

# **The Virginia Indigent Defense Commission**

Policy and Procedure Committee Meeting  
1604 Santa Rosa Road, Suite 200  
Richmond, Virginia 23229  
February 25, 2016

The meeting was called to order at 10:30 am by Judge Hanson. Other Commission members in attendance were Karl Hade, Carrie Grady and Committee Chair David Walker. Committee members not in attendance were Delegate Minchew and Tom Chaffe. Administrative staff included Executive Director, David Johnson; Deputy Director, Maria Jankowski; and Administrative Assistant, Diane Pearson.

With four committee members in attendance, quorum requirements have been met.

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

Ms. Grady made a motion to approve the January 29, 2015 Policy and Procedure Committee meeting minutes and the agenda for today. Mr. Hade seconded the motion. The motion carried.

The next order of business is the policy and procedure changes.

Ms. Jankowski said there are a couple of instances throughout the proposed policy changes where we removed the remedy. We did this since it is one in a few random sections where we provide for a specific remedy. Additionally, we have a specific section on remedies so it is duplicative.

It is also a concern that if we lay out a particular remedy it would be interpreted that was the sole remedy so we are trying to be consistent. As we go through the policies we will highlight those.

Similarly, along with remedies we removed references to specific examples.

Chapter 2

Section 2.0 Professionalism

Page 6 removed:

vi. Obtain approval from supervisor prior to accepting outside employment

Ms. Jankowski said we took this out because last year the Commission reworked the outside employment policy and this seemed to be inconsistent with that reworking. This is addressed elsewhere in the policies under outside employment.

Chapter 2

Section 2.1 Professional Liability Insurance

Page 7

B. Authority of the Public Defender

We are covered by the State and represented by the Attorney General's office. We added "the employee must notify the Public Defender who shall notify the Director or Deputy Director immediately upon receipt of any notice of proceeding."

This reminds people that if there is a habeas filed against them or a lawsuit filed against them they have to let us know immediately so we can let the Attorney General know. This has not been an issue.

Section 2.4 Maintenance of Client Files and Records Retention

Paragraph A. File Maintenance. Take out "all" in the third sentence.

We propose changing the number of years we keep files. Previously we kept misdemeanor files for three years in the office and five years at the records center and twenty years for felonies. We propose changing to three for misdemeanors and ten for less serious felonies but leaving the more serious felonies at twenty.

Ms. Jankowski explained the reason for these changes is that our quarterly bill to the Library of Virginia is between \$15,000 and \$20,000. We have 18,000 boxes that by and large are untouched sitting at the Library. This is a huge expense and DGS (Department of General Services) will not let us rent office space on site for storage and that would not be cost effective either. The Library charges \$6 to destroy one box of files. We have found contractors in every part of the state who can destroy our boxes for sometimes as low as \$1 a box.

Mr. Johnson added the main reason we want to stop sending boxes to the Library is because we rarely recall them. This change means offices will have their misdemeanor files on site for three years and then they are destroyed on site.

There was discussion regarding client files and special handling of files.

Ms. Jankowski said the Commonwealth's Attorneys, in some instances, keep misdemeanor files a year. They do not use the same terminology that we use.

There was discussion regarding scanning files, storing electronic data, and the length of time to keep files.

Mr. Johnson added that felony files need to be stored at the Library of Virginia because they must be kept for ten years and would take up too much space in the offices. Also, the files are safer at the Library because we have had flooding and fires that have destroyed files.

## Section 2.5 Professional Organizations

### Page 11

#### A. Payment Authorized

##### i. Attorneys

Add the sentence: The Director may authorize payment for membership in additional organizations, if such memberships are deemed to be beneficial to the agency.

Last year the Commission voted to give us some new senior trial lawyer positions so we could have a career development program. One of the benefits for those employees is to join professional organizations but there was no authority other than for the Chief Public Defender to be able to join professional organizations.

Mr. Johnson added that with many national organizations the membership usually pays for itself the first time an attorney attends a training program because there is usually a discount.

There was discussion regarding such memberships.

Mr. Walker joined the meeting.

## Section 2.6 Personal Conflicts of Interest

### Page 12

Remove paragraph C – Non client conflicts

## Chapter 3

### Section 3.1 Hiring

Page 14

The Human Resources Director removed all of the process details. The old policy had four pages. The new policy is one paragraph. The majority of what was in there was our internal process.

### Section 3.2 Background Investigations

Page 15

The Human Resources Director removed the process details.

### Section 3.3 Fair Labor Standards Act Compliance

Page 16

The Human Resources Director removed the last paragraph.

### Section 3.4 Equal Employment Opportunity

Page 17

In the third paragraph the Human Resources Director removed the examples and made it concise.

### Section 3.5 Workplace Harassment

Page 18

This is a complete rewrite. The Human Resources Director combined unlawful harassment with sexual harassment and just made it workplace harassment. There are no substantive changes to the harassment.

### Section 3.9 Attorney Duty to Report Formal Allegations of Ethical Misconduct or Ineffective Assistance of Counsel

Page 23

We removed the remedy from paragraph E, Conviction Consequences.

## Chapter 4 Hours of Work and Holidays

### Section 4.0 Standard Hours of Work

Page 27

We flipped the first two paragraphs because we felt it makes more sense.

### Section 4.2 Official Holidays

Page 29

We removed reference to the President and specific holidays.

## Chapter 5 Compensation

### Section 5.0 Salaries

Page 31

We removed the example in paragraph C.

### Section 5.1 Salary Increases

Page 32

We simplified to follow the statute. We rewrote this section because if we receive an Appropriation Act increase we cannot do it differently. We removed the last three paragraphs.

There was discussion regarding the culture of the public defender offices and the difference between the small offices and the larger offices.

#### Section 5.5 Direct Deposit and Payline

Page 36

We removed paragraph B, the reference to Payline.

#### Section 5.6 Voluntary Payroll Deductions

Page 37

We removed examples.

#### Section 5.8 Attendance and Leave Records

Page 40

We are now using an automated system, TAL (Time Attendance Leave).

Ms. Jankowski said there are no proposed changes in Chapters six or seven.

#### Chapter 8 Performance Management

##### Section 8.4 Terminations and Resignations

Page 66

We combined Sections 8.4 terminations and 8.5 resignations because of what needs to be done the two are fairly the same. The main concern was making sure the public defender offices know that when someone was terminated or resigned they need to let the administrative office know so they do not continue to get paid and we can cut off their access to their computer.

We added: The Administrative Office should be notified immediately of all resignations and terminations. The Systems access form should be completed within one business day of termination or notice of resignation.

That is to protect us from an IT security perspective and to take them off the payroll.

##### Section 8.5 Separation Process

Page 67

###### Paragraph B Retention of client files

If the employee is going to take the file and has permission from the public defender to do so, we added the language "and only after the appropriate motion to substitute counsel has been filed and an order has been entered."

There was discussion regarding an employee keeping a client file.

#### Chapter 10 Reimbursement to Employee

##### Section 10.1 Policy

Page 76

Ms. Jankowski said the first substantive change is mileage. The state changed the mileage rate from 100 miles to 200 miles to travel reimbursement rate. We would like to cut this to 150 miles with the Commission's approval.

Mr. Johnson explained previously if an employee would drive 99 miles they would receive the state reimbursement rate of \$.50 per mile, if they would drive 101 miles reimbursement would be \$.24 per mile.

Ms. Jankowski added that we did not change this to 200 miles because we wanted to make sure we had enough money in the budget.

Mr. Johnson said there are other things that factor in, there is a trip calculator to determine if it is more cost effective to get a rental car or if there is more than one person car pool might be the best option.

Ms. Jankowski said the next two changes relate to training. One is a retention agreement; the other is a scholarship application. We are looking to remove both requirements from our policies. These only applied to trainings over \$2000 and in practice people were not attending.

Chapter 10 previously was eighteen pages long; it is now ten pages and is reorganized. Instead of definitions there are general requirements. Lodging once was Section 10.6 and is now Section 10.3 and is followed by meals and incidental travel. We used to go into great detail to explain how to fill out a form or how a rate is calculated; we now have hyperlinks to the GSA website.

Throughout Chapter 11 wherever the word Director appears, we added or designee.

#### Section 11.1 Expectation of Privacy and Communications

Page 87

This section was previously Public Records. We rewrote this section to more clearly outline client confidentiality.

#### Section 11.2 Access and Data Security

Page 88

The access form must be submitted to the IT Department.

Judge Hanson made a motion to recommend to the full Commission adopting the policy changes as outlined by staff, the Executive Director, Deputy Director, and subject to full discussion by the Policy Committee with the exception of Section 2.4 and Section 11.1. Those two sections will require further study and decision to be made by the full Commission. Mr. Hade seconded the motion. The motion carried.

There was no further business.

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

The meeting adjourned at 12:40pm

Respectfully Submitted:

Approved By:

---

Diane Z. Pearson, Administrative Assistant

---

David J. Johnson, Executive Director