



LOUISIANA PUBLIC DEFENDER BOARD

Thursday, August 8, 2019
Bluebonnet Regional Library
9200 Bluebonnet Boulevard, Room 2
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, August 8, 2019, at the Bluebonnet Regional Library in Baton Rouge, Louisiana, at approximately 12:08 p.m.

The following Board members were present¹:

Zita Andrus
Patrick Fanning
Frank Holthaus
Moses Williams

Chris Bowman
W. Ross Foote
Donald North

Flozell Daniels
Michael Ginart
Chaz Roberts

The following Board members was absent:

Katherine Gilmer

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

Richard Pittman, Interim 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

1a. Commendation – Mr. LeRoy Smith, District Defender, District 6. Mr. Holthaus announced the recent death of LeRoy Smith who had served as District Defender in District 6 (E. Carroll, Madison and Tensas Parishes) for the last twelve years. He thanked Mr. Smith for his dedicated service to indigent defense.

2. Adoption of the Agenda. Mr. Pat Fanning moved to adopt the agenda. Mr. Flozell Daniels seconded the motion which passed unopposed.

¹ Ms. Andrus, Mr. Ginart, Professor North, and Mr. Roberts arrived after roll call; however, voting quorum was not affected by the late arrivals.
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3. Call for Public Comment. District Defender Harry Fontenot, District 14 (Calcasieu Parish) and District Defender Brian McRae District 39 (Red River Parish) submitted the DAF and DDAC issues, respectively, for discussion. Mr. Holthaus indicated public comment is welcomed with each item as they are reach in the agenda.

4. Adoption the Minutes, June 11, 2019 Meeting. Mr. Moses Williams moved to adopt the Minutes of the June 1, 2019 meeting as presented. Mr. Fanning seconded the motion which passed unopposed.

5. Executive Session. Mr. Holthaus announced that Executive Session would be moved to the end of the agenda. There was no opposition.

6. District 6 – District Defender - Ratification of Appointment and Salary of Interim District Defender, Ms. Angela Claxton, \$2,000/mo. Mr. Williams recognized Mr. LeRoy Smith for his service in District 6 and welcomed Ms. Angela Claxton as the Interim District Defender. He reported that Ms. Claxton has been an attorney in the 6th PDO for the past 11 years. Ms. Claxton will remain in the interim position pending appointment of the permanent District Defender. Ratification on the appointment and her salary will be taken up by the Board after Executive Session.

Mr. Holthaus indicated Action Items 7 – 9 will also be moved to the end of the agenda, after Executive Session. Chairman Holthaus asked to defer discussion of Budget issues at agenda Item 10 until the Budget Chairman is present. There was no opposition.

11. DAF – FY21. ISPD Pittman reported that discussions need to begin on the approach to the FY21 DAF and he would like to submit for future discussion the possibility of guiding principles as a means of distribution of state funds rather than reliance just on numbers. Mr. Chris Bowman suggested a point system based on specific objective criteria that would pay a certain amount of money per case so that everyone is treated the same. Mr. Pittman cautioned that the challenges in that approach are the broad range of services and unstable, inequitable local funding across districts. Mr. Pittman agreed that the basis needs to be objective, but policies need to be decided and they need to be transparent. Mr. Williams reminded everyone that the Board’s job is to provide indigent services and how the state is funding the public defense system needs to be addressed. Mr. Holthaus referred this issue to the Budget Committee for continued study.

12. Personnel

a. SPD Search

i. Working Group Update. Mr. Holthaus reported two applications received for the SPD position to date.

ii. Reappointment of ISPD. No action was taken on this issue as the sixty day appointment of the interim does not expire until September 18, 2019.

b. Other Open Positions. Mr. Pittman announced that two statutory positions – Trial Level Compliance Officer and Director of Training – remain unfilled. He expressed his concern for the possibility of losing the positions within the agency’s current Table of Organization (T.O.) of 16 due to the extended vacancies. Both positions are included in the FY20 budget and will be included in the FY21 request. Mr. Pittman suggested that staff move forward with reposting the positions pending the placement of the new State Public Defender who would be responsible for the interview and hiring phases. Several board members expressed disappointment that these positions remain unfilled. Chairman

Holthaus referred the matter of advertising and filing vacant positions to the Policy Committee. After some discussion, staff was directed to re-advertise the positions, to provide a list of all advertising venues to the full Board, to provide the prior applicants with notice of the re-posting and to provide all application submittals via a drop box to all Board members. In the event a new State Public Defender is not put in place at the end of the advertising process, the interim was given the authority to move forward in the interview and hiring process and provide a recommendation to the full Board.

13. District Issues

a. ROS – Status. Dr. Tiffany Simpson reported that, pursuant to the ROS protocol, staff has completed follow up ROS site visits to all but three districts: (District 15 (Acadia, Lafayette and Vermilion Parishes), District 16 (Iberia, St. Martin and St. Mary Parishes), and District 41 (Orleans Parish).

14. Interim State Public Defender Report

a. Electronic Fund Transfers – District Options. Mr. Pittman reported that some districts still receive paper checks via US Mail rather than electronic transfer of funds which sometimes results in funding delays. He expressed a desire for a policy urging EFT's which would ensure a more reliable, uniform and timely transfer of state funds to the districts.

Discussion moved to the recent allocation of a portion of the residual funds. Mr. Chris Bowman inquired why District 2 (Bienville, Claiborne, Jackson Parishes) did not receive the \$7,000 DAF in addition to the \$75,000 residual approved by the board at the June meeting. Mr. Pittman explained that the Board approved the methodology (Method 14) and, by error, the base distribution amount presented at the June meeting did not exclude the funding allocation of \$1.3M for Miller-Montgomery cases. Once that money was removed from the base distribution amount, the DAF changed for all districts. District 2 (Bienville, Claiborne, Jackson Parishes) which was to have received \$7,000 in DAF, got zero DAF funding as a result of the methodology but did receive the \$75,000 residual.

Mr. Harry Fontenot, District 14 (Calcasieu Parish) District Defender addressed the board. He reported a \$1.1M cut in DAF, a declining local revenue and that he would be requesting \$600,000 from the Board to address the accruing shortfall. However, he also reported a \$2M fund balance which directly resulted in the reduced DAF amount. Professor North indicated that the Budget Committee would be addressing this issue prior to the next Board meeting.

b. Capital Report Format. Mr. Mike Ginart indicated that the charts presented are not what he was looking for and do not answer the questions regarding capital cases which is needed in order to inform legislators. Chairman Holthaus suggested a different "measuring stick" that would measure how much money it takes to NOT go to (capital) trial. Mr. Pat Fanning reiterated the need to know that the money allocated to capital is being spent properly. He and Mr. Ginart agreed to meet with the Capital Case Coordinator to work out the details of a report containing the needed information.

c. Site Visit – Update. Dr. Simpson reported that staff will be visiting districts 11 and 12 between Jul 30 and Aug 30 to address new and existing issues in those districts. Mr. Moses Williams asked how staff determines which districts to visit. Dr. Simpson reported that any district in ROS is visited pursuant to the ROS protocols/guide, litigation in districts, requests for additional funds or salary increases, or other issues or concerns brought to the attention of staff would initiate a site visit.

d. Title 4E Funding (CINC). ISPD Richard Pittman reported that federal funding for CINC cases will be managed and distributed through DCFS; however, the details regarding the corresponding reporting requirements have not been finalized. He further reported that he believes that estimated funding in the amount of \$250,000 per year is less than originally anticipated. He agreed that the funds could be sent to the districts as “CINC” funds, but stressed that the funds should be used strictly for parent representation, as intended.

i. Defender Leadership Training, Sept. 17 – 18, 2019. Mr. Pittman reported that the 2019 Defender Leadership Training in September will focus on Title 4E funding.

10. Budget

a. Financial Report. Budget Officer Natasha Carter reported that because the state’s financial reporting (for the prior month) is not available until after the 6th business day of each month, that there was not sufficient time to compile a final financial report.

b. Solvency Projections. Mr. Pittman reported no new projections this early in the fiscal year. What is provided in the materials are all projections made for FY19 which indicate that by the end of fiscal year 2019, districts’ fund balances averaged within 7.57% of the February projections.

i. Local Revenues by District – FY18 vs FY19. For informational purposes, local revenue changes between FY18 and FY19 are provided. Twenty-two of the 42 districts were less than or above 10% of the local revenues projected for FY19² with eight of those being above 20 percent. Seventeen districts were 10 to 20 percent below FY 19 projections.³ Three districts fell greater than 20% below projections.⁴

c. Final 5% DAF and FY 19 Disbursements. Mr. Pittman reported the final DAF in the amount of \$515,909.25 and year end administrative funds in the amount of \$73,368.00 have been disbursed to the districts. Mr. Harry Fontenot, District 14 (Calcasieu Parish) District Defender reports losing approximately \$125,000 per month, indefinitely. Mr. Flozell Daniels asked for an evaluation by staff of other districts permanently losing money and the impact. Mr. Moses Williams suggested that the districts provide ideas on how better to fund their offices in preparation for talks with legislators on more stable and permanent funding sources.

d. FY20 DAF and CINC Disbursement. Mr. Pittman reported the initial FY20 DAF in the amount of \$22,638,233.72 – approximately two million dollars more than last year’s DAF -- and CINC monies in the amount \$979,680 have been sent out to the districts. Mr. G. Paul Marx, District 15 (Acadia, Lafayette and Vermilion Parishes) District Defender addressed the Board and suggested the Board look at what takes priority: districts that are faced with zero fund balances at the end of the year or making districts whole.

i. Residual Fund Options: District Grants. Mr. Pittman reported that the Method 14 distribution of the FY20 DAF left a “residual” of approximately \$736,000 (after the \$150,000 total payments to District 2 (Bienville, Claiborne, Jackson Parishes) and District 34 (St. Bernard Parish). He suggested several

² Districts above or below 10% projections: 10, 5, 11, 18, 12, 31, 30, 33, 8, 42, 1, 25, 19, 22, 9, 16, 7, 26, 3, 17, 41, 21

³ District 10-20% below projections: 32, 24, 27, 29, 23, 36, 38, 39, 4, 35, 2, 15, 28, 6, 20, 40, 13

⁴ Districts greater than 20% below projections: 14, 34, 37

options for discussion for the disbursement of the funds: 1) pro-rata distribution to the 16 districts that were cut from FY19 which would give them back approximately 40 percent; and, 2) a “grants” program to assist districts with addressing their local office issues, from hiring investigators and clerical to upgrading I.T. systems.

e. FY21 Budget Process. Ms. Carter reported that OPB has not announced the date that the FY21 budget is due but that staff has begun to submit divisional budgets for a compilation to be included in the agency’s full budgetary request. Last year’s budget request was \$66,743,462.

15. LPDB Division Reports. Mr. Holthaus reported that the Interim SPD, Capital and Juvenile reports are in the materials for review.

16. Announcements. Mr. Brian McRae, District 39 (Red River Parish) District Defender reported that the DDAC continues to meet and is taking the DAF very seriously and would like to bring their comments and work product to staff and the Budget Committee as they progress.

There was no new business brought for discussion.

17. Next Meeting(s). The next meeting is scheduled for Thursday, September 12, 2019 at 1:00 p.m. The Budget Committee will meet the same day at 12:00 p.m.

5. Executive Session. Judge Foote moved to go into Executive Session. Professor North seconded the motion which passed unopposed and guests and staff were asked to leave. Ms. Zita Andrus moved to leave Executive Session. Judge Foote seconded the motion which passed unopposed and the meeting returned to regular session. Chairman Holthaus called the regular meeting to order at approximately 3:12 p.m.

6. District 6 – District Defender - Ratification of Appointment and Salary of Interim District Defender, Ms. Angela Claxton, \$2,000/mo. Mr. Fanning moved to ratify the appointment of Ms. Claxton as the Interim District Defender in District 6 at a salary of \$2,000 per month pending the appointment of a permanent district defender. Mr. Ginart seconded the motion which passed unopposed.

7. District Defender – District 25 Recommendation. Mr. Pittman reported that all interviews have been completed and it is the Selection Committee’s and staff’s recommendation to appoint Ms. Chanel Long to the position of District Defender in District 25 (Plaquemines Parish). Professor North moved to adopt staff recommendation. Mr. Flozell Daniels seconded the motion. Upon a vote, the motion carried with six members in favor (Holthaus, Andrus, Daniels, Foote, North, Williams) and four against (Bowman, Fanning, Ginart, Roberts).

8. Capital Case Funding – Registry of the Courts - \$300,000; and,

9. 501(c)3contract amounts.

Since the last Board meeting, LPDB has been ordered to remit \$300,000 to the registry of the courts in 3 separate capital cases in Citizen litigation. Writs are being taken; however, a resolution to the *Citizen* litigation is being recommended in conjunction with the funding of the three capital trial programs, expert witness funds, and post-conviction for FY20.

Board counsel Maggie Broussard addressed the Board with the recommendation that Board enter into a Memorandum of Understanding or settlement to address orders issued by five trial courts

in six cases to fund capital defendants that have currently been appointed to counsel by those courts. This will encumber the \$1.4 million dollars that the board has remaining for FY20 to be expended on capital representation in trial cases, expert witness funding and in post-conviction cases. Further, she advised that doing so will address seven defendants currently awaiting counsel and will prevent or give the Board additional defenses against future such orders. Judge Foote moved to accept the recommendation and stretch the funds to the different areas as recommended. Professor North asked for clarification from Mr. Pittman on his recommendation. Mr. Pittman agreed that the disbursement of funds in this manner would maximize coverage including handling all cases currently in *Citizen* litigation. The programs would be able to staff up and cases would get representation. Professor North called the question and upon a vote there were eight Board members in favor and two in opposition (Bowman and Fanning).

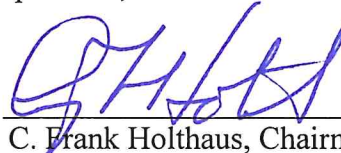
Professor North clarified that he voted for the recommendation in the belief that it will provide the best coverage for these cases. Mr. Fanning explained his opposition is that by settling this way, a precedent is created for this type of action in the future. Chairman Holthaus indicated the record should reflect that the entire board is concerned about the precedential consequences of this settlement. Mr. Williams suggested that the capital organizations should work with staff to formulate a simpler way to explain -- without graphs and charts -- how the programs work, what cases their programs are working on and what has been put into cases.

18. Adjournment. Mr. Pat Fanning moved to adjourn which was seconded by Ms. Zita Andrus and passed unopposed.

Guests:

Harry Fontenot	Chuck Reid	Reggie McIntyre
Bob Noel	Mike Courteau	Angela L. Claxton
Victor Papai	Amos Cormier	Herman Castete
Deirdre Fuller	Maggie LeBlanc	G. Paul Marx
Paul Fleming	Richie Tompson	Rene Bourg
Susan Kutcher Jones	Jené O'Keefe Trigg	Bruce Unangst
Brian McRae	Steven Thomas	Margaret Lagatutta
Richard Bourke	Raymond L. (LNU)	Derwyn Buntun
David E. Marcantel	Thomas Gernhauser	Don Kneipp
Lindsay Blouin	Sadé Lee	Yvette Beamon
Kyla Romanach	Kerry Cuccia	Mitch Bergeron
Michael A Mitchell	Maggie Broussard	Cecelia Kappel
Chanel Long	Autumn Harrel	John Lindner

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 8th day of August, 2019, as approved by the Board on the 12th day of September, 2019 at Baton Rouge, Louisiana.



C. Frank Holthaus, Chairman