

**The Virginia Indigent Defense Commission
Commission Meeting
1604 Santa Rosa Road, Suite 239
Richmond, VA 23229
September 18, 2008**

The meeting was called to order at 11:10am by vice chair, Judge Alan Rosenblatt who welcomed everyone. Other members of the Commission in attendance were James Towey, designee for Dave Albo; Steve Benjamin, Karl Hade, Judge Edward Hanson, David Lett, David Walker, and Carmen Williams. Administrative staff included Executive Director, David Johnson; Deputy Director, DJ Geiger; Bryan Aud, Amy Williams, and Diane Pearson.

Quorum requirements have been met.

Mr. Johnson introduced Bryan Aud as our new Director of Budget and Finance who has been with us since July 10th and Amy Williams who is our new Human Resources Manager. Amy will start work September 25th. He also introduced Michael Jay who is with House Appropriations.

The first item on the agenda is to approve today's meeting agenda.

Mr. Walker made a motion to approve the agenda, Judge Hanson seconded the motion. The motion carried.

The next item is to approve the June 12, 2008 meeting minutes.

Judge Hanson moved to approve the minutes, Mr. Towey seconded the motion. The motion carried.

The next order of business is the budget and finance update.

Mr. Johnson stated that the budget and finance report, which is in the meeting materials, was prepared by Bryan Aud. Mr. Johnson explained that the end of the year balance for FY 2008 is \$1.48 million which would be a potential carryforward amount. It looks like we are going to generate about \$20,000 a month in turnover and vacancy savings after we pay for what we have previously obligated the money. The bottom line is at the end of the year what our forecasted savings is, based on our projection so far, which is only a couple months' data and that could change, half of the \$1.48 million. That represents about one percent of our overall budget. We will be keeping a close eye on this because we are going to have to meet our obligations.

One thing we have seen is that our turnover and vacancy is down significantly, partly because the salary structure change but also a part of it might be due to the economy, people aren't leaving their jobs right now. If that trend continues, then this available money is going to get smaller and smaller. One of the advantages of having Bryan here is instead of waiting until the end of the year to figure this out we are trying to track this as we go through the year.

Mr. Johnson continued with projects that were approved at the end of last fiscal year. One of the projects was to replace all of the desktop computers. Part of the difficulty in accomplishing this was to get everything ordered, delivered, purchase orders in, and paid for with that year's money. It was a huge project. The end result was very good. The original figure was \$1.3 million which was for all of the projects and that turned out to be a little high. One of the projects we did not get done in time. The final costs needed totaled \$1.1 million. All but \$61,000 of that we were able to get done in the fiscal year.

There was a question regarding the budget and carryforward money and keeping track of it. Mr. Aud explained that with every payroll there is a turnover in salary vacancy and we have the information about a week prior to payday.

There was discussion regarding exit interviews and surveys as to why people are staying in their current positions and looking at trends and analyses which Ms. Williams will look into as part of her position.

Mr. Johnson added that Ms. Williams also has a Masters Degree in Human Resources Management.

The next item on the agenda is policies, procedures, and reports.

Mr. Johnson said that the first section is the appellate policies and procedures. In response to the dramatic number of appellate defaults that were happening, not just within the public defender system but across the state, we assembled an appellate workgroup over a year ago with some public defenders and some staff members. Jane Chittom was a tremendous help with it. Jane, who is our appellate defender, has just been named one of the leaders of the law in Virginia by Virginia Lawyers Magazine, which is a great distinction and reflects well on our system and the kind of work she is doing. There will be a special awards ceremony and there will be a special magazine with highlights.

After several meetings the workgroup produced the appellate policies and procedures which the Commission approved last year with an effective date of May 1st. The number of defaults peaked at 37 in one individual year.

Note: Commission member Chris Anderson has joined the meeting.

Mr. Johnson continued.

We wanted to see how those policies and procedures are working, so we reassembled the workgroup and our staff looked at the defaults that occurred since these new procedures went into effect and the number was six. The workgroup went through each default along with the report that was filed by the public defender and tried to figure out what happened. We decided that there were still some tweaks that could be done in the policies and procedures that could strengthen it to try to keep this number as low as it is. One of the reasons the number is so low is we instilled a healthy level of paranoia among the public defenders that this had to stop. We also wanted them to be aware of the continuing review process.

Mr. Johnson said that everything is being reviewed at multiple levels now. He reported that the changes are *italicized*. The workgroup will meet annually to review these policies and make changes as needed.

Mr. Benjamin said that Virginia law has changed and it now permits an affidavit to be completed without a notary. In paragraph 1.3, take out "notarized affidavit" and substitute with "legally sufficient affidavit". Mr. Johnson agreed with this suggestion.

On page 5 Item #6 take out the wording "In the event of a habeas corpus proceeding... and change to "Where habeas proceedings are necessary to restore appellate rights, the public defender...."

Mr. Walker made a motion to adopt the proposed amendments as amended to the Appellate procedures. Judge Hanson seconded the motion. The motion carried.

The next report is the Department of Aging Draft.

Ms. Geiger said that last year was the first year we had to file this report and we found out about it through the strategic planning process. The Department of Aging didn't have us in their system. They have not decided on the format of the report this year. The report is due November 15th which is before the Commission meets again, so the report is drafted in the same format as last year. The only changes that were made are 1.) Updated number of cases handled by the public defenders and 2.) Added updated data from the Virginia State Police Crime in Virginia 2007 report. Everything else is the same. Because of our turnover rate we don't have a large employee population that is aging or headed toward retirement and because of the statistical information that the Crime in Virginia report provides, the older you get the less crime you tend to commit. Our clients are not necessarily going to be in the aging population. It basically reads the same as last year with a few numbers changed. The only numbers that are missing are our caseload numbers for the specific age brackets which I will get from Ed Ernouf before November.

There was discussion about the number of reports the agency is required to file.

Judge Hanson made a motion to approve the aging report, Mr. Lett seconded the motion. The motion carried.

The next item is the Annual Report.

Note: The Vice chair recognized that Commission member, Maria Jankowski has joined the meeting.

Ms. Geiger reported that she updated the caseload numbers and it shows that we did increase our cases handled by 9.9 percent.

Mr. Johnson added that the caseload data sheet which is in the meeting materials is very good news. In the last year with the new salary structure our caseload has gone from about 94,000 to about 103,505. This is a very dramatic increase in one year. This does not include capital cases. The caseloads were actually up a little for individual attorneys but part of that was because we didn't have as many experienced lawyers leaving. When we hire a new lawyer it takes them a year to get up to a full caseload. We were benefiting by being able to fill the positions but also the attorneys who were staying were gaining more experience and getting up to full caseloads.

Our turnover rate for our attorneys was 31 percent in FY07; it is down about 8-1/2 percent. The turnover rate for authorized attorneys is down significantly to about 9 percent. What we thought was going to

happen has happened, it has been very positive. The stability that it has brought to the offices has really helped them this year.

Ms. Geiger added that we take the actual pay periods and if a position is vacant, that is where you get the difference between the authorized positions which assumes full employment and the actual.

The number of certified attorneys on our Court Appointed Certified list in each classification has decreased but juvenile has significantly decreased. We are working on some approaches as to how we can increase that. We received permission from the Bar to have a table with some brochures for the new attorney swearing-in ceremony. We also contacted them about putting a link on their website for certification.

Mr. Johnson added that when this all came about and certification was required there was a statutory procedure that allowed waiver of attorneys without taking the training based on their experience. Many attorneys who have been practicing for many years with a lot of experience were waived. The statute requires that they take ten hours of CLE, six in criminal and four in juvenile within a two year period in order to recertify. That cannot be waived; I cannot waive that because it is a statutory requirement. Some lawyers have said that they satisfy all of their CLE requirements at the Bar conference every year. The problem is that there is only one hour of criminal CLE at that conference. If that's all an attorney is getting in criminal law continuing educations they can't meet the certification requirements. With juvenile, we now have more juvenile trainings available. We would like to keep these numbers up. We're meeting the statutory requirements. We've made it as easy as we can. It's a one page form that is sent to us every two years.

There was discussion about juvenile cases and how lengthy they are.

Mr. Johnson said that many lawyers who traditionally did juvenile work are now concentrating on guardian ad litem work and for many this is their entire juvenile practice. \$77 million was listed as court appointed counsel fees and it turned out that about \$22 million of that was actually guardian ad litem. There are some things about this institutionally that we don't have a lot of control over at this point. What we're doing is tracking the numbers and offering the training and meeting our statutory obligations and making it easy for them to get the juvenile training. Whether or not they want to get it and stay on the certified list, I don't know how we can control that.

Ms. Geiger added that there is a second statute that states that if there isn't anyone on the court appointed list a judge can appoint someone who they believe is qualified.

Judge Rosenblatt asked if the increase in caseload numbers can be attributed to fewer new attorneys.

Mr. Johnson said that was part of it. We also filled positions because of the new salary structure. A couple of offices can now take on more because they are at full staff.

Ms. Geiger advised that one of the new addendums for the Annual Report is the Standards of Practice Enforcement brochure and complaint form. Additionally, part of the requirement for reporting is the ranking analysis of where we stand in the fifty states. We had an intern volunteer her time this summer for a few projects and she found that it is difficult to tell where any state stands. She did a chart of funding sources, attorney types, structure, and then how it's paid. It's all over the board but the chart

shows how everyone else is doing it. There is no consistency among the fifty states on how we fund, who handles what cases, and who administers the systems.

She said she would like to make a slight language change on Page 14. It reads that the turnover rate has slowed slightly but now that she has the percentage rate would like to change it to “the turnover has decreased by eight percent.”

There was discussion regarding the caseload data and why some offices have more cases than others.

Mr. Johnson said that there is no easy answer. The Fairfax office does a lot more jury trials than any other public defender office. One of the reasons for the caseload study that we are eagerly awaiting is so that we can figure out where the numbers should be and one of the goals of having a caseload study is to be able to make that determination.

Judge Hanson made a motion to approve the annual report with the amendments. Mr. Walker seconded the motion. The motion carried.

Ms. Geiger reported that every year we update the policies and procedures and this year there will be some significant changes that we will need to look at in the travel and reimbursement chapter. She will get the workgroup to look at the changes first and present a draft to the policy committee for their review which will be mid to late October but we will get a date on that for you.

Mr. Johnson added that it is a statutory requirement that we are to develop our own policies and procedures. It is a good process to review them annually because we find things every year that need to be changed to make us more efficient.

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, David Johnson and the Deputy Executive Director, DJ Geiger 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. Williams 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.

Judge Hanson made a motion pursuant to §19.2-163.01(B) that we delegate to the Executive Committee the authority to review and approve a proposal or proposals for budget reductions in response to such requests from the Department of Planning and Budget. Mr. Lett seconded the motion. The motion carried.

Judge Hanson moved that the Commission direct the Executive Director to develop such a proposal or proposals for budget reductions and present that plan to the Executive Committee for approval. Mr. Towey seconded the motion. The motion carried.

The next item to be discussed is employee evaluations.

Mr. Johnson said that what we have done, pursuant to the language in the procurement act is that we have had the Public Defenders do evaluations on all of their employees. I have evaluated the Public Defenders and we have evaluated the administrative staff and are prepared to certify the results of those evaluations to the Department of Human Resources Management so they will have a list of employees who meet expectations or higher.

Judge Hanson moved that the Commission direct the Executive Director to certify our employee evaluation results to Department of Human Resources Management (DHRM). Mr. Lett seconded the motion. The motion carried.

The next order of business is the discussion of the new procurement process that needs to be put into place.

Ms. Geiger said that what we are going to ask for today is the adoption of the Department of General Services procurement manual. We will make some exceptions or changes to what is adopted and what is not adopted. We will continue to review it and if changes are needed we will bring those to you like we do with the policies and procedures. The only exceptions that we really made pertain to the use of the EVA tools, if there is a fee involved, or it's going to be less efficient for us where we have to actually enter something twice we are not going to use the EVA tools.

The other exceptions are generally with regard to spending authorities the Commission has given the Executive Director. The EVA manual speaks to \$50,000 and currently the Executive Director's is \$15,000. What we have done is limited that to where the Commission has already approved the budget with a project that exceeds \$50,000, the Executive Director would still be limited the same way he is now. That is an exception to the procurement manual.

The only other change is there are certain limits with the GE credit cards, travel cards, and purchase cards that the employees have. We provide stricter limitations than the manual does and we are keeping those in place. To the extent that this refers to a second manual which is called the Vendors Manual, we will use those sections only when they are specifically referenced by the DGS Manual.

Judge Hanson moved that the Commission adopt the agency procurement and surplus property manual (APSPM) with the noted exceptions. Ms. Jankowski seconded the motion. The motion carried

Mr. Johnson pointed out that there is a tab in the meeting materials for Capital jurisdictions. We are going to take a look at the regions that each capital defender office covers that we set up over five years ago. What we are finding is that Northern Virginia gets more than their share. We aren't turning away any capital cases. We are finding that some of the jurisdictions are not pursuing a lot of capital cases. It seems that the presence of the Southwest Virginia office has discouraged or there are fewer capital cases being brought. In Richmond, Mr. Johnson feels that David Baugh's presence has somewhat of that effect. A prosecutor in open court made the offer that they would take death off the table if David Baugh would remove himself from the case.

We want to take a look at the history of their case loads for the last few years and we may come to the Commission with a plan to tweak the jurisdictions just a little to try and even out the work load.

The statute provides that we can do this.

Mr. Johnson continued with the best practices assessment report. There are twenty three recommendations and we have made significant progress on a lot of them. There are about eight or nine that are the job of an HR Manager, which is why we have Amy Williams coming on board.

We had talked about the possibility of a forensic specialist position. I did my due diligence and talked to people in various states and still think it would be an extremely valuable position for us to have. With the budget up in the air, since it's not funded, and until we find out what is to be expected of us we wouldn't be able to propose anything specific.

Along the lines of forensic training, one thing we are probably going to have to do because of the budget, we had tentatively accepted a proposal for our annual conference at Newport News this year but I didn't sign the contract and it would have been about an \$80,000 total cost for the annual training. We have had this discussion before about how valuable the annual training is but if it comes to the point of three support staff positions being eliminated versus being able to do that, and that is maybe where we are. If we have to do it this year to get people their CLE requirements, we can do small trainings here and put them on DVD.

I have been in contact recently with a couple people, Dan Crane, Roger Koppl who are involved in forensics training nationally and who want to bring forensics training to Virginia. There is a grant through the JEHT project out of New York that they think they can get. We just started talking this week about what form it can take and I offered up the two day block that we normally do our annual training. We could probably have a full one day training at the University of Richmond, which we can get for free. We can get all of the Public Defenders who are within a two hour driving distance to come to that. It would be a day long, really exceptional, forensics training. Lawyers doing court appointed work would be welcome too. Day two, what we have envisioned is to have forty select lawyers from our system here for an advanced track training that we can get on DVD. They can then go back to their offices and do some training.

Then on day three they would go to Roanoke and replicate the first day training there for people within two hours of Roanoke. That way we can get a lot of coverage for the state.

I think this is would be superior to anything we could put on. If we can put this together this year I think it would be a suitable substitute for our annual conference. We will supplement it with our trainings here.

Again, for us to do that annual conference, as great of a thing as it is, with travel costs it is phenomenally expensive. At this point, at least until we find out what is going on with the budget, I feel like I couldn't sign a contract of that size. I'm hoping we will have a suitable substitute.

Ms. Geiger reported on the ARMICS certification. This was Stage 2 and it was filed on time. We basically said there were some things we were going to work on where we found some weaknesses.

In Stage 3 we had to certify and provide a corrective action plan for the weaknesses that were found. There were nine corrective action plans or CAPS as they are called and I've given you a copy of the descriptions of each of those with the due dates. CAPS six, seven, and nine are already completed. One, three, four, and eight are being worked on and the deadline for those is June 9th. CAP two is one of the best practices DPB report requirements for the HR manager, so when Amy comes on board, she will start with that, with a due date of July 9th. CAP five will actually be a proposal to the Commission for the policies and procedures because it deals with our mileage requirement. We required them to report mileage to the tenth of a mile but a lot of the new cars don't have the tenth of a mile so it looks like we are not enforcing our own policy but that is not the case, we just need to correct it.

We have completed requirements for ARMICS for this year and the requirements for next year have already been posted. They should be less draconian because we have already been through the worst of it.

The next item is IT security. Ms. Geiger said there is a chart of all the security standard requirements. Mr. Ernouf has listed the extensions we have filed for meeting those requirements, all of which have been granted to us. We have met about half of them so far. We are on track to meet the extensions we have filed at this point.

Part of the IT standard requirements is that we have to have an IT committee that meets weekly to go over security and IT issues. We have extended that to all things IT. This gives you an idea of the entire running list of things that are going on that are IT related at any given time.

Ms. Geiger reported that the last item is the strategic plan. They allowed us to make only changes that were in the Appropriations Act so there really isn't anything to report because we couldn't change anything else.

There was no further business.

Judge Hanson moved to adjourn the meeting. Mr. Walker seconded the motion. The motion carried.

The meeting adjourned at 1:50pm

Respectfully Submitted:

Approved By:

Diane Z. Pearson, Administrative Assistant

David J. Johnson, Executive Director