

The Virginia Indigent Defense Commission  
Commission Meeting  
1604 Santa Rosa Road, Suite 109  
Richmond, VA 23229  
June 9, 2011

The meeting was called to order at 11:10am by chairman, Judge Alan Rosenblatt (ret.) who welcomed everyone. Other Commission members in attendance were Steve Benjamin, Judge Edward Hanson, David Lett, Maria Jankowski, Dean John Douglass, Kristen Howard, and Carmen Williams. Administrative staff included Executive Director, David Johnson; Deputy Director, DJ Geiger; Human Resources Director, Amy Williams; and Administrative Assistant, Diane Pearson.

Quorum requirements have been met.

The first order of business is to approve the agenda.

Mr. Benjamin made a motion approving the agenda. Judge Hanson seconded the motion. The motion carried.

The next order of business is to approve the meeting minutes.

Mr. Benjamin moved to waive the reading and approve the March 17, 2011 minutes. Judge Hanson seconded the motion. The motion carried.

Ms. Jankowski reported that the Executive Committee met earlier to propose nominations for the offices of chair and vice chair of the Commission for the next fiscal year. The committee recommends to the Commission that Judge Alan Rosenblatt remain as chairman and Maria Jankowski remain as vice chairman. The recommendations continue the same officers as last year. The recommendations for committee membership remain the same as well. The Committee also recommends renewal of the authority of the committees.

Mr. Benjamin moved to adopt the recommendations of the Executive Committee. Mr. Lett seconded the motion. The motion carried.

Mr. Johnson said that there is a form "Appendix A" and an "Acknowledgment of Notification of Provisions of the Appropriation Act Relating to Indebtedness of State Agencies" in the members' binder. Every year we need to give notice to the Commission that we cannot accrue debt. Mr. Johnson will fill it out, sign it, and file it with the state.

Nineteen of our Assistant Public Defenders will receive awards of \$5000 from the John R. Justice program for loan relief. If they continue to work for us they will receive this amount for the next two years. This is the first time we have realized any loan forgiveness program

awards. The Commonwealth Attorneys received the same amount for nineteen of their assistants.

James Fitchett, who is our new budget analyst, starts tomorrow.

The next item on the agenda is the budget report.

Ms. Geiger said that our appropriation is broken down into four service areas. The public defender offices are in the Criminal Indigent Defense Services, the capital defender offices are in Capital Indigent Defense Services, standards of practice enforcement is in Legal Defense Regulatory Services, and the administrative office is in Administrative Services. The administrative office includes IT, HR, Training, and Fiscal.

Within each of those we have the major categories of expenditures: Personnel, Contractual Services, Supplies, Transfer Payments, Continuous Charges, and Equipment. The budget is laid out the same way.

Due to the lack of staff and time at the end of last fiscal year, we used the expenditures to date and what we estimated would be spent for the rest of the year and populated the amounts into the FY11 budget. We have spent more in some of the categories in FY11 than in FY 2010.

This handout is more of a guide and not analytical as far as our budget needs.

One category that sticks out more is personnel and in the Criminal Indigent Defense Services the remaining budget is \$2.9 million. This is as of the end of April. The state expenditures are at least a month behind. The May expenditures will not be accessible until later today. The average expenditures are \$2.6 million and with \$2.9 million remaining for two more months. We will end with a shortage at the end of the year. Several of the public defender offices have filled positions that previously had been held open and the bonuses that were paid out in December were not calculated into our budget.

The 1500 series has a balance because we prepaid rent in FY 2010 for FY 2011, believing we might have less money in FY 2012.

The 2200 series is equipment; we budgeted all of our IT projects into the administrative IT budget. We did not give the field offices that money but we expended it from the offices.

Personnel costs were more this year than last year in both Capital and Public Defender offices. That is not the case for the other two service areas where the costs are right on the money or a little left over.

Personnel costs are higher, not because anyone has gotten a raise; it is because vacancy rates in the Capital Defender offices is lower than in FY10, and the state bonuses were paid in December.

We started with our appropriation, subtracted our judicial reversions and the amount we populated for the budgets based on the expenditures for the previous year. That left an unallocated amount for emergencies. We paid the remaining costs of the appellate office out of that. We are projecting an unallocated balance of \$442,313 based on FY 2010 and FY 2011 using those same expenditures.

As of April 30, 2011 our unexpended balance was about \$8 million, we subtract the \$944,000 judicial reversion amounts and that leaves \$7.1 million. The average available funds per month for the remaining two months is \$3.5 million. The April expenditures were \$3.1 million. The average over three months is about \$3.3 million. We are spending a little less than is available each month.

With two months remaining in the fiscal year we multiply what we are not spending on average to get about \$500,000.

The unallocated amount was \$484,000; subtract the cost of the appellate office through April, and the remaining two months, which is \$4,600, to get a remaining unallocated budget amount of \$437,713.

In June we generally pay only one payroll and in July we pay three. Based on this, we are projecting a payroll savings in June of \$1.5 million. Adding all of the projected balances together totals \$2.4 million. We had an unexpected return of half of our carryforward money from last year. We ended last fiscal year with \$594,000. The General Assembly deducted about half of that, so we unexpectedly had about \$297,000 returned to us. When that is added to the balance it totals \$2.7 million.

There are some deductions. These are the prepaid items we routinely pay in June for the following fiscal year. This includes: Virginia State Bar dues for our attorneys, postage, copier, and phone maintenance contracts. Generally we pre-pay one month of rent, but last year we paid three months. These costs total about \$857,000. Subtracting that from the year end projected balance leaves a balance of \$1.8 million at the end of the year.

Factors Contributing to Projected Year End Balance:

- |    |   |           |
|----|---|-----------|
| 1. | Frozen positions  | \$571,564 |
| 2. | Long term vacant positions in the Administrative office | \$227,628 |
| 3. | Second appellate position, budgeted but not filled      | \$ 70,614 |
| 4. | Ninety day hiring delay (lifted February 2011)          |           |
| 5. | Did not budget outside training                         |           |
| 6. | No annual conference in FY11                            |           |
| 7. | Unfinished IT projects                                  |           |
| 8. | No additional budget reductions/judicial reversions     |           |

## 9. Spike in turnover and vacancy

Additionally we received a return of about \$300,000 in carryforward. It is a mandatory reappropriation at least to the extent the General Assembly does not take the funds. The Appropriations Act specifically provided for the return of the carryforward to us, except to the extent the General Assembly determines otherwise.

There was discussion regarding judicial reversions. Judicial reversions require budgetary reductions by the agency in order to return funds to the General Fund at the end of the fiscal year. We work with the Supreme Court in determining our agency's portion of the reversions. There was a figure set for judicial department agencies. We are considered a judicial department agency for budgeting purposes and negotiate our contribution.

Ms. Geiger clarified that the amount remaining, the \$8 million, is what remains of our \$42.6 million overall budget. We actually budgeted \$41 million and have expended about \$35.3 million.

### Turnover and Vacancy:

Starting with FY 2009 a spreadsheet was created to capture the savings generated in turnover and vacancy. When a position is vacated and until it is filled, the amount not being paid toward salary and fringe benefits is creating turnover and vacancy savings.

In FY 2009 we generated \$2.467 million. The percentage of turnover based on our appropriated amount was 6.17. In FY 2010 that inched up to \$2.688 million with an average of 6.97%. The range per month went from 4.2% to a spike of 13.65%.

In FY 2011 we updated the chart through April 9<sup>th</sup>. This is through March. The hiring delay was in effect through mid February. There has been a fair jump. This is through March so we have three more months of turnover and vacancy and the range is from 6.34% to 9.92%.

The hiring delay was in effect prior to July 1, 2009 through February 10, 2011. Our hiring delay was ninety days compared to the Supreme Court where it was a year.

The HR department has put together an anonymous exit survey for employees voluntarily leaving the agency using Zoomerang which allows us to track the answers and compile reports. This will give us information to identify the reasons for turnover and to try to address them.

### Reallocations:

The total annual cost of filling the positions previously frozen due to the judicial reversions is about \$570,000. The second category is other long term vacancies in the administrative office. We are holding the positions in part because we had the Department of Planning and

Budget (DPB) analyze the processes in the administrative office which resulted in some reconfiguring and restructuring. We did not want to fill the positions for the sake of filling them. We also have budgeted but not filled the second appellate coordinator position.

The recommendation by DPB was that we needed a Director of Budget and Finance. We wanted the department to be configured properly and if we were going to reclassify a position, we wanted to make sure it was a position we actually need. This took time to work through.

The reversion positions total \$570,000, the administrative positions total \$227,000, and the second appellate coordinator position is \$70,000 for a total of \$867,000. Some of these were budgeted last year, but have not been filled.

During the March Commission meeting you approved unfreezing one of the positions. That went to Fredericksburg as an APD I, as well as a reclassification of a Staunton Senior Public Defender position to a Deputy Public Defender position, and one of the Secretary I positions in Fredericksburg to a Secretary II position. We affected three positions by unfreezing one.

During the 2007 General Assembly session, we received additional positions and each of the capital defender offices received an additional position. However, none of those were filled because immediately after there were budget reductions and the positions were frozen.

The first part of the proposal is to unfreeze and return those positions to the capital offices. Each of those offices has noticed an increase in caseload. They are all carrying a full caseload at this point.

The offices each received one attorney and one staff position. The Central and Southeast offices had an attorney position frozen. The Northern Virginia office had an investigator position frozen and the Southwest office had a mitigation specialist position frozen.

Three APD I positions from the Arlington office were frozen. The recommendation is to convert those to non Northern Virginia (NOVA) positions and reallocate one each to Newport News, Richmond, and Virginia Beach. The savings for each of those positions by converting them to non NOVA positions is \$6,420 or a total of \$19,260. Looking at our caseload study, the National Center for State Courts provided us with a spreadsheet that can be updated by inputting the current caseload numbers. We updated that chart with FY 2010 information. We are attempting to positively affect the five offices with the highest per attorney caseloads with these changes. Newport News, Richmond, Virginia Beach, Roanoke and Fredericksburg were the top five.

We further recommend converting the frozen Fairfax APD II position to a non NOVA APD I for Roanoke. The savings would be \$14,123. We recommend converting the Arlington Secretary I position to a Bedford Investigator I position. Right now Roanoke and Bedford share an Investigator II position. The incumbent Investigator would move to Roanoke, and

when he retires the position would revert to an Investigator I position. The cost of the reclassification from Fairfax to the Investigator I is \$7,704. There is sufficient funding from the savings realized from the other conversions to pay for this.

The difference between the costs of the NOVA APD I's to the non-NOVA APD I's is \$19,260. We recommend using that to reclassify the remaining Lead Secretary II's, who are functioning as Office Managers, to the actual title of Office Manager. We just revised the Office Manager job description. The Lead Secretary II's currently function as Office Managers but because they are classified as Lead Secretary II's, for Fair Labor Standards Act purposes they could be classified as non-exempt and would not be eligible to work over 40 hours a week without compensation for overtime.

A Fixed Asset Accountant position in the administrative office has been frozen since 2008. The complement that we have now in our fiscal department including the budget analyst is what we need. We do not foresee a need for an additional fiscal position at this time. However, HR is short handed. The recommendation would be to convert the Fixed Asset Accountant position to an HR Assistant position, which results in a small savings.

Referring to the spreadsheet in your binders, there is the proposed overall agency budget as well as individual office budgets. We have provided expenditures from FY 08, 09, and 10. We have provided the actual expenditures as of April 30, and the proposed FY 2012 budget amounts. The expenditures are listed by object codes. Object codes are provided by the Department of Planning and Budget (DPB), and the codes are used by every agency to categorize expenditures.

To determine what to propose for FY 2012, we looked at the three years of expenditures, what has been expended so far in FY 2011, and anticipated spending in FY2012. Each of the public defenders has received a copy of their individual office budget. They were asked for input for special projects or issues. These are estimated amounts. Part of the budget analyst's job requirements will be to monitor these very closely, to monitor the turnover and vacancy, and to advise us when an adjustment is necessary.

The 1100 series is personnel costs. Prior to last year 1165 did not have funds in it. Last year a change was made and new employees had to pay five percent toward their retirement. Starting July 1' existing employees will get a five percent raise but will have to contribute five percent toward retirement. Object Code 1111 is the employer's contribution toward retirement. There is no way to precisely calculate that number so we took the current year and projected anticipated costs for FY 2012. The personnel amounts assume 100 percent employment.

The 1200 series is contractual services. 1216 and 1217 represent phone, fax, and data lines. On the state contract there is a new broadband contract. We are switching from our old T1 lines and DSL to broadband. Because of the lower costs involved in this switch, we are able to provide two Internet connections, (broadband where available, a combination of

broadband and DSL in other markets) for each office. If one service provider goes down, we will be able to switch to the other as a backup. This was a very small cost savings.

The 1224 and 1227 series are training. We have significantly increased the amount for outside training programs and associated travel. This was hands down where the public and capital defenders wanted more money.

Series 1268, 1271, 1273, 1275, and 1279 are all IT related. A large portion is the amount necessary to conclude the IT projects started last year. This includes the switch to Google email and documents, and our access portal, case management is moving to a web based system. MyABC has been put on hold because of the staff time involved. ECM (Electronic Content Management) which would digitize some administrative/fiscal information was also put on hold. This also includes the annual licensing fees, the Cloud storage location, and document storage.

Series 1285 and 1288 are Lodging and Overnight Travel Meals. These categories may be reduced through the year. Each of the capital offices anticipates additional travel related to their case work.

Series 1535 and 1539 are building rental. The Department of General Services real estate division manages some of the leases now and in doing so receive a fee. We split the DGS and the non DGS leases into the two different categories. This is mandatory unless it is less costly to the state. On paper it is a very favorable lease but it is up to us to pay for new paint and carpet. It is a saving to the state but the agencies have to absorb those costs. 1535 includes the storage of files with the Library of Virginia.

Series 2218 is off the shelf software. This includes some of the licensing connected with the other IT projects.

Series 2264 is office machines. We need to replace some of our old digital recorders but this also includes some fax machine replacements.

The base appropriation amount is \$42,607,377. We propose a spending plan totaling \$43,724,923. The difference is \$1.1 million. We are still required to pay that judicial reversion amount of \$944,000 in FY12. That leaves us with a negative balance of \$2,061,546. The \$43,724,923 amount is 102.6% of our budget. There is some flexibility within the budget. We do not have to prepay three months rent each time, or prepay other costs. We significantly increased training funds. We have been generating \$2.4 million in turnover and vacancy. That is the lowest amount we have generated in the past three years.

Mr. Benjamin moved to approve the proposal for unfreezing, reallocating and filling of positions. Judge Hanson seconded the motion. The motion carried.

Ms. Howard made a motion to approve the budget as proposed. Ms. Williams seconded the motion. The motion carried.

The next item on the agenda is the training update.

Mr. Johnson said that on March 21<sup>st</sup> and 22<sup>nd</sup> we held our appellate supervisor training. The designated appellate attorney from each office attended. We impressed upon them the importance of being the appellate supervisor. Most of them are the Chief Public Defenders. This will be an ongoing training.

May 23<sup>rd</sup> and 24<sup>th</sup> was our management training. Judge Rosenblatt commented that it was well received by the Chief Public Defenders and it was professionally done.

Mr. Johnson said that the Employee Work Profiles (EWP's) for the Chief Defenders have been redone. It has been acknowledged that the job has changed. The training included recognizing the Office Manager's position and what that role entails. There was also a piece on recruitment and the importance of hiring the right people.

Ms. Geiger added that the training included an actual role playing portion where each Public Defender engaged in exchanges in groups where they came up with interview questions. The training included evaluating the candidates and the screening process.

Mr. Johnson continued with the boot camp update. Boot camp this year will be held July 25<sup>th</sup> through the 28<sup>th</sup> at the Hilton in Short Pump. We are anticipating forty attorneys, ten small group leaders who are Public Defenders or Senior Assistants, twelve lecturers, twenty judges, twenty bailiffs, eighty witnesses, and 120 jurors. The logistics are phenomenal. The Hilton bid state rate and has the facilities we need. We will provide snacks for the week but everyone will be on their own for breakfast, lunch, and dinner. This will keep the costs down. We will be able to do seven of the jury trials there; three will be here, cutting down on the logistics.

This year we are giving them an example of what a public defender case file should look like, including the client service record. One of the challenges we have is that documentation is uneven. Documentation is so important for new attorneys, reflecting all the work done, every phone call, etc.

We have a suppression issue that they will lose. At the end of the jury trial, which they could win but will lose, they must appeal. They will have to order the transcript. They will return here in November for more training on the appellate piece and to go through their petitions. They will argue an appellate argument. The penalty piece is missing and we would like to add that next year by adding an extra day.

Friday is a good day if anyone would like to come and observe.

The lecturers for Boot camp to date are:

Webster Hogeland, Bedford Public Defender – Discovery and pretrial  
David Baugh, Central Capital Defender – Voir Dire  
Jim Grandfield, Suffolk Public Defender – Opening statements  
Bonnie Hoffman, Leesburg Deputy Public Defender – Laying foundations  
Jonathan Esten, Fairfax APD I – (best reviewed last year) - Closing arguments  
Craig Cooley – Plea negotiations  
Melinda Douglas – Direct examinations  
Pete Legler and Cal Bain – Cross examinations  
Vikram Kapil – Sentencing phase and jury trial phase

The annual conference is scheduled for September 21<sup>st</sup> and 22<sup>nd</sup>. This changes the Commission meeting date to Wednesday the 21<sup>st</sup> at 11:00 a.m. This will allow the Commission members to attend the conference and earn CLEs.

Mr. Johnson continued. The certification form used for application to the Court Appointed Counsel list has been streamlined. Attorneys are now required to give us all adequate information so we can adequately determine eligibility and qualification in accordance with the requirements of the statute. Apparently some attorneys found a loop hole. We are now requiring more information for initial certification such as the case numbers, the court, the resolution, etc. They must have actual trial experience to get on the list.

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 §2.2-37 (F) of the code of Virginia, the Commission also requests the attendance of the Executive Director, the Deputy Executive Director, and the Human Resources Director because it is reasonable to believe that their presence will aid the Commission in its consideration of the matters which are the subjects of the closed session.

Ms. Jankowski 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 the 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 and were identified in the motion by which the closed session was convened.

All members so certified.

The next item on the agenda is the report of the Policy and Procedure Committee.

Ms. Geiger said there were some general policy tweaks in each of the chapters. There is a new telework policy and a records retention policy. The telework and general amendments were recommended for approval.

Amy Williams said that the telework policy coincides with the transition to the Cloud. With the ability to work from an alternate work site it was necessary to implement a policy. The policy is defined on page 40 of the policy and procedure manual. Our definition of telework limits its use to special projects and on an infrequent basis. We outlined who is eligible and who is not eligible. Secretaries, receptionists, and office managers are ineligible due to the critical office support nature of these positions. The public defender or executive director will approve other classifications to telework based on the business needs of the agency.

Employees cannot use telework in lieu of sick leave, family personal leave, annual leave, or child care.

There was discussion regarding telework. Mainly lawyers and investigators are eligible to telework for special circumstances. The agency will require a work agreement for anyone who teleworks.

It was a requirement for agencies to examine options and opportunities to develop a policy.

Mr. Benjamin moved to approve the telework policy. Ms. Howard seconded the motion. The motion carried.

Judge Hanson did not abstain but does not agree with a telework policy and reluctantly voted yes.

Ms. Geiger said on page 35 there was a reference to chapter 7, we removed this reference. We removed all references to appellate defender. Page 37 there was a clarification on the exempt work hours this is for the Fair Labor Standards Act. This clarifies that there are exempt and non exempt employees. Exempt employees are not entitled to overtime or compensatory time in excess of their forty hour work week.

On page 38 we made a modification to the inclement weather. The current policy is if an employee was scheduled to take a day of leave and for whatever reason the office closes for half a day the employee would have to take the eight hours of leave. We are changing it. The employee will only have to take four hours. Mr. Walker does not like this but has agreed to let it go.

On page 44 there was a reference to service supplements for employees. It was a temporary program with, one time funding so we removed it.

Page 45 relates to pay practice. We are deleting the pay practice program since the funding is no longer available. We are hoping to come up with a better compensation plan or

compression plan in lieu of pay practice. We will have an update for the September Commission meeting.

On page 57 under traditional sick leave, the change relates to the few part time classified employees; we have eight. We initially said we would not pay out their remaining sick leave balances. This is something we cannot say no to because a state policy applicable to us provides that they are entitled to it. The change indicates we will pay part time classified employees for their sick leave balances up to 25 percent, or a maximum of \$5,000.

On page 63 we deleted the language for leave sharing since we no longer have leave sharing.

Page 82 is the grievance procedure. Employees who file an EEOC claim prior to filing a grievance will waive their access to the grievance procedure when the basis is the same as the basis for the EEOC claim. When an employee initiates an EEOC claim after filing a grievance and the basis for the EEOC claim is the same basis for the grievance, the agency will dismiss the pending grievance in lieu of responding to the EEOC claim. This will eliminate duplicate work.

We are making a few changes on page 87. The person against whom the allegations are being filed will receive a copy of the allegations, and that person may respond to the allegations in writing if they so choose.

It replaces the Deputy with the HR Director as the person doing the investigation. Initially we thought that if the HR Director was doing the determination of grievability we should have someone else do the investigation, but they really do not have anything to do with each other because the grievability determination does not include an investigation. The HR Director will make a written recommendation to the Deputy; the Deputy in turn will issue a written determination, which is appealable to the Executive Director.

There was discussion about the change in the grievance process.

Page 95 is court authorized expenses. Mileage will be requested from the Supreme Court only when the distance traveled is greater than 200 miles per trip.

When a state car is available and used for travel, reimbursement from the Court for mileage will be requested at the fleet rate.

On pages 104 and 105 we are restructuring the way the language is written in the hopes that it is easier to understand. Travel reimbursement for mileage is probably the most time consuming vendor payment we have. We require a cost analysis to be completed prior to travel. The assumption is that a state car or a rental car will be less expensive than a personal vehicle. There is a website where information can be inserted into a formula that gives an estimated amount for cost of a rental vs. privately owned vehicle. We require it now but this restates that.

We also restated that a rental car or car pool is required for travel to meetings or conferences when more than one person from the office is attending. This is still a savings to us.

We tracked the Department of Accounts (DOA) policy. There are three situations in which it is presumed to be cost beneficial to use a privately owned vehicle for state travel. They include:

1. Occasional travel planned for up to 100 miles a day; for overnight travel the average daily mileage over the period for which the vehicle is needed must be considered against the full mileage reimbursement rate,
2. Constant daily routine travel – mainly for investigators, or
3. When an emergency exists

On page 110 we removed the reference to paying for telegrams.

In Chapter 11, page 112 a few changes were made to comply with the updates to the state IT Security Standard. And to fit the upcoming IT changes for Google email, access control, and Cloud storage.

Judge Hanson moved to approve the policies as amended. Mr. Lett seconded the motion. The motion carried.

Records retention is on page 14, specifically client case files. The Library of Virginia keeps all documents. Our documents are considered quasi public because a public entity is creating them but they are actually client files, a little akin to medical records that other state agencies might have.

We have not reviewed our records retention schedule with the library for at least six years. The current retention period is ten years for misdemeanors and twenty for felonies and capital cases are kept forever. It is the same as the statute requires circuit court clerks to keep their files. There are an ever increasing number of case files. We have been doing about 100,000 cases a year for the last three to four years and we continue to generate those files every year. At some point safety of the files becomes an issue. We have had some instances where files have been destroyed because of elements within offices, i.e., files kept in a moldy basement. In some offices space is very limited which makes it difficult to store files.

The process used to develop a draft proposal is that we researched and reviewed the Virginia State Bar guidelines, their legal ethics opinions, the ABA guidelines, the Virginia Code, and the Library of Virginia guidelines. We did a survey of the Public Defender offices of how often they send files to the library and how often they retrieved them. We compiled the survey results and then had a teleconference with the public defenders to get their input.

We divided the types of cases into misdemeanors and felonies. Within that we have two timetables. One is when they send the files to the library and the other is when the files are actually destroyed. The clients' interests need to be protected so it has to be destroyed properly in lieu of being returned to the client.

The proposal is to retain a misdemeanor file in the office for a maximum of three years. At that point the file would be sent to the library. That is after the file is completely closed. Once the case has been closed for five years it would be destroyed.

We created a second category for misdemeanors called special handling. This would designate certain files to be kept up to ten years. Special handling likely will be used for immigration or juvenile cases. There are also a lot of mental health records that theoretically could be beneficial to the client at some point.

The category of felonies would be retained up to five years in the office, sent to the library and twenty years after the file is closed would be destroyed. There was some concern about having those files available in the event the person was charged with something else. The capital defenders saw some value in mental health evaluations that may not be obtainable somewhere else after a long period of time. The special handling category for felonies would allow files to be stored up to 40 years after closure. The recommendation of the public defenders who felt strongly about this was to keep the file forever. However, if there is no destruction date it becomes a whole other process of archiving. The files go to a different location and are treated completely differently. That is how we arrived at forty years.

Each public defender would be required to annually review their case files. Files that have reached the three or five year mark are required to be shipped to the library.

There is a form and the box must be labeled and a whole process for sending something to the library for storage.

That is the basic proposal.

In the Policy and Procedure committee meeting, Mr. Walker suggested writing a sufficient closing letter to the client so it would not be necessary to retain the files for so long. An appropriate closing letter would eliminate the need to retain the file beyond a certain time.

Based on Mr. Walker's suggestion, the second part of the recommendation provides that in a felony case resulting in a conviction, the attorney shall provide a letter to the client advising that representation has ended, the file will be closed, and the timeline for destruction of the file under the record retention policy.

Mr. Johnson added that the reason we are limiting this to felony convictions is that if we sent out closing letters in all of our cases, it would result in thousands of dollars in postage every year and an incalculable amount of man hours.

There was discussion about giving a client the file and the possibility at some point to digitize the documents, and the cost of storing boxes at the library. The length of time to keep files was also discussed.

The library does the shredding of documents when the time comes.

The intent of requiring a closing letter was so that the attorney would not have to keep the file.

Dean Douglass moved to remove paragraph B (at the present time) in Section 2.4 Maintenance of Client Files and to approve the remaining policy as written. Ms. Howard seconded the motion. The motion carried.

Paragraph B reads: "At the conclusion of representation in any case that results in a conviction of a felony, the attorney shall provide a letter to the client advising that representation has ended, that the file will be closed and of the timeline for destruction of the client file under this Records Retention policy."

Paragraph B will be discussed with the public defenders and staff will report the results of the discussion back to the Commission.

There was no further business.

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

The meeting adjourned at 1:45pm

Respectfully Submitted:

Approved By:

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Diane Z. Pearson, Administrative Assistant

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David J. Johnson, Executive Director