complicated than we need to be doing them.

Mr. Johnson explained one of the reasons he believes things were done the way they were is because this agency started very small; with four pilot offices and a part time fiscal director, who was a bookkeeper and started with the public defender commission in 1972. As the agency grew, it got much more complicated but essentially many of the functions were still being done in a bookkeeping fashion. We need to move a couple decades forward and do the budgeting in a way that makes more sense.

Ms. Geiger explained that because we once had turnover and vacancy funds we relied on it and built it into the budget. One was the appellate office; another was internal raises, which were the result of an auditor of public accounts telling us this was a legitimate way to use the turnover and vacancy money. Escalations in rent in our leases are something we don't get new appropriations for each year, so we have to find money.

Mr. Johnson added that because our turnover and vacancy had risen to 27 percent, we were generating millions of dollars in turnover and vacancy money, and it was a cycle of constantly training new employees.

Ms. Geiger continued that the approach of how to budget that and how to allocate it each quarter is how it got so complicated. With 30 offices, we would take the amount of savings each month and allocate it proportionately to every single office for each of the items, which is time intensive. The approach we are moving to is to determine the cost of the big ticket items and then allocate it across the agency based on the bottom line using the previous expenditures and previous budgets and historically getting the best numbers we can. Then any turnover and vacancy that is generated will go toward items that are emergencies, items we did not count on, judicial reversions, budget reductions, or where ever we have a need. We can allocate that as it is earned.

The general fund appropriation is taken from the chart we just went over which is the \$42,637,377. We have 540 allocated positions from the General Assembly. If all of these positions were filled for an entire year it would cost us \$36,818,272. For rent, based on what we know of escalations and our current leases and a few that will expire is \$2,334,731. If we prepay three months of this year, that amount is \$1,752,731.

Contract services, supplies, continuous charges (non-rent), and equipment covers all of our operating costs, such as mileage, training, Westlaw, licenses for Microsoft, etc. The only exception is phone systems. If we reduce all of the known operating costs, we get to \$581,464 or \$1,163,464, depending if we prepay.

For FY 2010, the last budget that had been laid out for us, we had never budgeted for unemployment compensation, annual leave pay out, and this year we will have some severance with the Appellate Office. The balance is \$381,964. This number is based on what we have paid so far and our estimate of what we are going to have due at the end of the year. Generally it has been about \$5000 per year.

Mr. Johnson said that normally those items that had not been budgeted before was because those numbers had been very small. We hadn't paid much in unemployment but that has changed now. When people lose their job now, they are not finding another one.

Ms. Geiger continued. There are two reversions, and have basically merged so we have a \$944,000 reduction and for the first time you will see if we do not prepay rent we are at a deficit.

Adding the two appellate coordinator positions, if we pay the senior level person at the deputy level and the second appellate attorney at a senior level for a full year, the negative balance starts to increase. We are suggesting the second position be funded for only nine months in the first year because we will want the senior person to get an idea of what they need and be involved in the hiring, which will take some time. We are looking at \$720,991 with a \$138,991

deficit. For the operational costs, we are looking at a deficit of either \$733,341 or \$151,341. These positions are very training oriented.

The three years are connected. The choices we make in 2010 affect 2011, and 2011 affects 2012. Looking at 2012 we will assume our appropriation will be the same starting out and personnel will be the same, adding the two appellate positions costs for a full year. The rent, because of the escalations, is about \$47,000 more on average each year. We have kept the remaining operating costs the same level funding for 2012 as well.

The balance looks pretty close to what it looked like in 2011. The budgeted and non budgeted items are still showing. We are assuming we will not have a severance to pay out that year. If we keep these numbers we will be in the ball park.

The judicial reversion puts us close to the same deficit if we do not pre-pay rent, but we show to the positive if we do pre-pay rent.

In June a lot of bills come due. The once a year insurances, workers comp, service charges from DGS real estate section, and a couple other things. These are not optional; we need to pay these at the end of the year. This estimate includes the furlough day which is about \$106,000. At the end of June we will have a bill for about \$158,000.

Generally at the end of each year there is a category of bills we pay with turnover and vacancy savings in order to alleviate the burden for the following year. We used that because it is one-time money and if we do not use it it's gone. We try to give ourselves a better position by pre-paying these items. The list of items that can be pre-paid is controlled by the Department of Accounts CAPP Manual, the Commonwealth's Accounting Policies and Procedures.

We pre-pay bar dues, postage, and a month's rent historically every year. If you add those along with the June required bills it is about \$628,000. For FY10 we do have the funding to pay all this because we have turnover and vacancy savings built up. Part of the reason we have that is we have a ninety day hiring delay. The other reason is that we have locked down spending. We have tightened up on mileage reimbursement, encouraging car pooling, and using Enterprise for car rentals.

Ms. Geiger said that one of the values of pre-paying is that the likelihood of pre-paying the judicial amount is slim, so the money will be lost and we will be on the hook for it anyway next year, in addition to the \$944,000. The good news about the pre-pay is while we have generated savings, we can use it to back down the costs for next year. The reversion can be decreased next year if the economy doesn't pick up. The pre-pays will remain similar each year.

Ms. Geiger continued with the judicial reversion funds. The positions held vacant for FY09-10 are as follows: SW Capital Office, Mitigation Specialist II; Central Capital Office, Assistant Capital Defender; SE Capital Office, Assistant Capital Defender; Arlington PD, Senior Assistant PD, Assistant PD I, and Secretary I. The positions in the capital offices were frozen because they

were new positions and had not been filled. The positions in Arlington were frozen due to their low caseload. The additional \$90,000 was found in mileage and training, we cut administrative office spending, and we carved a little from every office.

Since we have an additional \$400,000 in the reversion, the positions that are vacant are NOVA Capital office, mitigation specialist II; Arlington PD, Sr. APD and APD I; Administrative office, an Accountant/Fiscal technician. The Fairfax APD II is not vacant. That would add an additional \$353,292. If all of these positions are held open for a year, the total savings is \$807,773.

The FY2011 anticipated equipment replacement costs consist of copier replacements and telephone systems that will need to be replaced.

Copier maintenance contracts are more expensive each year. The year end costs for copier maintenance was \$56,450 for the entire agency. We have gone to multi-use copiers that are also scanners and printers.

Every telephone system we have will go out of maintenance the beginning of FY12. The problem is the Petersburg voice mail crashed and the correct parts are no longer available because the models are going out of use. We need to replace the phone systems. We will be pre-paying using turnover and vacancy as it is generated becomes your contingency in the case of an emergency.

There was discussion about different telephone options.

Ms. Geiger said that we need to plan for the reversion and the pre-pays that we will have every year or the cost will go to the following year, and that is why it gets more difficult to fund a full appellate office that way because once you lay out why we are doing this in order to make all of these numbers work right now. We are holding positions open in existing, authorized offices, and we are artificially inflating turnover and vacancy by having a ninety day hiring freeze. The options become having the appellate office if we continue to expend the number of vacant positions we hold open, or we can eliminate the appellate office, try these two positions and see whether that increases the quality of the system, and then maybe work to alleviate the burden on the current public defender offices.

We did a caseload study and some of the higher volume offices came out as needing resources. Some offices came out as needing to reduce staff. We will be able to track expenses and turnover and vacancy monthly and that way we can come to the Commission quarterly and show our financial position as of a certain day. As we generate enough turnover and vacancy, if we can free up these positions and reallocate based on the caseload study, that is what we would like to do.

There was discussion about the ninety day hiring freeze. Reducing or increasing the hiring freeze where appropriate was suggested.

Ms. Geiger said that if we monitor these three tools: 1) the hiring freeze 2) keeping some of the vacant positions in play and 3) the turnover and vacancy, it should give us the ability to do some of the things we need to do.

The turnover and vacancy for FY10 is down. We generated approximately \$1.5 million, some will need to go to the pre-pays but there is some play there. There is going to be a need for internal auditors and some of the IT security will cost us this year. Increasing the band width, and changing our band width, after the initial implementation will save us \$40,000 per year. There are too many moving parts, but if we keep on top of it and come to the Commission every quarter and explain what we think we need to do, we should be fine.

The central capital office was supposed to move to their new office May 31 but that has been delayed until June 14 for the build-out.

Ms. Geiger said we have a lot of IT issues brewing. We are looking to make some changes that would be less expensive in the long run including increasing the band width. There is an ABC owned system called 'My ABC' that tracks pretty much everything like pay raises, leave balances, travel vouchers, etc., in one concise system, from the time a person applies for a job until the employee leaves an agency. This would streamline things here, and is accessible via the internet. What we are looking at is possibly eliminating all of the individual servers, so we would not have to replace those at the end of their life cycle and would mean a lot of infrastructure will be eliminated. In three to four years when it comes time to replenish equipment, that bill is greatly reduced. ABC will give us the code for free; we just need to find someone to service it. This would include email systems that are also accessible from the internet. The IT portion will help reduce costs in other areas.

Mr. Johnson added that with IT we are good for a while, but we are looking at obtaining a better delivery system at a less expensive cost. We are hoping to do that with the phones as well.

We were given an advisory opinion from the Bar that all of our servers have to be firewalled so they could not get each other's data. We pull the data in from their servers every night and back it up, but their servers cannot talk to each other. It will be a lot simpler if we can do away with the servers and have that separation.

Through the Department of Human Resources Management we have the Knowledge Center where we post all of our forms and that could house the brief bank for us.

Judge Rosenblatt made a motion to approve the pre-payment of FY11 expenses as outlined to defray to the extent possible, the impact of the judicial reversion amount of \$944,000.

A second motion was made to approve the purchase, prior to the end of FY10, of seven copiers to replace those at the end of the life cycle in FY11.

A third motion was made to approve to continue to hold vacant positions from the first judicial reversion, and to hold vacant the additional positions as outlined in Tier 2 and Tier 3 in the information provided to the Committee.

A final motion to approve the creation of two appellate positions, a senior coordinator, with a salary at a Deputy Public Defender level, the second is an Appellate Coordinator, with a salary at a Senior Public Defender level, with the second position funded for nine months during FY11.

Ms. Howard seconded the four motions. The motions carried.

Judge Rosenblatt moved to adjourn the Budget Committee meeting. Ms. Howard seconded the motion. The motion carried.

There was no further business.

Respectively Submitted:

Approved By:

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Diane Z. Pearson, Administrative Assistant

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David J. Johnson, Executive Director