

The Virginia Indigent Defense Commission
Commission Meeting
1604 Santa Rosa Road, Suite 109
Richmond VA 23229
September 23, 2010

The meeting was called to order by chair, Judge Alan Rosenblatt (ret.) at 11:10 am. Other Commission members present were Karl Hade, Maria Jankowski, Judge Edward Hanson, Dean John Douglass, Kristen Howard, Kent Smith, Steve Benjamin, David Walker, and Kristi Wooten. Administrative staff included Executive Director, David Johnson; Deputy Director, DJ Geiger; and Administrative Assistant, Diane Pearson.

Quorum requirements have been met.

Judge Rosenblatt welcomed new members, Kent Smith and Kristi Wooten. Mr. Smith is currently a pretrial officer for the Department of Justice Services with the City of Richmond. Previously he was a member of the Virginia Parole Board. Our other new member is Kristi Wooten. Ms. Wooten is a lawyer in Chesapeake. She received her JD and MA degrees from Regent University and is currently a partner with the law firm of Bowman, Green, Hampton, and Kelly.

Each Commission member introduced themselves to the new members.

The first order of business is to approve the proposed agenda.

Mr. Walker moved to approve the agenda. Mr. Douglass seconded the motion. The motion carried.

The next item on the agenda is to approve the June 17, 2010 meeting minutes.

Mr. Walker made a motion to waive the reading of and approve the minutes. Judge Hanson seconded the motion. The motion carried.

Judge Rosenblatt read a thank you note from Jane Chittom for a plaque that was given to her from the Commission in appreciation for her dedicated service.

Mr. Johnson said that our sentencing specialists came up with an idea to start a newsletter in order to network more effectively. A copy of "Mitigation Station" is in your binder. The newsletter will be issued quarterly.

The next item was the report of the Executive Committee, which met earlier this morning and recommends to the full Commission that Maria Jankowski serve as vice chair.

Mr. Benjamin moved to elect Ms. Jankowski as Vice Chair of the Commission. Mr. Walker seconded the motion. The motion carried.

Judge Hanson moved to approve the second recommendation of the Executive committee containing the following nominations: Mr. Lett to serve as chair of the Personnel and Training Committee, Mr. Smith to serve on the Policy and Procedure Committee, Ms. Wooten to serve on the Personnel and Training Committee, and Ms. Jankowski, as vice chair, to serve as chair of the Budget Committee. Mr. Douglass seconded the motion. The motion carried.

Ms. Geiger said that we will be adjusting our budget quarterly based on expenditures and provide an update at the Commission meetings. If a different format is needed, we are able to change it. The way the state expenditure reporting works, we do not get the expenditures from the current month until close to the middle of the next month. We currently have July and August and will not have September numbers for a couple more weeks.

In the Appropriations Act we have four service areas and each is based on the different programs of the agency. Of those four service areas, Criminal Indigent Defense Services is the largest and consists of all of our Public Defender offices. The second is Capital Indigent Defense services, the third is Legal Defense Regulatory Services, which is the line item that is specifically for Standards of Practice Enforcement. The fourth is Administrative Services and includes IT, Training, Personnel and anything that supports the field offices.

Each category has sub-object codes. Every expenditure goes into a sub-object code. We have put the various sub-object code amounts into larger categories.

July is usually a higher expenditure month because we pay three payrolls and also there are expenditures from the end of the year that were not keyed by the June 30th deadline. We know that it is higher and can calculate it going forward. Additionally, we know in June we have one less payroll.

Our starting appropriation is \$42,607,377. We met with our Department of Planning and Budget (DPB) Analyst, Reginald Thompson, and with the Deputy Director, Michael Maul. We previously had a starting appropriation of \$43.1 million. This change is because of adjustments made in retirement and other fringe benefits during the most recent General Assembly session. Our starting point will be lower because we will have to pay less. There should not be any major adjustments. Previously when the \$43.1 million was deposited into our account at the beginning of the year, adjustments were made for the fringe benefits resulting in a lower starting balance. Going forward they will make those adjustments at the outset.

Our total agency expenditures should be similar to last year. The approach we are taking this year, by beginning with the actual expenditures in each category from FY10, automatically captures the costs or savings resulting from any turnover and vacancy we may have had because it gives us the bottom line on what we spent on personnel. This makes the calculation a little easier. We ended up with an estimated \$41,179,159 in

anticipated expenditures. Within that number we made some adjustments. We purchased telephone systems for all but three of the field offices. Any one time expense will not be added back in this year. Any expense, like the three phone systems not yet installed and paid for was added back.

We have two judicial reversions. One has been in effect since the previous biennium and is continuing. Our portion of that reversion is \$544,000. The second reversion amount is \$400,000. The total amount that we are required to pay back is \$944,000. We have taken this off the top of our appropriation, which leaves us with a balance of \$41,607,377. If we subtract our expected expenditures from that, we have an unallocated amount of \$484,218.

In closing the Appellate office we have some leftover expenditures. There are some personnel items that need to be paid along with rent and phone lines to forward calls temporarily. As of August 31, 2010 that number is \$16,678 and is not included in the \$484,218. Emergencies are also not included.

Mr. Johnson added that when the Budget Committee met and approved our approach, they did express some angst in that we are cutting it close. We promised to monitor it very closely and let you know exactly where we stand at each meeting. Part of our fail safe is that we have a ninety day hiring freeze. Our hope is that we will spend even less and later in the year ask you to scale that back to sixty days or thirty days.

Ms. Geiger said that we have several IT projects planned to keep the agency up to date and moving forward. Some of the projects are aimed at the disaster recovery and COOP (Continuity of Operations Plan), meeting the IT security standards that are required and providing 24/7 remote access for our attorneys to email and documents they need. Some of these purposes overlap.

We are carrying the costs of the IT projects entirely in the IT budget, which is within the administrative service area. The costs will be expended through the individual offices, but for now, they are showing as administrative costs. Mr. Johnson said that red flags are raised and there is concern if an agency's administrative costs are ten percent of their appropriation or higher, and our administrative costs are five to six percent or less.

Ms. Geiger said that we have created individual office budgets and have used the same approach. What was expended in the listed categories last year and what is expected to be needed this year. We made those adjustments and each of the offices will receive a copy of their budget when we meet with them. We can provide you with a copy as well if you'd like.

There was discussion regarding the budgets for the field offices and the big expenditures that exist like mileage reimbursement, books, and online research tools, etc.

The next item on the agenda is the Annual Report.

Ms. Geiger reported on the changes within the Annual report including that we were able to reinstate the annual conference. We were also able to have an investigators and sentencing advocates training, which had not been held in several years.

There has been a 3.5 percent decrease in our caseload this year which seems to be consistent with what the court has seen on the criminal side.

Ms. Geiger added that on Page 15 of the annual report it has been suggested to remove Paragraph 3.

David Lett arrived.

There was discussion about the annual report.

Mr. Hade moved to accept the annual report as amended. Judge Hanson seconded the motion. The motion carried.

The next item on the agenda is informational items.

Mr. Johnson began with a legislative update. He said that discovery reform has been out there for a while. There are three groups looking at the issue this year. The Virginia Association of Criminal Defense Lawyers (VACDL) has drafted some legislation. Additionally, the Virginia State Bar's Indigent Defense Task Force, and the Virginia Criminal Justice Conference, are also studying the issue. Staff will advise the Commission, should any legislation come from the discussions.

Last year during the General Assembly, the Commonwealth Attorneys were facing significant cuts and said they could save money in the criminal fund if they decided to waive jail time on certain misdemeanors, thus eliminating the need to appoint counsel to indigent defendants. They proposed legislation, which failed, but what came out of the session was language in the Appropriations Act directing the Committee on District Courts to meet in consultation with the VIDC and the Commonwealth Attorneys Association and report back to the General Assembly with proposals related to this issue. Reductions to the Criminal Fund Appropriation were made in conjunction with anticipated savings resulting from the proposal.

The Committee on District Courts met with the prosecutors and us. The result was a report indicating the current state of the law and providing best practice guidelines.

Currently, if a prosecutor decides to waive jail time the court can accept the waiver. If jurisdictions are going to do this there will be a form included for the judges. We are not agreeing to blanket waivers. There are still questions regarding separation of powers because the judges have the sentencing authority.

At this point it is unclear whether the Commonwealth Attorneys will introduce legislation again. Many legislators understand that this is a difficult issue. There is not a simple formula.

There was discussion on waiving jail time.

Mr. Johnson continued with the training update. July 26th through the 30th we had our annual boot camp. He thanked Dean Douglass for the use of the law school at University of Richmond. This was our seventh boot camp and was really good. A couple of years ago when our turnover was at its peak, we had over seventy new lawyers, and this year we had thirty which made for a much higher quality program. We changed the format a little.

There was discussion regarding boot camp. Judge Rosenblatt complimented the staff on the quality of the program this year and has received positive feedback from some participants.

Mr. Johnson said that all of our trainings are recorded on DVD which we send to our offices as well as to several Bar Associations that we are in partnership with. October 15th our new Appellate Coordinator, Joe Sadighian, will be doing a live training on appellate defaults which will be recorded.

Regarding appellate defaults, Mr. Benjamin suggested giving consideration to legislation endorsing an indigent appellant's ability to restore appellate rights if they have been defaulted due to an obvious attorney error of missing a deadline. He is aware that the court has now made some distinctions in dismissals so that the legislative remedy no longer exists. He would like someone to take a look at that to determine whether we now need a further adjustment or legislative remedy to deal with the court's position on this.

Mr. Johnson stated that there will still be human error in handling appeals. He added that each office now has an appellate lead attorney. They are not writing the appeals but they are supervising and instructing. We will be bringing them in for about three days of training. In years forward we would like to bring each first year attorney in for appellate practice training because we want to raise the bar on appellate practice also. We think this will help to make them better trial lawyers as well. We have stepped up our training but appellate training is our number one mission.

Dean Douglass departed from the meeting.

Mr. Johnson continued with the training update. The boot camp culminated with doing jury trials. The prosecutors for the mock trials this year were actually instructors.

This year we will have a true management training for the public defenders. Sometimes the characteristics that make them such good trial lawyers are the opposite of what they need to manage an office. We have two public defenders from Maryland coming in

to share their experience with this. Conflict management is a big issue within the offices. We have a professional speaker talking on that. We will have someone talk on leadership development. Stress management is becoming a big issue in all businesses and we are not exempt from that. We deal with a very stressed client base.

Guy Horsley from the Attorney General's Office is going to do an hour on workplace harassment and how to avoid it and recognize it. Amy Williams, our HR Director is going to lead a session on effectively managing difficult employees. Then DJ and I will speak at the end. We also have one-on-one meetings with the public defenders. This is also the time of year we do their performance evaluations. We talk about their office needs, their numbers, etc. It is really difficult to meet with all 29 public defenders so we have made arrangements to visit about twenty of the offices in the next few weeks. It is a good opportunity to go to their offices, meet the staff and sit down with the public defenders to do their evaluations. This is our plan for the next several weeks.

Our capital defenders are having a separate training after the conference. We have some very good speakers coming in for this.

Federal legislation created the John R. Justice program. This program was years in the making. It was the first federal legislation that specifically named public defenders in a loan forgiveness program. The full name is the Prosecutors and Defenders College Cost Reduction Act. The original version was stripped down quite a bit in terms of funding. It ended up with \$10 million the first year and proportioned it to each state. Virginia gets \$223,000 in year one. We had to get another agency to administer it because it is supposed to be split between prosecutors and defenders. The Governor named DCJS as the managing agency. In the first year, nineteen of our assistant public defenders will get \$5000 awards toward their loans. Each recipient is eligible for awards for three years, so they will receive a total of \$15,000 if they stay for three years.

When it is fully funded the Act will provide for up to \$10,000 a year or \$60,000 over the term of someone's employment. Hopefully the funding will continue to increase. We need to publicize the program to all of our attorneys. We will not be involved in who gets it, there will be a DCJS review committee. Eligibility is driven by the qualifying loan and income.

Moving on to the DPB recommendations, Ms. Geiger indicated that a couple of years ago we asked the Department of Planning and Budget's Best Practices Management division to look at our administrative office structure and functions to see what changes we could make in order to provide better services to the field offices. They gave us twenty three recommendations most of which we have implemented. Based on one of the recommendations and attempts to implement the change, we determined that we needed further assistance. We requested and received a change agent from DPB, Jewell Hudson, who work with us for about six months. She reviewed our fiscal processes and provided us with a new list of recommendations. The first item was the utilization of the eVA system, which unfortunately has failed us this morning in ordering lunch. Its use was proposed as a means to provide some efficiencies and save money. Another

recommendation was to reduce the procurement staff from two people to one because some duties were clearly fiscal responsibilities not procurement. We have gone from one and a half fiscal technicians to two.

We recruited and interviewed for the director of budget and finance position twice. We were not satisfied that the candidates we interviewed were the right fit or had the right credentials. The longer we looked the more it became evident that we had someone in the office that if we gave her the opportunity and training and tools would be more than sufficient in that position. That person is Janice Johnson. Janice will be attending VCU's Commonwealth Management Institute in November in order to learn the management side of the job. She has been working with DJ developing the budget and is assisting with running the fiscal department, ensuring we do not miss deadlines, etc. We will expand that after we get a few items off of her plate.

The two fiscal technicians are entry level. The second position has been filled and she starts Monday. She is experienced and has been using the same systems. They will be the first level of entry and will cross check each other's work, which eliminates a layer of review for us. We will then move some of Janice's duties to Lena Francisco, who is in our accounting position. Those moves will free up Janice to take on the remaining responsibilities of the director position. Janice has the respect of everyone in that section, and they are going to her now as a leader. It is going to be a good fit and a very good opportunity for her.

Ms. Geiger continued with travel vouchers. Another recommendation is to automate the travel vouchers to be completely; the first phase is to make the voucher fully electronic. We have done that and rolled the electronic form out to the field offices. The form was designed in conjunction with DPB. The employee enters his or her employee number. Once that is entered, the form automatically populates the employee information. It auto calculates, so math errors are no longer an issue. This streamlines what the fiscal technicians will need to check. The next step is to fully automate it. We will need approval from DOA for that. DOA likes our form and is considering the use of it on a statewide basis.

With some of the IT projects we are working toward automating more of the processes. The My IDC project will automate leave reporting.

Mr. Johnson said that the performance evaluations are due at the end of October. The Public Defenders do a self evaluation first and that is used as a basis for their evaluation. Reading their self evaluations is always a positive exercise because they take the opportunity to point out the good work that has gone on in their offices. There is also a lot of good, innovative training they are doing individually within their offices. The evaluations take time but it is good to see what is going on in the offices.

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 §2.2-3712 (F) of the Code of Virginia, the Commission also requests the attendance of the Executive Director and the Deputy Director because it is reasonable to believe that their presence will aid the Commission in its consideration of the matters which are the subject of the closed session.

Mr. Lett seconded the motion. The motion carried.

*At the conclusion of the closed session, the Commission shall immediately reconvene in open session. A roll-call vote will be taken and each Commission member will be asked to certify that, to the best of his or her knowledge, during 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.

Each member so certified.

There was no further business.

Judge Hanson moved to adjourn. Ms. Jankowski seconded the motion. The motion carried.

Respectfully Submitted:

Approved By:

Diane Z. Pearson, Administrative Assistant

David J. Johnson, Executive Director