

## **The Virginia Indigent Defense Commission**

Commission Meeting  
1604 Santa Rosa Road, Suite 200  
Richmond VA 23229

June 8, 2017

Judge Alan Rosenblatt (ret.) called the meeting to order at 11:05 am. Other Commission members in attendance were Steve Benjamin, Carolyn Grady, Karl Hade, Guy Horsley, Kristen Howard, Professor Henry (Hank) Chambers, Professor John Douglass, Delegate Chris Collins, Jim Hingeley and Carmen Williams. Members not present were Judge Edward Hanson (ret.), Senator Richard Stuart, and David Walker. Administrative staff included Executive Director, David Johnson; Deputy Director, Maria Jankowski; and Administrative Assistant, Diane Zubke.

Quorum requirements have been met.

The first order of business is approval of the agenda and minutes.

Mr. Horsley made a motion approving the agenda. Ms. Williams seconded the motion. The motion carried.

Mr. Horsley moved to approve the minutes. Ms. Williams seconded the motion. The motion carried with Mr. Hingeley abstaining as he attended the March meeting but not in the capacity as a Commission member.

The next order of business is the budget.

Ms. Jankowski said the Budget Committee met May 9<sup>th</sup> and three items of significance were: 1) the final FY17 report, 2) the proposed FY18 budget, and 3) office reallocations. The committee voted to allow the prepayment of eleven months rent. Staff is now requesting approval of twelve months rent. The committee reviewed the proposed FY18 budget. The committee was reminded that a significant majority of the budget is not truly discretionary in that it covers the cost of employees' salaries, benefits, other costs, and the cost of offices rent and attenuated costs. The committee's attention was drawn to increase training, travel, and money for fellowships. The committee acknowledged that the increase in training is a likely cost savings.

The committee was advised that staff would like to institute an IDC fellowship program. Staff explained that it is a challenge to recruit competitive law school students since we cannot make a commitment before graduation and bar results. The fellowship program would allow recruiting the third year and bringing them into our system while they wait bar results. Further the commitment could be made in the middle of the third year when the many students are accepting positions.

Finally, the committee requested five office reallocations and those will be handled later on today's agenda.

The committee voted to recommend to the full Commission approval of the proposed FY18 budget.

There was discussion regarding rent prepayment.

Ms. Jankowski said the first spreadsheet in the meeting materials is our FY17 expenditure forecast. This indicates what our FY17 adjusted budget was, our FY17 actuals year to date, a May to June forecast, FY17 total forecasted expenses, and the projected FY17 adjusted balance.

The first full section relates to retirement, social security, salaries represents twenty one pay periods through April. There are three in May and June that are forthcoming. The following page shows an estimated balance remaining.

In the short term disability column it shows a significant overage of \$153,623. That money was actually budgeted in salaries.

There was discussion regarding the estimated remaining balance.

Mr. Johnson said the remaining balance should be returned to us.

Ms. Grady made a motion approving prepayment of twelve months rent. Mr. Benjamin seconded the motion. The motion carried.

Ms. Jankowski said there is an item that is worked into the FY18 budget. The state provided for a three percent raise to all state employees. Our instructions from the Department of Human Resources Management (DHRM), because we are an independent agency, we are required to certify that all employees at least meet expectations. The comparative rating in the executive branch is contributor. The way the budget bill is written raises only apply to employees that meet at least this performance level.

Mr. Johnson added when we went through the performance evaluations we actually had eight employees who did not meet expectations, five are no longer with us, and the other three received interim evaluations and their supervisors are now saying they are performing at a satisfactory level.

Ms. Jankowski added there are provisions for people who have come on as new employees since the last performance evaluation and we have taken the necessary measures in regard to those folks. Additionally there were people in our system who had not had a performance evaluation. One person was on military leave and there are various other people in the system who did not receive a performance evaluation. We have since gotten what we need from those employees so they become eligible.

We are now in a position where everyone meets expectations.

Ms. Grady moved that the Commission certify to the Department of Human Resources Management that all employees of the Virginia Indigent Defense Commission are performing at the level of at least meets expectations. This rating is comparable to contributor. Mr. Hingeley seconded the motion. The motion carried.

Mr. Benjamin made a motion with big thumbs up that Mr. Johnson meets expectations and entitled to the three percent raise. Ms. Howard seconded the motion. The motion carried.

The next item on the agenda is the proposed FY18 budget.

Ms. Jankowski said the proposed FY18 budget includes the anticipated three percent raises. We do not have the exact number that DPB (Department of Planning and Budget) will give us to cover the three percent raises. We have worked into the budget what we believe that number will be so the salaries reflected in this budget include a three percent raise.

Mr. Johnson said when there are raises we increase the entry level positions salary. Every entry level position moves up.

Delegate Collins arrived.

Mr. Johnson welcomed Delegate Collins.

Ms. Jankowski said in the materials is the budget that was presented to the Budget Committee in May. The committee voted to recommend this budget to the full Commission. There are a few changes. The feedback we got from the Budget Committee was since we prepay rent they did not want it to look like our rent decreased or we no longer had rent. The budget Committee recommended adding something to the spreadsheet to indicate what our actual rents are.

In the proposed FY18 budget there is a note at the bottom that indicates the overall annual rent cost for FY18 is estimated at nearly \$2.7 million. Our documentation indicates what our true rent is separate and apart for any year that we prepay.

Mr. Johnson added localities are required to provide Commonwealth Attorneys with rental space and public defenders are not provided rental space, we are on our own.

Ms. Jankowski said the second request from the Budget Committee is in line item Office Expense Allowance and used to be Bonus and is how DPB labeled that line item. The Budget Committee did not like that as it is not a bonus. It is actually an office expense for five part time folks in three different offices. The Budget Committee asked to make that change.

The final adjustment after our Budget Committee meeting is we received information about obtaining an HR data base at a fairly reasonable rate. We would like to request to put it in the budget in the hopes we will be able to move forward on it. It is about \$20,000 over the course of a year. We do not have an HR data base and with 546 employees everything is done manually.

Mr. Johnson added that our current HR director is leaving so when the new director comes in that person will decide on what system will work best for us.

There was discussion regarding the HR director position and salary analysis.

Mr. Johnson said we feel as the administrative office we cannot change the rules for us. The public defender offices lose good people to Commonwealth Attorneys offices all the time and we lose good people to other state agencies. We have had the philosophy that we cannot have special rules here when we tell the public defenders there is nothing we can do to enhance salaries.

Mr. Hingeley said that looking back on his experience as a public defender he believes he would be receptive to an argument that there is a big value to getting and keeping good people in the administrative office just as there is the same value in the public defender offices. In terms of the public defenders relations with the administrative office there is a value to be had and continuity with the HR director. For example, the public defenders interact a lot with the administrative office and the administrative office does a terrific job. Maybe the time has come to reevaluate that philosophy. He would urge to reconsider that philosophy of starving the administrative office so it is just as hungry as the public defender offices.

It is not just that the administrative office is paid lower salaries as are the public defender offices compared to other state agencies but it is also the number of people employed in the administrative office so there would be savings. They run very lean in terms of the number of staff and in terms of the salary scale.

Perhaps one of the committees could take a look at that and make some adjustment. Mr. Hingeley believes it would be cost effective.

Mr. Johnson said we are not going to be the agency who hires away the accomplished director. We try to find the person who is willing to step up but sometimes our salaries are not even attractive to them. In the grand scheme of things we are a small agency. For instance, our IT department is staffed with four people and we should have about twelve.

There was discussion regarding the hiring process that is not only time consuming but takes away from normal responsibilities.

Mr. Benjamin thinks we can be sensitive to the perception of the public defender offices and speak to that and at the same time do what we need to do to adequately staff the administrative office and he encourages us to do that.

There was discussion regarding longevity within an agency and why it is appreciated by most to be able to talk with the same person.

There was discussion regarding prepaying rent and the flexibility this allows us in case of an unexpected expense.

Ms. Jankowski said the FY18 budget is presented in two formats. One provides a historical point of reference of previous years. The other format is divided up in service areas of Public Defenders, Capital Defenders, Regulatory, and Administration. The Regulatory is Certification and Standards of Practice. When the Budget committee met it gave them angst if you look at the budget with the historical perspective it gives the appearance that the rents fluctuate from year to year. The concern is to the uninformed eye it could appear that we cut our rents in half. This is what prompted us to indicate a note of the true rent costs. The spreadsheet shows what our actual rent is every month.

Mr. Johnson added DPB understands we prepay rent.

There was discussion regarding the current budget format.

Ms. Jankowski said the Budget Committee specifically suggested we bring two items to your attention not previously in the budget. One is a brief description of the Virginia Indigent Defense Public Defender Fellowship Program. We asked the Budget Committee for one fellow at \$4000. They suggested requesting four fellows.

Mr. Johnson said law schools like the University of Richmond have fellowship programs with the idea to get law students to go into public interest work. Most public interest agencies like ours cannot employ graduates until they pass the bar. By the time they take and pass the bar they are hired by law firms. The hope with the fellowships is after four months they will get hired by that office or another public defender office.

The fellowship program pays a stipend to the fellow for four months. They take the bar in July and work from September through December and are paid \$2000 a month. The hope is to employ them if we like their work.

One of the keys to the fellowship program is to hire lawyers who really want to be in this field.

The second relates to training. Ms. Jankowski said there is a slight increase in the budget for training. The main reason is we would like to send some attorneys to the Gideon's Promise Training Program. Senior attorneys would go to leadership and train the trainer. Junior attorneys would go to the core program for Gideon's Promise fellows. The benefit is it would allow us to be eligible for Gideon's Promise fellows. This is a yearlong fellowship paid by the law school.

Mr. Johnson added the core program is a two week training for young lawyers. They return every six months for three years.

Mr. Johnson attended the graduation with a class of sixty public defenders who had gone through the three year training. Fifty eight of the sixty were still in public defender offices and one had been killed in a car crash, so one person out of sixty left. Compare that to our retention. Because we participate in this and our public defenders attended the leadership program we qualify as a Gideon's fellow. Our Portsmouth office has a fellow starting this year. We are sending the lawyer to the core program. Her law school is paying her for a year as an extra attorney in the Portsmouth office. The applicant pool the public defender had to go through was twenty five third year law students from across the country.

We are sending the one attorney who we are committed to send and have three more. This is a competitive application process. We have three other assistants who have been accepted.

Mr. Johnson will be attending the three day leadership program. At the end of three days he will see the graduation.

We have infused a lot of the Gideon's Promise into our boot camp trainings, for instance team building.

Ms. Jankowski said again this is worked into the proposed budget.

Ms. Grady moved to approve the FY18 budget as recommended by the Budget Committee with the additional information and the future amended format. Ms. Howard seconded the motion. The motion carried.

Ms. Jankowski said we are required by DPB to inform you that the agency carries no debt. There is a signed Deficit Provision Acknowledgment Form that has been signed by Mr. Johnson stating this in the meeting materials.

The next item on the agenda is office allocations.

Mr. Johnson said we have done this in the past to even out workloads. We have a couple opportunities to make adjustments.

The Fairfax office has two secretary positions that are of concern to the public defender. One is a secretary I position that is vacant the other is a secretary I position filled by someone who is really good and has been there a long time. The public defender would like to change this position to a secretary II.

We would like to take the vacant secretary I position and move it to our Martinsville office.

We have one sentencing advocate position in our Fredericksburg office and could use another.

We have a part time sentencing advocate position in our Bedford office and would like to move to Fredericksburg. There is no cost with this move.

Our Fredericksburg office has twenty attorneys and Virginia Beach has twenty five attorneys. There are only two investigators in each of these offices. One of them is an investigator II and is exempt from over time. The other is an investigator I who cannot work over forty hours. This has become a client representation issue. We would like to make the I's II's. The cost is about \$8000 each.

Ms. Jankowski said as a point of reference Virginia Beach has two investigators, Richmond has four, Fredericksburg has two, and Fairfax has three.

Ms. Grady made a motion approving the office reallocations. Ms. Howard seconded the motion. The motion carried.

The next item on the agenda is the proposed new mission statement.

Mr. Johnson said we sent surveys to the offices and received great feedback. We have three options in the meeting materials. All three are somewhat similar. Our hope is the Commission will have a preference so we can roll it out.

There was discussion regarding the mission statement options.

A majority vote selected the following mission statement:

Dedicated to protecting and defending the rights and dignity of our clients through zealous, compassionate, high-quality legal advocacy.

The next item on the agenda is the training update.

Mr. Johnson reported the new certification training will be going live this month; the first one is June 22<sup>nd</sup> and 23<sup>rd</sup> at the University of Richmond Law School. The revised agenda is in the meeting materials. We updated our old program. All of the speakers are in our system. This is a big shift from our former certification training.

We purchased a subscription to Sprout Video at \$50 a month. This will eventually allow people to recertify. Lawyers need hours every year to recertify and to our dismay some lawyers attend our certification training every couple years. We host late day lectures every month and invite people to attend, however, folks from a distance have difficulty making the trip. This allows attorneys to watch replays for CLE credit. This is our effort to help the private bar whenever we can and is free. We cleared it with the state bar.

We just had our revamped trial skills boot camp last month. We completely rewrote the program with input from the people who have attended Gideon's Promise including one lawyer who has been to the core program.

July 28<sup>th</sup> we are hosting the capital habeas certification training. When we revamped the requirement for capital work we also revamped the requirement for habeas work.

The annual conference is October 17<sup>th</sup> – 18<sup>th</sup> at the Portsmouth Renaissance. Our lead off speaker is Phil Hirshkop. We are very excited to have him. We will make sure you all receive a copy of the agenda, you all are invited. This is another good program and is an inexpensive way to get quality CLE credits.

The four lawyers we are sending to the Core program are a Gideon's fellow who will be in Portsmouth, a young lawyer from Newport News, another from Fredericksburg, and the other is from Richmond. All of their public defenders have gone to Gideon's Promise.

There was discussion regarding conferences the public defenders attend and training.

Melinda Douglas our Alexandria public defender opened that office thirty years ago July 1<sup>st</sup>. We would like to acknowledge her thirty years and are open to suggestions.

Ms. Jankowski said she emailed the legislative update to the Commission members and a hard copy is in the meeting materials.

There was no further business.

Delegate Collins made a motion to adjourn. Ms. Howard seconded the motion. The motion carried.

The meeting adjourned at 1:00 pm.

Respectfully Submitted:

Approved By:

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Diane D. Zubke, Administrative Assistant

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David J. Johnson, Executive Director