

## VIRGINIA INDIGENT DEFENSE COMMISSION

### COMMISSION MEMBERS

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*Judge Alan E. Rosenblatt, Vice Chair*

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*Jo-Ann Wallace*

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August 20, 2007

**DAVID J. JOHNSON**

*Executive Director*

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*Deputy Director*

**LAURA L. ST**

*Fiscal Director*

**CARLOS L. HOPKI**

*Training & Attorney Certification Director*

**EDWARD E. ERNOUF, II**

*Information Systems Director*

To: Virginia State Crime Commission  
Members of House Committee for Courts of Justice  
Members of Senate Committee for Courts of Justice  
Members of House Committee on Appropriations  
Members of Senate Committee on Finance

RE: 2007 Annual Report of the Virginia Indigent Defense Commission

Dear Sirs and Madams:

Pursuant to §19.2-163.01 of the Code of Virginia of 1950 as amended, enclosed please find a copy of the 2007 Annual Report of the Virginia Indigent Defense Commission. The Report contains information relating to the state of indigent defense in Virginia, caseloads of public defenders, and the status of the Commission's compliance with statutory mandates.

Please contact me with any questions, concerns or comments you have concerning this report.

Sincerely,

  
David J. Johnson



# Virginia Indigent Defense Commission

Annual Report 2007

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Richmond, Virginia 23229  
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## **FY07 - Commission Members and (Appointing Authorities)**

Chairman

Jo-Ann Wallace (Governor)

Vice Chairman

Robert E. Shepherd, Jr. (Virginia State Bar)

The Honorable David B. Albo, Virginia House of Delegates

Christopher L. Anderson (Governor)

Steven D. Benjamin (Senate of Virginia)

Karl R. Hade, Executive Secretary of the Supreme Court

The Honorable Edward W. Hanson, Jr. (Senate of Virginia)

Maria D. Jankowski (Speaker of the House)

Alexander N. Levay, Jr. (Virginia State Bar)

The Honorable Frederick M. Quayle, Senate of Virginia

The Honorable Alan E. Rosenblatt (Senate of Virginia)

The Honorable Kenneth W. Stolle, Senate of Virginia

David D. Walker (Speaker of the House)

Carmen B. Williams (Speaker of the House)

### **Commission Staff**

Executive Director

David J. Johnson

Deputy Director

D. J. Geiger

Fiscal Director

Laura Still

Information Systems Director

Edward Ernouf III

Training & Attorney Certification Director

Carlos L. Hopkins

## Public Defender Offices

Office	Localities Served	Year Established
Alexandria Appellate	City of Alexandria as appointed	1987
Arlington	County of Arlington and City of Falls Church	2005
Bedford	City/County of Bedford	1989
Capital Defender (Central)	Cities of Bedford, Charlottesville, Colonial Heights, Emporia, Hopewell, Lynchburg, Petersburg, Richmond, Staunton, Waynesboro and Counties of Albermarle, Amelia, Amherst, Appomattox, Bedford, Brunswick, Buckingham, Campbell, Charles City, Charlotte, Chesterfield, Cumberland, Dinwiddie, Essex, Fluvanna, Goochland, Greensville, Halifax, Hanover, Henrico, King and Queen, King William, Lancaster, Louisa, Lunenburg, Mecklenburg, Nelson, New Kent, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Richmond, Surry, Sussex, Westmoreland	2002
Capital Defender (North)	Cities of Alexandria, Fredericksburg, Winchester and Counties of Arlington, Clarke, Culpeper, Fairfax, Fauquier, Frederick, Greene, Harrisonburg, King George, Loudoun, Madison, Orange, Page, Prince William, Rappahannock, Rockingham, Shenandoah, Spotsylvania, Stafford, Warren	2003
Capital Defender (Southeast)	Cities of Chesapeake, Franklin, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, Virginia Beach, Williamsburg, and Counties of Accomack, Gloucester, Isle of Wight, James City, Mathews, Middlesex, Northampton, Southampton, York	2003

## Public Defender Offices

<u>Office</u>	<u>Localities Served</u>	<u>Year Established</u>
Capital Defender (Western)	Cities of Bristol, Buena Vista, Covington, Danville, Galax, Lexington, Martinsville, Norton, Radford, Roanoke, Salem, Staunton, Waynesboro and Counties of Alleghany, Augusta, Bath, Bland, Botetourt, Buchanan, Carroll, Craig, Dickenson, Floyd, Franklin, Giles, Grayson, Henry, Highland, Lee, Montgomery, Patrick, Pittsylvania, Pulaski, Roanoke, Rockbridge, Russell, Scott, Smyth, Tazewell, Washington, Wise, Wythe	2003
Charlottesville	City of Charlottesville and County of Albermarle	1998
Chesapeake	City of Chesapeake	2005
Danville	City of Danville	1990
Fairfax	City and County of Fairfax	1987
Franklin	City of Franklin and Counties of Isle of Wight and Southampton	1989
Fredericksburg	City of Fredericksburg and Counties of King George, Stafford, and Spotsylvania	1990
Halifax	Counties of Halifax, Lunenburg, And Mecklenburg	1990
Hampton	City of Hampton	2005
Leesburg	Counties of Fauquier, Loudoun, and Rappahannock	1988
Lynchburg	City of Lynchburg	1991
Martinsville	City of Martinsville and Counties of Henry and Patrick	1992

## Public Defender Offices

<u>Office</u>	<u>Localities Served</u>	<u>Year Established</u>
Newport News	City of Newport News	2005
Norfolk	City of Norfolk	2002
Petersburg	City of Petersburg	1979
Portsmouth	City of Portsmouth	1986
Pulaski	City of Radford and the Counties of Bland, Pulaski, And Wythe	1988
Richmond	City of Richmond	1986
Roanoke	City of Roanoke	1976
Staunton	Cities of Buena Vista, Lexington, Staunton, and Waynesboro and the Counties of Augusta and Rockbridge	1972
Suffolk	City of Suffolk	1989
Virginia Beach	City of Virginia Beach	1973
Winchester	Counties of Clarke, Frederick, Page, Shenandoah, and Warren, and the City of Winchester	1989

## **I. VIRGINIA INDIGENT DEFENSE COMMISSION**

### **A. BACKGROUND**

The Virginia Indigent Defense Commission (VaIDC), in conjunction with court appointed private attorneys, provide legal representation for indigent people accused of crimes for which the possible punishment is incarceration or death.<sup>1</sup>

The 2004 General Assembly created the VaIDC by adding a supervisory governing commission to, expanding the scope of responsibilities of, and renaming the Virginia Public Defender Commission in response to a two-year study assessing the then existing methods for providing indigent defense in Virginia, including the quality and cost effectiveness of each.

### **B. VIRGINIA CODE § 19.2-163.01 - STATUTORY MANDATES**

The sections of the Code of Virginia governing the VaIDC include several statutory mandates, most of which concern the VaIDC's duty to oversee court appointed private attorneys.

A summary of the recent actions taken and the mandate requiring such action follows.

#### **1. VIRGINIA CODE § 19.2-163.01A(1) - Publicize and enforce the qualification standards for attorneys seeking eligibility to serve as court-appointed counsel for indigent defendants.**

During FY05, the VaIDC published articles and provided local Town Hall meetings in which it detailed qualification standards and requirements for indigent defense certification. Based on feedback from the legal community, the VaIDC streamlined the original application process. All qualification standards are available twenty-four hours a day on the VaIDC website at [www.indigentdefense.virginia.gov](http://www.indigentdefense.virginia.gov).

#### **2. VIRGINIA CODE § 19.2-163.01A(2) - Develop initial training courses for attorneys who wish to begin serving as court-appointed counsel, and to review and certify legal education courses that satisfy the continuing requirements for attorneys to maintain their eligibility for receiving court appointments.**

In October 2004, the VaIDC, with input from Circuit Court judges, created the initial certification training courses. The VaIDC updated the initial certification training program in June 2007. (**Appendix A, VaIDC Court Appointed Attorney Certification Training Curriculum**). The VaIDC also reviews and certifies legal education courses provided by other entities that satisfy the continuing education requirements for attorneys to maintain their court appointment eligibility. The VaIDC maintains a current list of MCLE approved courses on the VaIDC website.

The VaIDC began conducting Indigent Defense Certification Trainings in March 2005. By statute court appointed certification is valid for a period of two years from the date of certification. The first year for recertification of previously certified court appointed attorneys is 2007. Attorneys nearing their recertification date deadlines receive multiple notifications in the months preceding expiration of their certification. Attorneys wishing to maintain certification for court appointed work are required to complete the one page recertification sheet, providing information regarding the completion of the required number of approved MCLE credits.

- 3. VIRGINIA CODE § 19.2-163.01A(3) - Maintain a list of attorneys admitted to practice law in Virginia who are qualified to serve as court-appointed counsel for indigent defendants based upon the official standards. Disseminate the list by July 1 of each year and updates throughout the year to the Office of the Executive Secretary of the Supreme Court for distribution to the courts.**

The VaIDC developed the Certified Assigned Attorney Process (CAAP) to maintain an electronic list of the names of certified attorneys eligible for indigent defense court appointment. Additionally, the VaIDC website contains links to a printable version of the list, allowing Virginia court personnel to easily retrieve certification information by jurisdiction and/or case type. The system became operational in June 2005. As of June 30, 2007, the number of attorney certifications by case type was as follows:



Case Type	Number of Certified Attorneys 6/30/06	Number of Certified Attorneys 6/30/07	Annual Change
Capital Appellate	64	64	0
Capital Habeas	49	50	+1
Capital Trial Co-Counsel	199	200	+1
Capital Trial Lead Counsel	131	131	0
Juvenile	1,338	1,429	+91
Misdemeanor	1,724	1,874	+150
Felony	1,533	1637	+104

- 4. VIRGINIA CODE § 19.2-163.01A(4) - Establish official standards of practice for court-appointed counsel and public defenders to follow in representing their clients and guidelines for the removal of an attorney from the official list. Notify the Office of the Executive Secretary of the Supreme Court of any attorney whose name has been removed from the list.**

The VaIDC created a Committee on the Standards of Practice to develop the official standards of practice for court-appointed counsel and public defenders. The Committee members included representatives from public defender offices, the Office of the Executive Secretary of the Supreme Court of Virginia, the Office of the Attorney General, Commonwealth Attorney offices, the Ethics Counsel of the Virginia State Bar, members of the judiciary, and members of the private bar.

Draft Standards were developed for non-capital criminal cases at the trial level, for appellate criminal defense representation and for juvenile defense counsel. The proposed standards were published for comment in the fall of 2006. Copies were sent to local bar associations, General Assembly members, and the Virginia Crime Commission for input. The VaIDC received very little feedback on the proposed standards.

The VaIDC approved the Standards of Practice at its November 30, 2006 meeting, with a delayed effective date of April 1, 2007 to receive and consider any additional comments or suggestions arising from the General Assembly during its session. The VaIDC received no further comments and the Standards as adopted by the Commission became effective on April 1, 2007. Copies were provided to each certified attorney and are available on the VaIDC website at [www.indigentdefense.virginia.gov](http://www.indigentdefense.virginia.gov).

During its 2007 session, the General Assembly allocated funding beginning July 1, 2007 for two positions related to the enforcement of the Standards of Practice. The VaIDC formed a committee to develop guidelines for the removal of an attorney from the certified list when that attorney has violated the Standards of Practice. Members of the committee included representatives from the Virginia Bar Association, the Virginia State Bar (Criminal Law section and Ethics Counsel), the Virginia Association of Criminal Defense Lawyers, the Virginia Trial Lawyers Association, the Office of the Attorney General, the Commonwealth Attorneys Services Council, the Supreme Court of Virginia, members of the private bar, and public defenders. The committee proposed guidelines, which the VaIDC adopted at its August 16, 2007 meeting. The Enforcement Procedures will also be made available on the VaIDC website.

**5. VIRGINIA CODE § 19.2-163.01A(5) - Develop initial training courses for public defenders and to review and certify legal education courses that satisfy the continuing requirements for public defenders to maintain their eligibility.**

The VaIDC continues to enhance training and development opportunities for the private court appointed counsel and public defender office attorneys, investigators, sentencing advocates and support staff. Information on training programs is available on the VaIDC website.

The VaIDC offered Indigent Defense Certification Training programs on a monthly basis during FY06-07. These training programs were held across the Commonwealth, sometimes in

partnership with the local law libraries or bar associations. The VaIDC training staff also accommodated attorneys with urgent time deadlines by providing monitoring, a location and the equipment to view the certification training program on DVDs at the VaIDC administrative office in Richmond.

Additional non-certification training programs provided to attorneys in Public Defender offices included the 3<sup>rd</sup> Trial Skills Bootcamp, New Attorney Training, the Public Defender Conference, Appellate Practice/Procedures and the Public Defender Management Training. The Trial Skills Bootcamp for New Attorneys was held in July 2006 at TC Williams School of Law at the University of Richmond. Forty-eight attorneys attended, making the 3<sup>rd</sup> Bootcamp the largest to date. The annual Public Defender Management training was held in September 2006 in Natural Bridge. Topics included the budget process, fiscal and procurement requirements, human resources information, caseload reporting, and appeals. Similarly, due to growth in the number of Public Defender offices and increasing rates of vacancy and turnover, the VaIDC provided training to the office managers and senior secretaries. Attendees learned information necessary to assist the Public Defenders with their administrative duties, including procurement, human resources, benefits, and payroll. Training programs for investigators and sentencing specialists are scheduled for October 2007.

The VaIDC also either partnered with other groups or provided non-certification training programs, which were open to both private bar court appointed counsel and public defender office attorneys, including replays of the Chief Justice's 2005 Advanced Skills Training program, Evidence training, the Juvenile Law and Education Conference and a Jury Selection Workshop training.

**6. VIRGINIA CODE § 19.2-163.01A(7) - Periodically review and report to the Virginia State Crime Commission, the House and the Senate Committees for Courts of Justice, the House Committee on Appropriations, and the Senate Committee on Finance on the caseload handled by each public defender office.**

VaIDC FY07 Caseload Data. FY06 saw an increase in the number of cases handled by the public defender offices for a total of 94,325 cases compared to 93,505 cases in FY06.

**(Appendix B, VaIDC FY07 Caseload Data).**

The 2004 VaIDC enabling legislation required the VaIDC to “establish appropriate caseload limits for public defender offices.” However, the 2005 General Assembly amended the statute to instead require the VaIDC to annually report public defender caseload data. Caseload limits have never been promulgated or enforced within public defender offices.

Virginia State Bar Legal Ethics Opinion 1798 (LEO 1798) acknowledged the need to control prosecutors’ caseloads. The Opinion also noted that “excessive caseloads for public defenders and court-appointed counsel raise the same ethical problems [as for prosecutors] if each client’s case cannot be attended to with reasonable diligence and competence.”<sup>2</sup> Similarly, on July 19, 2004, James M. McCauley, Ethics Counsel for the Virginia State Bar, issued an informal letter opinion stating that, “[t]he acceptance of an overwhelming caseload may result in an ethical breach, leaving the defense attorney exposed to disciplinary action.”

On November 9, 2004, the VaIDC adopted a resolution regarding the ongoing issues of public defender caseloads to facilitate the legislative mandate. The resolution required public defenders to monitor caseloads within their offices until the VaIDC and the General Assembly could develop and enact caseload limits with adequate funding at an agency wide level. Public defenders were directed to take necessary and reasonable steps to ensure that each attorney

would fulfill his or her ethical duty of competency consistent with the Virginia State Bar's Standing Committee on Legal Ethics' Opinion 1798 issued July 19, 2004.

In May 2006, the ABA Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 06-441, Ethical Obligation of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere with Competent and Diligent Representation, which echoed the conclusions of LEO 1798. The Opinion concluded that:

The obligations of competence, diligence, and communication under the Rules apply equally to every lawyer. All lawyers, including public defenders, have an ethical obligation to control their workloads so that every matter they undertake will be handled competently and diligently.

In an attempt to determine what reasonable and ethical caseloads should be within the Virginia public defender system, the VaIDC issued an Invitation for Bids for a comprehensive, Virginia-specific workload/caseload study in March 2007. The contract was awarded in April to the National Center for State Courts (NCSC).

As proposed, the study is projected to take eighteen months to complete. The study will result in a final report that recommends a range of caseload numbers for public defenders based on experience, the nature of cases, geographical challenges, and other relevant factors.

**7. VIRGINIA CODE 19.2-163.01(B) – Commission shall adopt Rules and Procedures for the conduct of its business.**

During a 2006 audit, the Auditor of Public Accounts found no violations of Commonwealth policies, but recommended that the Commission adopt policies and procedures relating to its daily operations and the conduct of its business. As a result of the APA's recommendation and the approval of legislation amending § 19.2-163.01(B) requiring such policies and procedures, the Commission formed a committee to develop any additional

necessary policies and recommend revisions to the existing office policies and procedures. The Commission adopted the revised policies and procedures at its November 2006 meeting and copies were disseminated to all employees. The VaIDC will review the policies annually and make any necessary modifications or updates.

## **II. THE STATE OF INDIGENT DEFENSE IN VIRGINIA**

### **A. INTRODUCTION**

In January 2004, the American Bar Association (ABA) released its report, A Comprehensive Review of Indigent Defense in Virginia<sup>3</sup>. The ABA found that in Virginia:

1. There is very limited use of expert witnesses and investigator services, which are essential to proper representation of clients in many cases, due to funding and resource constraints.<sup>4</sup>
2. The low statutory fee caps act as a disincentive to many assigned counsel, keeping many of them from doing the work necessary to provide meaningful and effective representation to their indigent clients.<sup>5</sup>
3. The public defender system is over-burdened and underfunded.<sup>6</sup>

### **B. VIRGINIA'S NATIONAL RANKING - COURT-APPOINTED ATTORNEY FEES**

National ranking. Pursuant to Virginia Code § 19.2-163.01(15), this Annual Report must address “Virginia’s ranking amongst the 50 states in terms of pay allowed for court-appointed counsel.” Numerous reports, including the 2005 ABA report, Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview, have noted that Virginia’s caps place its fees among the lowest in the nation.<sup>7</sup> The ABA report further indicated that Virginia ranked 49<sup>th</sup> in the nation based on its compensation for court-appointed counsel.<sup>8</sup> At the time of the report, the only state with a lower compensation rate was Mississippi, which placed a \$1,000 cap on non-capital felony charges.<sup>9</sup> In 2003 and 2004,

Virginia was ranked 48<sup>th</sup> in the nation;<sup>10</sup> only Mississippi and Maryland ranked lower in compensation rates.

There have been no new studies conducted to rank states by their court appointed compensation rates. Doubts have arisen regarding the accuracy of the report that ranked Virginia near the bottom among the 50 states.

State-to-state comparisons are difficult because the structure and funding of the systems vary nationwide. For example, some states pay by the case; others pay by the charge. Some states fund public defender and court appointed work and others have a combination of funding from the state and local levels. Further, at least one state provides an office allowance to attorneys performing indigent defense work. Therefore, it may be more useful to note the efforts Virginia has taken to improve its indigent defense system.

General Information. The Supreme Court of Virginia sets the maximum hourly rate at which court appointed counsel are paid.<sup>11</sup> The current maximum rate is \$90 per hour for both in-court and out-of-court work. The legislature limits the funds to pay court appointed counsel through substantive law and the legislature's power to appropriate funds. The Supreme Court determines the maximum rate paid to court appointed counsel based on the legislature's appropriated amounts.

Progress. During the 2007 General Assembly session, legislators took several significant steps toward improving indigent defense funding and services. Legislation to increase statutory fee caps for court appointed counsel introduced in and approved by the House and Senate has been signed into law. The legislation allows for payment over the current statutory fee caps and also provides a second tier waiver in certain cases upon approval by the judge. (**Appendix C – House Bill 2361 (Delegate Lacey Putney) and Senate Bill 1168 (Senator Ken Stolle)**).

In addition, \$8.2 million in new funds was appropriated to the Criminal Fund for waivers granted pursuant to the legislation. There are legislative requirements for the collection and maintenance of more detailed information to determine the cost of the complete elimination of fee caps in court appointed cases. Additionally, the Supreme Court of Virginia has developed guidelines to determine whether a request for a waiver meets one of the criteria contained in the statute.

The 2007 General Assembly also approved efforts to address some of the challenges facing the public defender offices, including a turnover and vacancy rate of 27% in calendar year 2006 despite actions by the VaIDC to internally increase salaries and utilize retention bonuses in order to retain employees. Salary increases were approved effective November of 2007 for attorneys and administrative and support staff. Additional positions were allocated to the Commission. Also, significant adjustments were made to the Capital Defender Offices, which included salary increases and additional positions. The unallocation of \$3 million of carryforward funds, generated previously by the public defender offices due in large part to turnover and vacancy, will fund a large portion of the costs of the salary increases and new positions in the first year. The Criminal Fund, from which court appointed counsel are paid, was reduced by \$2.3 million in anticipation of savings from the improvements made to the public defender offices.

The VaIDC expects that the General Assembly's changes will assist in the recruitment and retention of attorneys and staff, thereby increasing the experience of its employees, the number of indigent people the public defender system can represent, and the quality of that representation.



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<sup>1</sup> U.S. Const. Amend. VI

<sup>2</sup> Id. at n.2

<sup>3</sup> American Bar Association, A Comprehensive Review of Indigent Defense in Virginia, (2004)

<sup>4</sup> Id. at 82

<sup>5</sup> Id.

<sup>6</sup> Id. at 87

<sup>7</sup> ABA, Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview, The Spangenberg Group (August 2005)

<sup>8</sup> Id. at 9

<sup>9</sup> Id.

<sup>10</sup> ABA, Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview, The Spangenberg Group (August 2003)

<sup>11</sup> Court-Appointed Counsel-Public Defender Procedures and Guidelines Manual 25 (Supreme Court of Virginia July 2004)

## **APPENDIX A - VaIDC Court Appointed Attorney Certification Training Curriculum**

### **Indigent Defense Certification Training For Court Appointed Lawyers**

#### **PROGRAM OUTLINE**

##### **DAY 1**

#### **REPRESENTING ADULT CLIENTS IN MISDEMEANOR AND FELONY CASES**

(6- 1 Hour Sessions)

**NOTE** – Topics on Day 1 will apply for the most part to adult defendants. Speakers will allude to areas that are applicable to juveniles as well. Practice issues occurring only in juvenile cases will be addressed in the four one-hour sessions on juvenile practice presented on Day 2.

**9:00 – 10:00: Appellate Advocacy**  
Preparing and filing the *Anders* petition

**10:00 – 11:00: Pretrial Preparation**  
Obtain Discovery  
Conduct Factual Investigation  
Develop a theory of the defense (Fact based) and a case strategy (Legal)  
File Appropriate Pretrial Motions  
Assess the Strength of the Case  
Consider possible sentencing alternatives or pleas that meet client objectives  
Discuss possible pleas with prosecutor  
Keep Client Advised  
Subpoena Witnesses  
Prepare Witnesses to Testify

**11:00 – 11:15: Break**

**11:15 – 12:15: Initial Client Interview**

*Preparation:* Obtain charging document  
Review charge and penalty statutes  
Consult relevant guidelines forms (if a felony)

*Objectives:* Build rapport and inspire confidence [discuss interview techniques and how to respond to questions challenging competence or dedication of the attorney when challenged by client]

Explain client confidentiality

Obtain the following necessary information:

- Contact Information
- Bond Information
- Citizenship/Alien Status Information
- Relevant information concerning the offense
- Background information needed to calculate guidelines
- Details concerning arrest/seizure of evidence/statements to police for motions preparation
- Background information for mitigation (substance abuse/mental health history)

Names and Addresses of Witnesses

Educate the defendant about the relevant law pertaining to his/her case  
Explain what will happen in court  
How and whether to raise competency/sanity issues  
Advise defendant of steps he/she can take pretrial to advance his/her case

\*\*\*\* *In the case of juveniles, be aware of developmental issues as they affect competency and criminal responsibility*

**12:15 – 1:15: Lunch On Your Own**

**1:15 – 2:15 Practice in Circuit Court**

Bond Appeals  
De Novo Appeal Trials B Judge or Jury (Bi-furcated)  
Discovery Motions  
Pre-trial Motions (in limine, to suppress, on other statutory or Constitutional grounds)  
Burdens of Proof in Motions Practice  
Preserving Appellate Issues at Trial  
Sentencing Alternatives  
Plea Negotiations  
Sentencing Trials and Hearings  
Appeals and Motions to Reconsider Sentence  
Probation Violation Hearings

**2:20 – 3:20: Practice in Traffic Court**

Obtaining Client's driving transcript and other relevant documents from DMV  
Review of Traffic Statutes  
Investigate Diversion Programs  
Mandatory Minimums  
Review of Traffic Defenses  
Sentencing Alternatives and Programs for Traffic Offenders  
Collateral Consequences of Conviction  
Negotiating Pleas with Prosecutors  
De Novo Appeal

**3:25 – 4:25: Misdemeanor Practice in the General District Court & JDR Court (adults**

Procedures in GDC --Subpoenas, Discovery, Motions  
Investigate local diversion programs and alternative sentencing options (consider having client pre-qualified or enrolled before court date)  
Common Misdemeanor Defenses (self defense, trespass defenses, etc.)  
Determine collateral consequences of convictions as they affect immigration, employment, etc.  
Accord and Satisfaction  
How to negotiate plea agreements with prosecutors  
Appeals  
Felonies: preliminary hearings  
Guidelines preparation in aid of plea negotiations

INDIGENT DEFENSE CERTIFICATION TRAINING FOR COURT APPOINTED LAWYERS

**Day 2**

**JUVENILE CASES  
(4 – 1 HOUR SEGMENTS)**

- 9:00 – 10:00: Overview of the Juvenile Court**  
Background of the Court  
Special Issues Concerning Juveniles (developmental issues, competency issues,  
Issues of criminal responsibility)  
Statutes applicable only to juveniles (transfer statutes)  
Diversion Options  
Sentencing Options  
Role of the Attorney (contra Guardian ad litem)  
Client ' s Right of Confidentiality  
Identify Treatment and Sentencing Options
- 10:10-11:10: Client Interview and Pretrial Preparation**  
Develop trust relationship with client  
Advise client of attorney client privilege  
Educate the client as to what to expect in court  
Advise client as to how to prepare for court and how to act in court  
Obtain family, school, social services, and any medical or psychological records  
Speak with client ' s counselors at school or at court services  
Detention Advocacy (including review of new statutory requirements)  
Obtain Discovery  
Conduct Factual Investigation  
Identify Mitigating Factors  
Assess the Case and Devise Strategy  
Consider Possible Collateral Consequences (i.e., future effects on guidelines,  
Immigration status)  
Discuss Plea Offer with Prosecutor  
File and Argue Pretrial Motions (including for release)
- 11:20 – 12:20: Adjudication**  
Prepare client and witnesses for trial  
Record proceedings in the event of an appeal  
Have a cogent theory of the defense (legal and/or factual)  
Subpoena all necessary witnesses  
Have sentencing witnesses and arguments prepared
- 12:30 – 1:30: Disposition**  
Learn available dispositional alternatives  
Obtain records from prior cases  
Call witnesses for mitigation  
Meet with court services personnel to discuss options beneficial to the client  
Prepare client to address the court  
Explore alternative sentencing options  
Discuss appeal options with client

**APPENDIX B – VaIDC FY07 Caseload Data**

FY07 ANNUAL REPORT: CASES BY OFFICE												
OFFICE	TOTAL CASES	CAPITAL	FELONY	MISD	APPEAL	TOTAL ADULT CASES	JUV FEL	JUV MISD	JUV APPEAL	TOTAL JUV CASES	ACTUAL ATTNYS	CASES/ ATTY
Alexandria	3231	0	1145	1923	16	3084	46	89	12	147	10.0	324.4
Arlington	1572	0	449	914	1	1364	49	159	0	208	9.2	171.2
Bedford	891	0	353	538	0	891	0	0	0	0	2.8	324.0
Charlottesville	1774	0	801	855	22	1678	32	64	0	96	6.8	261.7
Chesapeake	3356	1	1424	1324	113	2861	184	310	0	495	11.6	288.6
Danville	1720	0	760	788	20	1568	18	134	0	152	4.0	434.3
Fairfax	4276	0	1868	1777	15	3660	304	312	0	616	21.2	201.9
Franklin	1551	0	682	769	19	1470	43	38	0	81	5.9	264.2
Fredericksburg	7110	0	2516	3875	56	6447	140	522	1	663	13.2	540.7
Halifax	2173	0	759	1210	10	1979	28	166	0	194	5.1	422.8
Hampton	3612	0	1762	1296	2	3060	173	379	0	552	12.5	289.9
Leesburg	4688	0	1543	2512	38	4093	129	462	4	595	12.8	365.1
Lynchburg	3034	0	912	1951	1	2864	59	111	0	170	6.8	444.9
Martinsville	1575	0	478	928	8	1414	52	109	0	161	5.2	304.1
Newport News	4874	0	1487	2659	55	4201	242	431	0	673	17.5	278.8
Norfolk	6885	1	2901	3223	147	6271	208	403	2	614	21.1	326.3
Petersburg	2209	0	921	1036	52	2009	81	119	0	200	6.1	360.4
Portsmouth	4342	0	1610	2106	209	3925	125	291	1	417	14.5	299.9
Pulaski	1979	0	899	1059	2	1960	3	16	0	19	4.9	404.7
Richmond	10205	0	4429	5034	23	9486	288	431	0	719	25.4	401.8
Roanoke	4312	0	2035	1862	34	3931	154	226	1	381	8.9	486.7
Staunton	3881	0	1425	2009	4	3438	78	365	0	443	7.1	549.7
Suffolk	1417	0	723	486	36	1245	70	102	0	172	5.6	252.1
VA Beach	10395	0	3273	5268	445	8986	316	1074	19	1409	21.3	488.7
Winchester	3263	0	1121	1882	14	3017	57	187	2	246	8.3	395.5
Public Defender	94325	2	36276	47284	1342	84902	2879	6500	42	9423	267.4	352.7
Capital Defender	16	16				16						
Central	3	3				3						
Northern	5	5				5						
Southeastern	4	4				4						
Southwestern	4	4				4						
Appellate	1	0	0	0	1	1						
										Note: Assumed 129 Appeal Cases From PD Offices		
COMMISSION	94342	18	36276	47284	1343	84919	2879	6500	42	9423		

**APPENDIX C - House Bill 2361 (Delegate Lacey Putney) and  
Senate Bill 1168 (Senator Ken Stolle)**

**CHAPTER 938**

*An Act to amend and reenact § [19.2-163](#) of the Code of Virginia, relating to compensation of court-appointed counsel.*

[H 2361]

Approved April 10, 2007

Be it enacted by the General Assembly of Virginia:

1. That § [19.2-163](#) of the Code of Virginia is amended and reenacted as follows:

§ [19.2-163](#). Compensation of court-appointed counsel.

~~Counsel appointed to represent an indigent accused in a criminal case shall be compensated for his services upon written request made to the court within 30 days of trial or preliminary hearing in an amount fixed by each of the courts in which he appears according to the time and effort expended by him in the particular case.~~ *Upon submission to the court, for which appointed representation is provided, of a detailed accounting of the time expended for that representation, made within 30 days of the completion of all proceedings in that court, counsel appointed to represent an indigent accused in a criminal case shall be compensated for his services on an hourly basis at a rate set by the Supreme Court of Virginia in a total amount not to exceed the amounts specified in the following schedule:*

1. In a district court, a sum not to exceed \$120, *provided that, notwithstanding the foregoing limitation, the court in its discretion, and subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, may waive the limitation of fees up to an additional \$120 when the effort expended, the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances warrant such a waiver;* or such other amount as may be provided by law; ~~such.~~ *Such amount shall be allowed in any case wherein counsel conducts the defense of a single charge against the indigent through to its conclusion or a charge of violation of probation at any hearing conducted under § [19.2-306](#), without a requirement for accounting of time devoted thereto;* thereafter, compensation for additional charges against the same accused also conducted by the same counsel shall be allowed on the basis of additional time expended as to such additional charges;

2. In a circuit court (i) to defend a felony charge that may be punishable by death an amount deemed reasonable by the court; (ii) to defend a felony charge that may be punishable by confinement in the state correctional facility for a period of more than twenty years, or a charge of violation of probation for such offense, a sum not to exceed \$1,235; *provided that, notwithstanding the foregoing limitation, the court in its discretion, and subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, may waive the limitation of fees up to an additional \$850 when the effort expended, the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances warrant such a waiver;* (iii) to defend any other felony charge, or a charge of violation of probation for such offense, a sum not to exceed \$445; *provided that, notwithstanding the foregoing limitation, the court in its discretion, and subject to guidelines*

*issued by the Executive Secretary of the Supreme Court of Virginia, may waive the limitation of fees up to an additional \$155 when the effort expended, the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances warrant such a waiver;* and (iv) *in the circuit court only*, to defend any misdemeanor charge punishable by confinement in jail or a charge of violation of probation for such offense, a sum not to exceed \$158. In the event any case is required to be retried due to a mistrial for any cause or reversed on appeal, the court may allow an additional fee for each case in an amount not to exceed the amounts allowable in the initial trial. In the event counsel is appointed to defend an indigent charged with a felony that may be punishable by death, such counsel shall continue to receive compensation as provided in this paragraph for defending such a felony, regardless of whether the charge is reduced or amended to a felony that may not be punishable by death, prior to final disposition of the case. In the event counsel is appointed to defend an indigent charged with any other felony, such counsel shall receive compensation as provided in this paragraph for defending such a felony, regardless of whether the charge is reduced or amended to a misdemeanor or lesser felony prior to final disposition of the case in either the district court or circuit court.

*Counsel appointed to represent an indigent accused in a criminal case, who are not public defenders, may request an additional waiver exceeding the amounts provided for in this section. The request for any additional amount shall be submitted to the presiding judge, in writing, with a detailed accounting of the time spent and the justification for the additional amount. The presiding judge shall determine, subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, whether the request for an additional amount is justified in whole or in part, by considering the effort expended and the time reasonably necessary for the particular representation, and, if so, shall forward the request as approved to the chief judge of the circuit court or district court for approval.*

*If at any time the funds appropriated to pay for waivers under this section become insufficient, the Executive Secretary of the Supreme Court of Virginia shall so certify to the courts and no further waivers shall be approved.*

The circuit or district court shall direct the payment of such reasonable expenses incurred by such court-appointed counsel as it deems appropriate under the circumstances of the case. Counsel appointed by the court to represent an indigent charged with repeated violations of the same section of the Code of Virginia, with each of such violations arising out of the same incident, occurrence, or transaction, shall be compensated in an amount not to exceed the fee prescribed for the defense of a single charge, if such offenses are tried as part of the same judicial proceeding. The trial judge shall consider any guidelines established by the Supreme Court but shall have the sole discretion to fix the amount of compensation to be paid counsel appointed by the court to defend a felony charge that may be punishable by death.

The circuit or district court shall direct that the foregoing payments shall be paid out by the Commonwealth, if the defendant is charged with a violation of a statute, or by the county, city or town, if the defendant is charged with a violation of a county, city or town ordinance, to the attorney so appointed to defend such person as compensation for such defense.

Counsel representing a defendant charged with a Class 1 felony may submit to the court, on a monthly basis, a statement of all costs incurred and fees charged by him in the case during that

month. Whenever the total charges as are deemed reasonable by the court for which payment has not previously been made or requested exceed \$1,000, the court may direct that payment be made as otherwise provided in this section.

When such directive is entered upon the order book of the court, the Commonwealth, county, city or town, as the case may be, shall provide for the payment out of its treasury of the sum of money so specified. If the defendant is convicted, the amount allowed by the court to the attorney appointed to defend him shall be taxed against the defendant as a part of the costs of prosecution and, if collected, the same shall be paid to the Commonwealth, or the county, city or town, as the case may be. *In the event that counsel for the defendant requests a waiver of the limitations on compensation, the court shall assess against the defendant an amount equal to the pre-waiver compensation limit specified in this section for each charge for which the defendant was convicted.* An abstract of such costs shall be docketed in the judgment docket and execution lien book maintained by such court.

Any statement submitted by an attorney for payments due him for indigent representation or for representation of a child pursuant to § [16.1-266](#) shall, after the submission of the statement, be forwarded forthwith by the clerk to the Commonwealth, county, city or town, as the case may be, responsible for payment.

For the purposes of this section, the defense of a case may be considered conducted through to its conclusion and an appointed counsel entitled to compensation for his services in the event an indigent accused fails to appear in court subject to a capias for his arrest or a show cause summons for his failure to appear and remains a fugitive from justice for one year following the issuance of the capias or the summons to show cause, and appointed counsel has appeared at a hearing on behalf of the accused.

*Effective July 1, 2007, the Executive Secretary of the Supreme Court of Virginia shall track and report the number and category of offenses charged involving adult and juvenile offenders in cases in which court-appointed counsel is assigned. The Executive Secretary shall also track and report the amounts paid by waiver above the initial cap to court-appointed counsel. The Executive Secretary shall provide these reports to the Governor, members of the House Appropriations Committee, and members of the Senate Finance Committee on a quarterly basis.*

## CHAPTER 946

*An Act to amend and reenact § [19.2-163](#) of the Code of Virginia, relating to compensation of court-appointed counsel.*

[S 1168]

Approved April 10, 2007

Be it enacted by the General Assembly of Virginia:

1. That § [19.2-163](#) of the Code of Virginia is amended and reenacted as follows:

§ [19.2-163](#). Compensation of court-appointed counsel.

~~Counsel appointed to represent an indigent accused in a criminal case shall be compensated for his services upon written request made to the court within 30 days of trial or preliminary hearing in an~~



~~amount fixed by each of the courts in which he appears according to the time and effort expended by him in the particular case, Upon submission to the court, for which appointed representation is provided, of a detailed accounting of the time expended for that representation, made within 30 days of the completion of all proceedings in that court, counsel appointed to represent an indigent accused in a criminal case shall be compensated for his services on an hourly basis at a rate set by the Supreme Court of Virginia in a total amount not to exceed the amounts specified in the following schedule:~~

1. In a district court, a sum not to exceed \$120, *provided that, notwithstanding the foregoing limitation, the court in its discretion, and subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, may waive the limitation of fees up to an additional \$120 when the effort expended, the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances warrant such a waiver;* or such other amount as may be provided by law; ~~such. Such amount shall be allowed in any case wherein counsel conducts the defense of a single charge against the indigent through to its conclusion or a charge of violation of probation at any hearing conducted under § 19.2-306, without a requirement for accounting of time devoted thereto;~~ thereafter, compensation for additional charges against the same accused also conducted by the same counsel shall be allowed on the basis of additional time expended as to such additional charges;

2. In a circuit court (i) to defend a felony charge that may be punishable by death an amount deemed reasonable by the court; (ii) to defend a felony charge that may be punishable by confinement in the state correctional facility for a period of more than twenty years, or a charge of violation of probation for such offense, a sum not to exceed \$1,235; *provided that, notwithstanding the foregoing limitation, the court in its discretion, and subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, may waive the limitation of fees up to an additional \$850 when the effort expended, the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances warrant such a waiver;* (iii) to defend any other felony charge, or a charge of violation of probation for such offense, a sum not to exceed \$445; *provided that, notwithstanding the foregoing limitation, the court in its discretion, and subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, may waive the limitation of fees up to an additional \$155 when the effort expended, the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances warrant such a waiver;* and (iv) *in the circuit court only*, to defend any misdemeanor charge punishable by confinement in jail or a charge of violation of probation for such offense, a sum not to exceed \$158. In the event any case is required to be retried due to a mistrial for any cause or reversed on appeal, the court may allow an additional fee for each case in an amount not to exceed the amounts allowable in the initial trial. In the event counsel is appointed to defend an indigent charged with a felony that may be punishable by death, such counsel shall continue to receive compensation as provided in this paragraph for defending such a felony, regardless of whether the charge is reduced or amended to a felony that may not be punishable by death, prior to final disposition of the case. In the event counsel is appointed to defend an indigent charged with any other felony, such counsel shall receive compensation as provided in this paragraph for defending such a felony, regardless of whether the charge is reduced or amended to a misdemeanor or lesser felony prior to final disposition of the case in either the district court or circuit court.

*Counsel appointed to represent an indigent accused in a criminal case, who are not public defenders, may request an additional waiver exceeding the amounts provided for in this section. The request for any additional amount shall be submitted to the presiding judge, in writing, with a detailed accounting of the time spent and the justification for the additional amount. The presiding judge shall determine, subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, whether the request for an additional amount is justified in whole or in part, by considering the effort expended and the time reasonably necessary for the particular representation, and, if so, shall forward the request as approved to the chief judge of the circuit court or district court for approval.*

*If at any time the funds appropriated to pay for waivers under this section become insufficient, the Executive Secretary of the Supreme Court of Virginia shall so certify to the courts and no further waivers shall be approved.*

The circuit or district court shall direct the payment of such reasonable expenses incurred by such court-appointed counsel as it deems appropriate under the circumstances of the case. Counsel appointed by the court to represent an indigent charged with repeated violations of the same section of the Code of Virginia, with each of such violations arising out of the same incident, occurrence, or transaction, shall be compensated in an amount not to exceed the fee prescribed for the defense of a single charge, if such offenses are tried as part of the same judicial proceeding. The trial judge shall consider any guidelines established by the Supreme Court but shall have the sole discretion to fix the amount of compensation to be paid counsel appointed by the court to defend a felony charge that may be punishable by death.

The circuit or district court shall direct that the foregoing payments shall be paid out by the Commonwealth, if the defendant is charged with a violation of a statute, or by the county, city or town, if the defendant is charged with a violation of a county, city or town ordinance, to the attorney so appointed to defend such person as compensation for such defense.

Counsel representing a defendant charged with a Class 1 felony may submit to the court, on a monthly basis, a statement of all costs incurred and fees charged by him in the case during that month. Whenever the total charges as are deemed reasonable by the court for which payment has not previously been made or requested exceed \$1,000, the court may direct that payment be made as otherwise provided in this section.

When such directive is entered upon the order book of the court, the Commonwealth, county, city or town, as the case may be, shall provide for the payment out of its treasury of the sum of money so specified. If the defendant is convicted, the amount allowed by the court to the attorney appointed to defend him shall be taxed against the defendant as a part of the costs of prosecution and, if collected, the same shall be paid to the Commonwealth, or the county, city or town, as the case may be. *In the event that counsel for the defendant requests a waiver of the limitations on compensation, the court shall assess against the defendant an amount equal to the pre-waiver compensation limit specified in this section for each charge for which the defendant was convicted.* An abstract of such costs shall be docketed in the judgment docket and execution lien book maintained by such court.

Any statement submitted by an attorney for payments due him for indigent representation or for representation of a child pursuant to § [16.1-266](#) shall, after the submission of the statement, be

forwarded forthwith by the clerk to the Commonwealth, county, city or town, as the case may be, responsible for payment.

For the purposes of this section, the defense of a case may be considered conducted through to its conclusion and an appointed counsel entitled to compensation for his services in the event an indigent accused fails to appear in court subject to a capias for his arrest or a show cause summons for his failure to appear and remains a fugitive from justice for one year following the issuance of the capias or the summons to show cause, and appointed counsel has appeared at a hearing on behalf of the accused.

*Effective July 1, 2007, the Executive Secretary of the Supreme Court of Virginia shall track and report the number and category of offenses charged involving adult and juvenile offenders in cases in which court-appointed counsel is assigned. The Executive Secretary shall also track and report the amounts paid by waiver above the initial cap to court-appointed counsel. The Executive Secretary shall provide these reports to the Governor, members of the House Appropriations Committee, and members of the Senate Finance Committee on a quarterly basis.*