

The Virginia Indigent Defense Commission  
Commission Meeting  
1604 Santa Rosa Road, Suite 200  
Richmond VA 23229  
March 10, 2020

Ms. Carolyn Grady called the meeting to order at 11:04 am. Other Commission members in attendance were Steve Benjamin, Professor Hank Chambers, Professor John Douglass, Karl Hade, Judge Edward Hanson (ret.), Guy Horsley, Kristen Howard, Adeola Ogunkeyede, David Walker, and Carmen Williams. Members not in attendance were Delegate Chris Collins, Senator Creigh Deeds, and Judge Alan Rosenblatt (ret.)

Quorum requirements have been met.

**Judge Hanson moved to approve the agenda. Ms. Williams seconded the motion. The motion carried.**

The next item on the agenda is approval of the December 17<sup>th</sup> meeting minutes.

**Mr. Hade made a motion approving the minutes. Judge Hanson seconded the motion. The motion carried.**

Mr. Johnson said Ms. Ogunkeyede is leaving her position at the Legal Aide Justice Center to become the Chief Public Defender in Travis County, Texas which is Austin and is the largest city in the country without a public defender system. We hate to lose her but she will actually become a colleague of ours. He wished her well and congratulated her on her new position.

The next item on the agenda is our Mission Moment.

Brenda Spry is our public defender in Portsmouth who will have thirty years as a public defender in our system April 1<sup>st</sup> with thirteen years as chief public defender. Brenda is an inspirational leader. She embraced our move toward more of a Gideon's Promise style of training and support of our attorneys.

Ms. Spry spoke briefly about the Portsmouth office and accomplishments. This office has sixteen attorneys and with staff a total of twenty-five in the office. Our staff seems to be pretty stable, we have a lot of people who have been there for a long time.

Mr. Johnson added that Ms. Spry has developed leaders that have gone on to other offices.

The next item on the agenda is the budget update.

Ms. Jankowski said in the meeting materials are two charts you are accustomed to seeing. One is the agency overall, the other is the exact same information divided up by our four different categories, Public Defenders, Capital Defenders, Administration, and Regulatory. We are on track at more than half way through the fiscal year and more than half as well through budget.

In the past we have asked the Commission to empower the Budget Committee when they meet in May to authorize any expenditures above Mr. Johnson's authority. We will not have time for the full Commission to authorize before the June meeting.

We will need to pay for items such as desks, phones, supplies, etc., for the new positions and these need to be paid in the budget year.

**Judge Hanson made a motion to empower the Budget Committee to approve expenditures above Mr. Johnson's authority without the approval of the full Commission. Mr. Benjamin seconded the motion. The motion carried.**

The next item on the agenda is the Policy Committee update.

Mr. Johnson said there are two policy changes that were discussed in detail when the Policy Committee met earlier this morning. One involves a recognition policy which allows an employee up to forty hours of recognition leave in a year.

The other is the remote access policy. We are stretching our IT capabilities and running a lot of tests so people will be able to work remotely if necessary. This policy allows us to address concerns, not just now but moving forward.

**Mr. Benjamin moved to adopt the recognition policy. Judge Hanson seconded the motion. The motion carried.**

**Judge Hanson made a motion adopting the remote access policy. Mr. Benjamin seconded the motion. The motion carried.**

The next item on the agenda is the Executive Director report.

Mr. Johnson said there is going to be a new public defender office in Prince William County. This office was created because the community asked for it. Dr. Reverend Savage who has a large church there who spoke with Mr. Johnson about creating this office.

We want to get the chief public defender in place in June and spend the summer hiring.

We are working with DGS who administers our leases. We have gotten bids on the RFP and have two possible sites. The office is opening with fifteen percent salary supplements in addition to the northern Virginia ten percent supplement.

Ms. Jankowski added that she has been in contact with the chief judge and communicated with the general district court, and she has a call this week with the local bar. We want to make this as smooth as possible.

Mr. Johnson said we requested fifty-nine new positions and have received the funding. We also are able to raise the entry level salary for all of our APD I's. This will help with recruitment. This is adding twenty-nine percent to our work force but not adding anything to the administrative office.

There was discussion regarding the new positions and salaries.

We have filled our long-time Equity, Diversity, and Inclusion position. Amari Harris is off to an astounding start. He has visited several offices and is helping with recruitments.

The next item in the executive director update is the corona virus.

Mr. Johnson said last week he held a teleconference with all the chief public defenders and deputies. The message is we do not want to panic but we also do not want to be under prepared. There are common sense practices we can do. We have a checklist of tier 1 and tier 2 items that can be done to get prepared now. When you actually have folks testing positive in your community preparation is key.

Temporarily we suggested to meet with clients via telephone instead of meeting in person. We want to keep everyone safe but we also have to keep our mission in mind. We need to make sure our clients believe they are being treated with dignity and respect.

We also suggested the chiefs be in contact with their jails about getting people out of the jails who are there pre-trial for non-violent offenses in particular.

We have discussed with judges to continue cases where people are out on bond. It is not fair to witnesses to compel them to go into unhealthy courthouses. This will be a jurisdictional decision.

Our IT department has been working diligently to get us set up to work remotely. We have the capability to access the phone from a laptop at home. There are some IT challenges that are being addressed.

At this point we do not do teleworking, we do temporary remote access. We are working on a rotation where two to three days a week folks are working remotely. The challenge for us is most of our support staff have desktops. This is a huge evolving undertaking.

The next item in the executive director's update is salary supplements.

Our statute was amended eight to ten years ago to allow for salary supplements. The offices that had the supplements were Fairfax, Alexandria, Arlington, Charlottesville, and the Warrenton satellite office. The Board of Supervisors in Leesburg voted for a twenty percent across the board increases for the entire office for next year.

We are empowering our other offices to take this on.

Prince William is opening with salary supplements. This will mean that eight of our twenty-six offices will have salary supplements.

The next item on the agenda is the General Assembly update.

Ms. Jankowski said we submitted a decision package to the Governor. We asked for thirty-two APD II positions and twenty-seven APD I positions. We also requested money to bring up our starting salary to at least what the lowest commonwealth attorney makes.

This year we had a few public defenders attend the General Assembly each week. They attended meetings of the Senate Judiciary Committee or House Courts. The public defenders felt like they learned a lot and

were able to contribute. In addition to the schedule we had really good communication with public defenders and criminal defense attorneys who were doing their own work on behalf of VACDL, Justice Forward, or Legal Aide Justice Center.

Substantively things that were able to be accomplished:

The Legal Aide Justice Center has been fighting a battle to prohibit charging kids with disorderly conduct in schools which it became the catchall way to get a lot of kids into the justice system so that is no longer theoretically going to be a practice because it is no longer allowed under the statute.

They were very involved in the bill to raise the age to certify children and treat them as adults.

In addition to that, Mr. Johnson serves on the VCJC and one of their bills which was deferred dispositions has passed as well. It is a very limited deferred disposition bill but it passed.

Justice Forward which is headed by Bradley Haywood, the chief public defender in Arlington, made a push and fought hard to provide for a bill that allows for ex-parte requests for experts. Ms. Jankowski said credit needs to go exactly where it is due. This was Doug Ramseur in his capacity with VACDL and Brad Haywood in his capacity with Justice Forward. This was a huge priority for them. They attended many committee and sub-committee meetings.

Another Legal Aide Justice Center bill was eliminating the mandatory minimum ten-day sentence in driving on a suspended license.

Another bill the VCJC had was custodial interrogations must now be recorded.

Delegate Watts had two bills. One requires a parent to be present for the interrogation of a child. The other was eliminating mandatory minimums for juveniles treated as adults.

There were a number of bills related to jury trials.

Mr. Benjamin added the important component of jury sentencing you can now advise the potential jurors prior to the trial of the sentencing range to the charged offenses.

This will be effective July 1<sup>st</sup>.

There was discussion regarding sentencing.

Mr. Benjamin said another bill that failed is Virginia is one of six states in the country to permit juries to do sentencing. And in Virginia you have a right to a jury is a right that exists also for the commonwealth. So, the commonwealth can threaten us with a jury knowing that a jury would be limited to the minimums. This has long been a problem. Juries cannot suspend sentences while judges can.

He added that the jury system is one of the most fundamental safeguards that we have in this country for citizens who are accused of crimes that will send them to prison for the rest of their lives. If we cannot afford it we need to get more money and stop doing criminal justice on the cheap.

There was discussion regarding the legislature and bills.

Mr. Benjamin said there were three things that stood out this year. One was the number of criminal justice reform bills. The second was the presence of public defenders who provided information to the judiciary committee about the reality of what goes on, on the street, in the court rooms, in practice. It is not so much advocacy as it is informational. They did a tremendous job and the committee appreciated it. The third thing was greater citizen involvement, apart from the gun rights people, citizens talking about parole. Citizens who served time talked about the fact that without parole there is no hope, there is no impetus to behaving. With parole there is hope for a future. All of this came from citizens.

The next item on the agenda is other business.

Mr. Johnson said Sandra Saseen-Smith who was the deputy public defender in Halifax was named an influential woman of the law. This is great timing because she retired last week after twenty-five years in our system.

There was no further business.

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

The meeting adjourned at 12:20 pm.

Respectfully Submitted:

Approved By:

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Diane D. Zubke, Office Manager

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David J. Johnson, Executive Director