

**The Virginia Indigent Defense Commission  
Budget Committee Meeting  
1604 Santa Rosa Road, Suite 109  
Richmond, Virginia  
June 1, 2011**

Budget Committee Chair, Maria Jankowski called the meeting to order at 1:10 pm. Other Commission members in attendance were Judge Alan Rosenblatt, and Kristen Howard. Administrative staff included Executive Director, David Johnson; Deputy Director, DJ Geiger; and Administrative Assistant, Diane Pearson.

Quorum requirements have been met.

The first item on the agenda is to approve the minutes of the previous Budget Committee meeting.

Judge Rosenblatt moved to waive the reading and approve the April 29, 2010 Budget Committee meeting minutes. Ms. Howard seconded the motion. The motion carried.

Ms. Geiger said that we have a Budget Analyst starting June 10<sup>th</sup>.

When we put together the FY2011 budget our basic approach was that what an office spent in FY2010 would be their starting budget for FY2011. Criminal indigent defense services is the service area that includes our public defender offices is on the first page of the handout. The second page is the capital defender offices. In both of those areas the amounts that remain are not sufficient to cover what the costs of personnel will be. As a result based on FY2011 expenditures to date we have seen an increase in personnel expenditures. Both the capital and public defender offices have filled many of the vacancies

We used the FY2010 expenditures because it was easy to capture and we did not have a budget analyst last year so this data is basically for informational purposes. There are some shortages in equipment. Ed Ernouf has been working to replace some network components in order to roll out all of the planned FY2011 IT projects.

Legal Defense Regulatory Services is the services area for the Standards of Practice Enforcement (SOPE). Administrative Services includes Training, IT, the Commission, and the Administrative office.

When we did the budget last year we provided an unallocated amount of \$484,218 as a reserve for unexpected costs. As of April 30 we have spent \$41,905 on rent and the final personnel costs from closing the appellate office. So the total unallocated amount at the end of April is \$442,313.

As of April 30<sup>th</sup> we had \$8,080,777 unspent from our total appropriation. We still have to return \$944,000 for our judicial reversions which will leave us with about \$7.1 million. The average available for the remaining two months of May and June is \$3.5 million per month. In April we spent \$3.1 million and from January through April we spent on average \$3.3 million. The difference between what we spent in April and the average of what we have been expending is +\$129,000. That leaves a projected positive balance of \$258,000 for the two remaining months of the fiscal year.

The unallocated amount of \$484,218 reduced by the appellate costs through April and the expected remaining appellate office costs for the year leaves a total unallocated balance of \$437,713.

In June we only have one payroll. The second June payroll is actually paid in July. We will save approximately \$1.5 million by not having that second payroll.

Calculating each of the positive balances, we project a balance of \$2,199,948.

We were advised that the remaining funds from our FY2010 appropriation totaled about \$594,000, our FY2010 carryforward balance. The General Assembly reduced that to half. We will retain approximately \$297,000.

Based on the above projections and calculations, the total projected year end balance is \$2.497 million. Historically we have prepaid items for the next fiscal year at the end of the current fiscal year. The \$264,500 includes postage, bar dues, copier maintenance, etc. A payment of \$593,434 prepays three months of rent on our leases. This is about \$857,000 of prepaid items, leaving a balance of \$1.6 million.

There are eight factors that contribute to the positive year end balance.

1. Ten frozen positions for the judicial reversion amounts (\$571,500)
2. Several long term vacancies in the administrative office (\$227,628)
3. A 2<sup>nd</sup> appellate coordinator position funded but not filled (\$70,000)
4. Ninety day hiring delay was not lifted until mid February
5. Little to no funding was provided for outside training
6. Not all of the planned IT projects have been completed
7. We expected but did not receive additional judicial reversions
8. A spike in our turnover and vacancy rate

We have been tracking the turnover and vacancy closely since FY2009, when the range of turnover and vacancy was 5.1-7.5 percent. We generated approximately \$2.4 million of turnover and vacancy savings in FY2009. That includes the frozen positions and the 90 day hiring delay. The amount of carryforward that year was \$317,000. In FY2010 we continued the frozen positions and the hiring delay but our carryforward and turnover and vacancy was higher, at \$594,340.

In FY2010 we hit a low turnover rate of 4.2 percent with frozen positions but at the end of the year it spiked pretty high. In FY2011 it has not gone below a rate of 6.34 percent, which is about as high as it went in FY2010 barring the last three months. We are tracking at a higher percentage each month for this entire fiscal year. Contributing factors could include the economy improving and people finding jobs and the lack of raises for several years. Through April 9<sup>th</sup> we generated \$2.5 million in turnover and vacancy.

There was discussion regarding normal turnover and vacancy for other organizations. Before the economy turned most state agencies had 10-11 percent in turnover. We were over 27 percent at one point. It is very difficult to compare our agency to other state agencies and other public defender systems in the country.

### Reallocations/Reclassifications

This is a proposal to unfreeze and reallocate all of the positions that have been held vacant for the judicial reversions.

We found that the Human Resources Department continues to be inundated. As a result, we are proposing to reclassify the fixed asset accountant position to an HR assistant position. We expect the HR assistant salary will be slightly less than the fixed asset account salary. We are still working on the final numbers.

The next four positions were provided by the General Assembly in 2008 for the capital offices. The positions were held vacant for the judicial reversions. The proposal is to unfreeze all four positions.

There were five positions frozen in northern Virginia. The proposal for these positions will allow us to impact the five offices with the highest caseloads according to the latest update of our caseload study. In FY2010 we reviewed our caseload information, updated the spreadsheet we received at the end of the caseload study, and determined the five offices with the highest per attorney caseloads. We have already affected one of these offices. In March the Commission allowed us to unfreeze one of the positions, and we used it to allocate an APD I position to the Fredericksburg office. We used the salary savings to assist the Staunton office by reclassifying their senior position to a deputy.

The Fairfax and Arlington offices continue to carry the lowest caseloads per attorney in our system. The offices were advised at the time the positions were frozen that the positions would not be returned to their offices.

Fairfax had an APD II position and our proposal is to reallocate it as an APD I in the Roanoke office. There will be about a \$14,000 savings because it is going from a northern Virginia position to a non-northern Virginia position.

The Arlington Secretary I position is proposed for reallocation as a Bedford Investigator I position. The Investigator I salary is about \$7,700 higher but with the savings from the Roanoke APD I reallocation; we will still have as savings.

Mr. Johnson added that Bedford has never had a full time Investigator position. They shared an investigator with the Roanoke office, and the incumbent will be retiring in December. Having an investigator in Bedford will solve a lot of problems. Roanoke will retain the full time investigator position by moving the incumbent to Roanoke.

The remaining APD I positions will remain APD I positions but will be moved from northern Virginia. One APD I each is proposed for Newport News, Richmond, and Virginia Beach. Each of these is a savings of about \$6,400.

We would like to reclassify the seven remaining Lead Secretary II positions to Office Manager positions. These positions actually do the work of an office manager but were not classified as such in our system previously due to the size of their offices. Several of the incumbents will receive no raise as a result of this reclassification because they are already making more than the entry level salary for an office manager. The cost is about \$14,600

In the Employee Work Profile (EWP) for Office Managers, we have identified specific job responsibilities for Office Managers and provided the revisions to the Public Defenders during the management training.

The long term vacant positions in the Administrative office include;  
Standards of Practice Enforcement Attorney  
Director of Budget and Finance

Janice Johnson, currently our General Accounting Manager will move to the Director position and the General Accounting Manager position will be reclassified as a Budget Analyst. This will result in a slight savings.

We are not proposing to fill the part time Accounting Technician position or the hourly Senior Accountant right now. The Senior Accountant was Bonnie Farrish's part time position. We will keep those on hold status. The last will be to fill the second Appellate Coordinator position. Now that Joe Sadighian has been in the position for a year and we have identified specific tasks we think that second position will be responsible for, including the development of a brief bank, we think we have a sufficient workload to fill that position.

There was discussion about the Senior Appellate Coordinator position and the training piece of the position.

There was discussion regarding the Standards of Practice Enforcement Attorney position and what it entails. It might be a part time position. We have to figure out how to structure this position.

Carlos Hopkins has sent out information on the Standards of Practice (SOP) procedures and the process itself to the law libraries of the jails. If it is a standard of practice violation it is a Bar complaint, an ethical violation.

Ms. Geiger said there are two positions connected to the SOPs service area. The appropriation amount for this service area is \$186,000. It started out at \$200,000 and has been reduced over the years. This includes two positions, part of the training room and other expenditures for the purpose of doing the work. This is basically the enforcement of the standards. A major project for us is to revisit what exactly we think the enforcement entails; what the duties and responsibilities are for the position, one concern we keep coming back to is that we do not want the position to be redundant to the role of the Virginia State Bar.

We are proposing that this position be slated for filling. If we do not spend in one of our service areas that money is considered carryforward. So we can provide in the budget for it and in the event funds are not expended the remainder becomes carryforward money.

Our service areas broken down into:

- Public Defender Offices
- Capital Defender Offices
- Standards of Practice (SOP)
- Administrative Office

In the Appropriations Act it is broken down the same way. When we create our budgets, the individual budgets of each of the offices within a service area get rolled into the service area budget. The service area budgets then get added together and rolled into one overall agency proposed budget.

Under the SOP service area, \$101,000 has been budgeted for the salaries of an administrative position and the attorney position. The administrative position is filled but the attorney position is vacant.

The next item on the agenda is the FY2012 proposed budget.

Ms. Geiger referred to a spreadsheet that include the previous three years of expenditure amounts listed according to object codes, FY2011 amounts expended through April 30, 2011, and the proposed budget for FY2012. The object codes are a product of Department of Planning and Budget. Whenever we buy something, it gets expended through one of the object codes. We have to plug in the amounts we think we will spend in each object code in order to get our total overall budget.

At the bottom of each series of object codes is a total for that category. After Object Code 1100 is a total for personnel. We are proposing funding all positions as though they will be filled for

twelve months. In other words, this assumes 100 percent employment. We generally will not have 100 percent employment so this is a rough estimate.

Object Code 1111 represents the employer paid portion of retirement. Object Code 1165 is the employee portion. As we have hired new employees who are required to pay the five percent these numbers have fluctuated. Object Code 1165 is actually a new category; previously money was not expended from there. The amounts for the two object codes may be transposed in the proposal, but the total amount will cover our costs.

The five percent raise will be provided to anyone hired prior to July 1, 2010 in order to offset the required employee paid five percent retirement contribution. Anyone hired after that date is already paying the five percent.

Object Code 1216 is our telecommunications services (VITA). We are taking our existing internet connection to broadband. The savings from going to broadband should actually make the cost lower than the \$224,000 for FY2012. We need to have both connections for the first couple months until we can roll out the new projects. This also includes our phone lines.

The other significant costs in the 1200 series are 1224 and 1227. We propose that we allow our employees to go outside of the agency for training. We estimated each attorney going to the criminal law seminar for example. The cost is \$140 per person. For the capital offices we tried to give them one training out of the office and then estimated travel expenses according to that. Both of those are increased from previous years.

Object Code 1271 through 1279 are IT related and the larger amounts are the costs for the remaining IT projects that were not completed in FY2011. This also includes our ongoing software maintenance fees, etc.

Object Code 1282 is personal mileage. We anticipate usage of Enterprise vehicles to increase and several offices now have state cars.

Object Code 1288 includes meals (overnight travel). The Capital offices are expected to have an increase for cases.

Some of the object code estimates are high and that allows us to shift funds in the event expenses are higher than anticipated in any of the object codes. For instance, if the annual leave costs are higher than the proposed budget amount, we can move funds from another area to cover the shortage.

There was discussion about how the numbers were calculated. Several capital offices have more cases and anticipate more traveling. We estimated a higher amount and if all proposed funds are not needed we may need them in another category.

There was discussion regarding Object Code 1221 (membership dues). The FY2011 expenditure to date total is low because the Bar dues have not been paid yet.

Object Code 1323 (gasoline). This is going up because we are encouraging the use of rental cars. Each office has a Voyager gas card for use with rental vehicles.

The 1500 series has a new category, 1539 – building rentals-non state owned. Previously rent was in 1535 but there is now a split with 1539. The Department of General Services now administers some of our leases so there is a difference between the non General Services lease and our General Services administered lease. As each of the offices gets renewed we are going to determine the appropriate object code for the new costs. The amounts are for twelve months. In FY2011 we have not paid as much because we prepaid three months of rent in FY2010.

There was discussion about prepaying three months of rent. We can prepay those leases that are not in renewal status. Four months is too much because there are things that could happen, building burns down, lightning strike, etc. Three months is a reasonable risk. All of our offices are in privately owned buildings. DGS just administers the leases; they do not own the buildings.

Object Code 1547 (private vendor services). This is our use of the eVA system. It has provided some efficiencies with the staff.

Object Code 2216 (network components) and Object Code 2218 (off the shelf software). These are leftover costs from some of our IT projects.

Object Code 2233 (voice/data equipment). When we purchased the new phone systems at the end of FY2010 and the beginning of FY2011, it was in part because there weren't replacement parts available. There are maintenance programs that provide parts while equipment is being repaired. The cost of the maintenance program is included in 2233.

Object Code 2264 (office machines). Our hand held digital recorders are out of maintenance and some are breaking and need to be replaced. Also a few offices need new fax machines.

We looked at three years of history for costs in all of our offices, our expenditures to date for this year, and what we went without for a couple years. We are proposing to add back as much as we can, and make the best projections about possible costs in order to propose the budget for FY2012.

The total budget is \$43.7 million, our appropriation is \$42.6 the difference is -\$1.1 million, in addition the \$944,000 for the judicial reversion amounts means that what we propose is over budget by \$2 million. We have been told by the Auditor of Public Accounts that based on the rate of turnover and vacancy that we have, we are probably safe in budgeting about 103 percent of our appropriation.

Mr. Johnson said that some agencies have budgeted over 107 percent. When there was more turnover, we pushed 103.5/104 percent.

Ms. Geiger said that we have been generating turnover and vacancy, and while it has been artificially inflated, it still has been consistently over \$2 million. If we prepay FY2012 rent, we will have a little buffer, if we over estimated on some things we can shift to categories where we need it, and we can always do the hiring delay again if needed.

Based on the Appropriations Act approved this year we are in the mandatory re-appropriation category for our carryforward subject to the General Assembly taking whatever part it wants. Unfortunately we will not know if any of the estimated \$1.6 million in carryforward will be returned to us until April and the conclusion of the veto session. It makes it very difficult for us to budget that money.

The judicial reversion of \$944,000 is maintained through FY2012. We do not know if it will be adopted through FY2013. We will transfer the funds through the Department of Planning and Budget system to reduce our balance by \$944,000.

Ms. Geiger reported that we should be moving to the Cloud in October.

Judge Rosenblatt moved to recommend the reallocation of positions and the proposed FY2012 budget to the full Commission. Ms. Howard seconded the motion. The motion carried.

There was no further business.

Judge Rosenblatt made a motion to adjourn the Budget Committee meeting. Ms. Howard seconded the motion. The motion carried.

The meeting adjourned at 2:25 pm.

Respectfully Submitted:

Approved By:

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Diane Z. Pearson, Administrative Assistant

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David J. Johnson, Executive Director