



## LOUISIANA PUBLIC DEFENDER BOARD

Thursday, January 31, 2019  
Bluebonnet Regional Library, Baton Rouge, LA  
12:00 p.m.

### Minutes

1. A meeting of the Louisiana Public Defender Board, pursuant to lawful notice, was called to order by its Chairman Frank Holthaus on Thursday, January 31, 2019, at the Bluebonnet Regional Library, in Baton Rouge at approximately 12:27 p.m.

The following Board members were present:

Patrick Fanning  
Frank Holthaus  
Moses Williams

W. Ross Foote  
Donald North

Michael Ginart  
Chaz Roberts

The following Board members were absent:

Zita Andrus  
Katherine Gilmer

Chris Bowman

Flozell Daniels

The following members of the Board's staff were present:

Jay Dixon, State Public Defender  
Barbara Baier, General Counsel  
Natashia Carter, Budget Administrator  
Jean Faria, Capital Case Coordinator  
Anne Gwin, Executive Assistant  
Tiffany Simpson, Juvenile Compliance Officer/Legislative Director  
Erik Stilling, Information and Technology Director

Chairman Holthaus announced the resignation of District 17 (Lafouche Parish) District Defender Mark Plaisance and thanked him for his service.

Mr. Holthaus reported that he has appointed retired Southern University Chancellor Freddie Pitcher as the LPDB representative on the Louisiana Judicial Council which meets twice a year and discusses court cost legislation among other things.

2. Adoption of the Agenda. Mr. Mike Ginart moved to adopt the agenda as presented. Professor Donald North seconded the motion which passed unopposed.

3. Call for Public Comment. No one presented for public comment.

4. Adoption the Minutes, November 9, 2018. Professor North moved to adopt the minutes of the November 9, 2018 meeting as presented. Judge Ross Foote seconded the motion which passed unopposed.

5. Executive Session. Chairman Holthaus announced that Executive Session would be held after budget discussions.

6. District Issues. SPD Dixon announced again the resignation of District Defender Mark Plaisance in District 17. He reported that Mr. Plaisance has indicated a February 28 effective date but that he has agreed to remain in the office as interim pending the hiring of his replacement. Mr. Dixon then asked the Board for the authority to appoint an interim district defender in the event Mr. Plaisance has to leave before February 28 or a replacement is found, whichever should happen first. Mr. Moses Williams inquired as to the adjoining parishes and Professor North stressed the importance of looking for a strong candidate for the position. Discussion continued on the need for an interim and clarification was made that Mr. Plaisance has agreed to stay until a replacement is hired but in the event he has to leave prior to that time staff would need authority to hire an interim. Judge Foote moved that if Mr. Plaisance has to leave the position prior to the hiring of his replacement, then the State Public Defender has the authority to fill the position, as needed. The motion was amended to include that whomever may be placed in the position as interim would not be paid a rate exceeding Mr. Plaisance's current salary. Mr. Ginart seconded the motion as amended. Mr. Plaisance then briefly addressed the Board. Professor North called the question and upon a vote, Judge Foote's motion, as amended, passed unopposed.

7. Policy Committee

a. Sexual Harassment Policy. Judge Foote reported that the Policy Committee is recommending the adoption of the sexual harassment policy as presented with the addition that the districts be required to comply with all reporting requirements on a semi-annual basis. SPD Dixon clarified that the issue being presented for Board approval has two parts: 1) approval of the Board's policy on sexual harassment; and, 2) adoption of compliance and supervision protocols of the districts regarding the statutorily mandated reporting requirements. He further clarified that the information to be reported by the districts to staff would include the semi-annual compilation of the statutorily required information and the immediate reporting of a complaint that has risen to the level of sexual harassment. General Counsel Barbara Baier added that the Policy Committee's recommendation also included compliance by the 501(c)3 programs. Judge Foote stated that the Policy Committee's recommendation is that the Board adopt the policy as presented here to include the 501(c)3 programs. Upon a second, the Policy Committee's recommendation passed unopposed.

i. Compliance and Supervision. Considering the prior discussion, Judge Foote recommended that the Board adopt the Policy Committee's recommendation as to compliance from the district defenders. Upon a second, the recommendation passed unopposed.

b. Public Defenders Servings as City Prosecutors. Judge Foote reported that the Policy Committee is recommending a policy that city prosecutors not serve as public defenders unless there are safeguards put in place, hardship is applied for and the board grants that specific exception. After discussion, Judge Foote clarified that the Committee is recommending the adoption of the Affidavit of Hardship as the mechanism for district defenders and the Board to address this issue.

Mr. Moses Williams expressed his strong opposition to the adoption of a policy which he believes is contrary to the statute and the constitution and urged the Board to work toward a solution to the problem. Mr. Holthaus agreed that a working group comprised of a board member or members and staff to research how other states are handling this issue is a viable option. Mr. Williams agreed to move forward as discussed pending future work on a solution to this problem. Mr. Ginart then seconded the recommendation of the Policy Committee. Upon vote, with one opposition and one abstention, the recommendation carried with five in favor.

c. Strategic Plan. Mr. Dixon reported that a strategic plan was presented to the Board some time ago and tabled but is now necessary. He reported having received input from the districts on the proposed language on page 44 and as a result has re-drafted it as presented in the handout. Mr. Dixon indicated that staff would be addressing the whole plan and would bring a final draft to the board for discussion and adoption prior to the end of fiscal year 2019. There was no further discussion.

d. Open Meeting Law, Rules of Order, LPDB Meeting Protocol. Mr. Holthaus reported the field and board need a way to get information to everyone without a potential violation to open meeting laws. He was specifically concerned about an email that went directly from a district defender to all board members and the subsequent potential for inadvertent action or “roaming” quorum as a result of that email. Judge Foote clarified that it is not the Board’s intention to muzzle anyone, rather to change the procedure and recommended that anyone with an issue should provide it to directly the State Public Defender to disseminate. After discussion, there was disagreement among board members as to whether a violation did, would or could occur under such practice(s). As a result, general counsel was directed to obtain an opinion on proper procedure for further discussion.

e. Salary Adjustments. The Policy Committee has no recommendations or changes to current protocols being followed by staff and the Budget Committee will address the adjustments later in the agenda.

5. Executive Session. Professor North moved to go into Executive Session. Mr. Ginart seconded the motion and the Board went into executive session. Mr. Pat Fanning moved to leave executive session and Mr. Ginart seconded the motion and the meeting returned to regular session.

8. Budgetary and Fiscal

a. Financial Report through December 31, 2018. Budget Chairman North reported a favorable recommendation of the financial report by the Committee as presented. Mr. Fanning seconded the recommendation which passed unopposed.

b. Protocols and Salary Ranges/Caps. State Public Defender Dixon reported that after full site visits of three districts which included court observation, file review and staff interviews, he is recommending the following salary adjustments for district defenders: District 2 - Mr. Donald Kneipp, from \$75,000 to \$87,000; District 3 - Mr. Rick Candler, from \$80,000 to \$90,000; and District 30 - Mr. Tony Tillman, from 93,622 to \$105,622. Professor North reported the Budget Committee is recommending favorable adoption of the adjustments as presented, retroactive to September 27, 2018. Judge Foote seconded the recommendation which passed unopposed.

- c. FY19
  - i. Solvency Projections. Mr. Dixon gave a brief summary of the solvency projections as presented. He reported that staff is watching several districts very closely for fiscal year end and possible FY20 shortfall.
  - ii. Exigency. Professor North reported the Budget Committee is recommending to the full Board immediate distribution of \$43,864 to District 11, which is the minimum amount needed for the district to maintain operations through Apr/May of 2019. Judge Foote seconded the recommendation which passed unopposed.
- d. DAF FY20
  - i. P & N Plan. SPD Dixon reported that staff has met with the DDAC and provided this draft DAF plan strictly as an example of what the DAF would look like with the P&N Plan using 2018 funding numbers for FY20. He stated this presentation is not a staff recommendation but should the P & N plan be a part of the DAF formula for FY20 that this is potentially what the distribution could look like. District Defender Brian McRae addressed the Board and assured them that the DDAC was not taking its duty lightly and has been working with Dr. Stilling and Mr. Dixon toward a viable formula. Mr. Dixon stated that if things stay the same that there will be fiscal problems in 2020.
  - ii. Hybrid Plan. This information is also an example of what the DAF would look like with the Hybrid Plan using 2018 funding numbers for FY20 and is not a staff recommendation. Mr. Ginart took the opportunity to urge the District Defenders to keep up with all of the information that is being provided and to provide as much information as possible so that the Board can make the best decision possible when the time comes.
  - iii. DDAC. This portion was address by Mr. McRae in item 8di.
  - iv. Accumulating v. Depleting Districts. The Budget Committee has no recommendations or discussion on this issue at this time.
- e. ROS. Dr. Tiffany Simpson reported the results of all ROS site visits that have been completed since June of 2018: five districts have exited ROS – Districts 8, 20, 23, 30, and 33; three are scheduled to exit as soon as they complete their hiring process - Districts 26, 28, and 33; and, five will remain in ROS with the potential to further restrict services - Districts 19, 16, 25, 41 and 15. Dr. Simpson stated that staff are planning a site visit to District 11<sup>th</sup> (Sabine) to see where the district stands in terms of service restriction. Dr. Simpson also brought to the attention of the Board a one-pager on talking points on the FY20 fiscal landscape that was requested by the Board at the November 2018 meeting.
- f. Changes in CINC Funding. SPD Dixon reported that the federal government has indicated possible funding to supplement the districts in CINC cases for parent representation in fiscal year 2020. He reported the distinct possibility that increased data collection from the districts may come with the increased funding, but details are still unknown. Staff will provide information as it is learned.
- g. FY 2020 Contracts. Mr. Dixon reported that in addition to the FY19 contracts presented, in FY20 two additional contracts will be added for Board consideration for JLWOP (Miller) conflict cases and JLWOP expert funding.

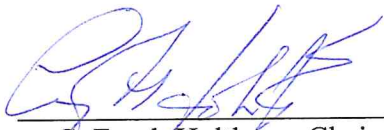
9. LPDB Fiscal Landscape. Mr. Dixon stated that this report originated as a request from Mr. Ginart on how and where LPDB get its funding. Mr. Ginart thanked Dr. Erik Stilling for the excellent “primer” and stressed its usefulness for preparing to talk to stakeholders.

10. Division Reports.
  - a. Capital. Professor North and Mr. Ginart both addressed the capital report as presented. Professor North's inquiries were focused on obtaining a better understanding of the capital defense process and how the programs work from beginning to end. Mr. Ginart requested that the capital report provide additional information in order for Board members to be able to lead meaningful and accurate discussions with legislators and other stakeholders. Mr. Holthaus suggested an at-a-glance document with the pertinent information. Staff agreed to include the requested additional information as discussed in future reports.
  - b. Juvenile Strategic Plan. Mr. Dixon indicated the Juvenile Strategic Plan is in the materials for review.
  
11. Announcements. Mr. Holthaus announced the death of Chris Bowman's mother and the Board recognized Mr. Bowman's loss.
  
12. Next Meeting. The Board set the next meeting for March 19, 2019, at 12:00 p.m. in Baton Rouge. The location will be announced.
  
13. Adjournment. Mr. Fanning moved to adjourn. Mr. Robert seconded the motion and the meeting adjourned at approximately 2:55 p.m.

Guests:

Deirdre Fuller	John Albert Ellis	Herman A. Castete
Reggie McIntyre	Tony Champagne	Ella Kliebert
Don Kneipp	Willis Brewer	Mark Plaisance
Brian McRae	Colin Reingold	Yvette Beamon
John Wagar	Maggie Simon LeBlanc	Tony Tillman
Alan Robert	Thomas Gernhauser	Trisha Ward
G. Paul Marx	Richard Tompson	Chris Aberle
David Marcantel	Steve Thomas	Gary Clement
Paul Fleming	Kyla Romanach	Aaron Clark Rizzio
Jee Park	Kerry Cuccia	Don Kneipp
Mike Mitchell	Kenn Barnes	Rick Candler
Remy Starns		

**I HEREBY CERTIFY** that the foregoing is a full, true, and correct account of the proceedings of the Louisiana Public Defender Board meeting held on the 31st day of January, 2019, as approved by the Board on the 9th day of May, 2019 at Baton Rouge, Louisiana.

  
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 C. Frank Holthaus, Chairman