



LOUISIANA PUBLIC DEFENDER BOARD

Tuesday, June 27, 2017
LSU Law Center, Tucker Room
1 Highland Road, Baton Rouge, LA
1:30 p.m.

MINUTES

1. Call to Order and Comments by Chairman, Frank Holthaus. A meeting of the Louisiana Public Defender Board, pursuant to lawful notice, was called to order by its Chairman, Mr. Frank Holthaus, on Tuesday, June 27, 2017, at the LSU Law Center, Tucker Room, Baton Rouge, at 1:45 p.m. Chairman Holthaus reported that a member was delayed but in route to the meeting. In an effort to expedite the meeting, he requested that the Board move forward with discussion only on items presented on the agenda.

The following Board members were present at the time the meeting was called to order:

Frank Holthaus
Patrick Fanning
Moses Williams

Chris Bowman
Donald North

W. Ross Foote
Ami E. Stearns

The following Board members were absent:

Zita Andrus
Katherine Gilmer

Flozell Daniels (arrived at 2:10 pm)
Michael Ginart

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

Jay Dixon, State Public Defender
Barbara Baier, General Counsel
Natashia Carter, Budget Officer
Jean Faria, Capital Case Coordinator
Anne Gwin, Executive Assistant
Carol Kolinchak, Trial Level Compliance Officer
Chase May, I. T. Support
Richard Pittman, Deputy Public Defender, Dir. of Juvenile Defender Services
Tiffany Simpson, Juvenile Compliance Officer, Legislative Affairs Director
Erik Stilling, Information and Technology Director

Professor North, Chairman of the Budget Committee, indicated the Committee needed to set its next meeting. Staff was instructed to secure meeting space at the Bluebonnet Regional Library on either August 9 or 10, 2017, at 10:30 a.m. and to send out notice upon securing the date and location.

Mr. Holthaus requested that the Board set its next meeting. After discussion and an attendance poll,¹ the next Board meeting was set for Wednesday, August 23, 2017, at 1:30 p.m. Staff was instructed to secure meeting space and to send out notice of the meeting as soon as possible.

1. Adoption of the Agenda*. This issue was returned to for action upon reaching quorum. **Judge Ross Foote moved to adopt the agenda as presented. Mr. Pat Fanning seconded the motion which passed unopposed.**

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

4. Adoption- Minutes / April 26, 2017*. This issue was returned to for action upon reaching quorum. **Mr. Flozell Daniels moved for adoption of the minutes of the April 26, 2017 meeting. Professor North seconded the meeting which passed unopposed.**

5. Financial Reports as of May 31, 2017*. Budget Officer Natasha Carter reported \$33,431,566 in either expended or encumbered funds for the 2017 fiscal year, \$578,750 projected to be spent by June 30, 2017 and \$74,306 available for reallocation. **Mr. Flozell Daniels moved to adopt the financial report as presented. Mr. Moses Williams seconded the motion which passed unopposed.**

6. Year End Disbursements*

a. Disbursement of the Remainder of FY17 DAF*. Mr. Dixon reported on the current projection of fund balances for the districts and a year-end DAF balance for distribution to the districts in the amount of \$318,529. Mr. Dixon reported that there are no districts projected to have a shortfall before the disbursal of any FY18 monies and gave staffs' recommendation to disburse FY17 monies pro rata. Professor North inquired when the monies could go out. Ms. Carter indicated dispersal can be immediate. Professor North reported that the Budget Committees recommendation is for the pro rata disbursal as listed on page 203 of the board materials. **Judge Foote moved that the State Public Defender disperse the remaining DAF funds of \$318,529, pro rata, immediately. Professor North seconded the motion which passed unopposed.**

b. Disbursement of Any Remaining Administrative Funds*. Mr. Dixon reported additional funds from the release or cancellation of previously obligated monies in the amount of \$74,306 are available to districts, as well and requested approval to disperse those funds. For clarification, Judge Foote inquired if staff is asking to distribute the FY17 DAF to the districts and under a separate request asking for authorization to distribute remaining administrative funds to the districts as well. Mr. Dixon confirmed that the goal is to have no remaining FY17 monies; however, he clarified that the distribution of the administrative monies would be by a different formula.

Mr. Dixon reported that staff's recommendation for the dispersal of the remaining FY17 administrative monies is to provide \$10,196 to District 28 (LaSalle) and \$12,170 to District 5 (Franklin, Richland, W. Carroll) to make those districts solvent after fund balance depletion. The remaining \$51,940 would then be split between Districts 1 (Caddo) and 19 (EBR).

¹ Mr. Holthaus set the meeting for 8/23/17 after taking a poll of the availability of those members present. Mr. Chris Bowman indicated his inability to attend on 8/23/17. The other date options were 8/22/17 and 8/24/17.

Mr. Fanning asked the district defenders present if there were any concerns with them in this dispersal format. Mr. Richard Stricks (District 40 – St. John the Baptist) proposed that the Board should consider making changes in the DAF so that it funds the same core services in every district. Not to be considered in the formula would be extra provisions that more rural districts cannot afford – retirement/health benefits and new electronic equipment, for example.

After a brief discussion on the status of the current DAF formula restructuring, it was decided that the Policy Committee is to address what expenses are to be taken into consideration for the Board to fund a fair distribution, while taking into consideration the work that has already been done toward a new formula. Professor North stressed that the district defenders are to provide their input to the Policy Committee. Staff was instructed to place this issue on the next Policy Committee agenda.

Judge Foote moved that the Board accept the \$74,306 administrative monies distribution recommendation with District 28 receiving \$10,196 and District 5 receiving \$12,170. Districts 1 and 19 are to receive 55% and 44% of the balance, respectively. Mr. Daniels seconded the motion which passed unopposed.

7. Disbursement of CINC Funds – FY18*. Mr. Dixon reported that staff is recommending the FY18 Child-In-Need-Of-Care (CINC) monies in the amount of \$980,680 be distributed pro rata to every district. Professor North inquired what the Board’s policy is on the distribution of CINC monies. Mr. Dixon stated that in the past fund accruing districts were excluded from receiving CINC monies; however, there are now too many accruing districts. He further stated that in the past the CINC distribution was based on the State Public Defender’s recommendation. Judge Foote stated that the Board needs to adopt a policy. Professor North agreed and indicated that the State Public Defender should develop a procedure for CINC distribution.

Professor North inquired whether the Budget Committee generally reviews CINC distribution and if so, why the Committee didn’t have the information prior to the Board meeting. **Mr. Chris Bowman moved that the dispersal of the FY18 CINC monies be deferred to the Budget Committee since it had not been given prior notice of the amounts. Professor North seconded the motion. After a brief discussion, Professor North withdrew his second of Mr. Bowman’s motion. Mr. Fanning seconded the motion. Upon the vote to defer the FY18 CINC distribution, the motion failed with three in favor and five in opposition. Judge Foote then moved to distribute one-half of the CINC funds and defer disbursement of the remaining funds to the Budget Committee for recommendation. Mr. Daniels seconded the motion, which passed unopposed.**

8. Budget Committee Report and Recommendations

a. **District Assistance Fund, FY18*. Budget Committee Chairman Donald North stated that it is the Budget Committee’s recommendation that \$20,322,490 of the total DAF (\$21,392,095) be distributed to the districts with the five percent balance (\$1,069,605) to be reserved for unforeseeable issues. Mr. Daniels seconded the motion. Upon vote, the motion passed with seven in favor and one opposed.**

b. Contract Amounts

i. 501(c)3 Programs*. Professor North reported that staffs’ funding recommendation as presented was passed by the Budget Committee with three of the committee members voting in favor. Professor North expressed his concern that the contracts as currently written do not provide for an accounting of the services for which the Board is paying. Mr. Bowman expressed his concern that some of the programs are allowed to maintain excessive fund balances while others are not, some have spend-down

requirements and some of the programs' services are not statutorily mandated. Mr. Bowman agreed that a cushion is needed but it should be reasonable. Judge Foote commented that each program has a different dynamic, their business mechanisms are different and the contracts have been vetted through the state on several levels. **Judge Foote then moved that the Board accept the Policy Committee's recommendation for the contracts to be reviewed for re-structure and later amendments and to accept the Budget Committee's recommendation to fund the programs for amounts as presented pending the Policy Committee's further review of the contracts. Mr. Daniels seconded the motion.**

Professor North stated that the Board needs to know how much money is available to each program on a regular basis so that the Board has a better idea of what amounts to fund them in subsequent years. Mr. Williams restated the Policy Committee's decision that the contracts be restructured to provide more accountability and that the programs would no longer get their payments in 1/12th increments, but rather would be paid for services provided. Professor North expressed his concern that there are funds being held up and not made available to others in need. Mr. Holthaus agreed that the Budget Committee needs to review the programs' accounts for "old" money and asked that the issue be put on the Budget Committee's next meeting agenda.

A motion was made and seconded to renew the 501c3 contracts and fund them as recommended by the Budget Committee as presented on page 207, Column E. Upon vote, the motion failed with a tied vote of 4 to 4. Mr. Holthaus moved to fund the contracts by one-half and have the Budget Committee locate the old money. Mr. Daniels seconded the motion. Mr. Williams offered a friendly amendment to have six month contracts pending the policy changes requiring extra accountability written into new contracts. Mr. Holthaus accepted the friendly amendment.

Mr. Kerry Cuccia, Executive Director of the Capital Defense Project of Southeast Louisiana, urged the Board to approve the contracts and contract amounts as recommended by the Policy and Budget Committees respectively in order to get them in line for approval so that there is no disruption in services to the clients. He reminded the Board that the contracts can be cancelled with 30-days notice. Mr. Looney stated that by having six month contracts and not encumbering those monies, there is a risk that the state will take it. Mr. Chris Murell reported that a six month contract could easily result in his program (Capital Appellate Program – CAP) running through their entire three-month reserve. **Mr. Holthaus withdrew his motion and Mr. Williams withdrew his amendment. Judge Foote then moved to accept the Budget Committee's recommendation to fund the 501c3 programs as presented and adopt the Policy Committees recommendation to renew the current contracts with the right reserved to cancel or modify them. Mr. Daniels seconded the motion. Upon vote the motion passed with five in favor, two opposed and one abstaining. Mr. Holthaus directed the Budget Committee to look at the fund balances for excess funds and directed the 501c3 programs to make the information available to the Budget Committee.**

ii. Professional and Consulting Contracts*. Professor North indicated that the Budget Committee took no action on this issue. Mr. Bowman inquired as to the feasibility of contracting with Mr. John Holdridge whose job duties are similar to the duties of the Capital Case Coordinator. Additionally, the LPDB also employs an assistant to the Capital Division. Capital Case Coordinator, Jean Faria, explained that Mr. Holdridge is

an expert in capital issues, organizes the mandatory annual capital training and assists with the capital certification process. She further explained that her assistant handles the expert witness fund and clerical work. **Mr. Bowman moved to approve all consulting and professional contracts except John Holdridge to assist the Capital Case Coordinator. Mr. Fanning seconded the motion. Upon vote, the motion failed two in favor and six in opposition.**

Mr. Daniels reported that it was discussed at length in the Budget Committee and decided that this contract was necessary for LPDB to meet its statutory mandates. After a brief discussion, **Professor North moved to accept the recommendation of staff with Ms. Faria instructed to provide the Holdridge contract outlining his duties and responsibilities and to obtain detailed billing. Upon vote, the motion passed with six in favor and two in opposition.**

- c. **Transferal of Administration of Expert Witness Fund to CPCPL***
Mr. Dixon reported that the Budget Committee is recommending the transfer of the Expert Witness Fund contract for the administration of payments from the fund from the Louisiana Appellate Project (LAP) to the Capital Post Conviction Project of Louisiana (CPCPL) and the transfer of the monies in the fund at the time of the transfer. **Judge Foote moved to accept the Budget Committee's recommendation. Professor North seconded the motion and upon vote the motion passed with seven members in favor and one in opposition.**
- d. **District 36 – District Defender Salary Increase^{2*}.** Mr. Dixon reported that the Budget Committee is recommending a salary increase in the range of \$80,000-\$90,000. He further reported that the range is fair and within LPDB's salary ranges. **Judge Foote moved to accept the recommendation and to approved a salary of \$90,000 for Mr. Wallace. Professor North seconded the motion which passed unopposed.**
- e. **Director of Training, La. R.S. 15:153*.** Professor North reported that the Budget Committee is recommending the filling of the Director of Training position at a salary of \$100,000 with a preference for an in-house candidate who would take on additional duties at that salary. Mr. Moses Williams reported that the Policy Committee agreed with filing with position but removed the in-house candidate requirement. Mr. North withdrew the recommendation. **Mr. Bowman moved to fill the statutorily mandated Director of Training position without a limitation for an in-house candidate and for the final hiring to be subject to recommendation to the Board. Professor North seconded the motion. Mr. Holthaus added that the salary would be up to \$100,000. Mr. Bowman accepted the amendment. Upon vote, the motion passed unanimously.**
- f. **Statutory Positions.** Mr. Dixon reported that Trial Level Compliance Officer Carol Kolichak has submitted her resignation and he is requesting authority to advertise the vacant position. Mr. Holthaus thanked Ms. Kolinchak for her service and that a Board resolution would be presented at the next meeting. **Professor North moved that the State Public Defender be authorized to advertise the Trial Level Compliance position. Mr. Bowman seconded the motion which passed unanimously. Upon vote**

² The Board may vote to go into executive session pursuant to La. R.S. 42:16 and 42:17 (formerly La. R.S. 42:6 and 42:6.1), by a two-thirds vote of the members present. The executive session is limited to matters allowed to be exempted from public discussion pursuant to La. R.S. 42:17, including character and professional competence of a person; provided, however, such person(s) may require that such discussion be held at an open meeting pursuant to La. R.S. 42:17(A)(1). The District Defender for the 36th JDC being recommended by the Budget Committee for a salary increase and has requested that discussion of the issue be in executive session.

the motion passed unanimously. Mr. Williams asked whether the Director of Training position would also be advertised. Mr. Dixon indicated that it would.

9. Policy Committee Report and Recommendations

a. Expert Witness Fund Changes and Recommendations.

i. Creation of a Policy to Create a Fund for Non-Capital Cases. Judge Foote reported that the Policy Committee is recommending that the Board create a policy addressing the need for expert witness funds in non-capital cases and creating the fund. No action was taken by the Board.

ii. Funding Mechanism for the Separate Fund*. Judge Foote reported that the current expert witness rule is to cease funding of experts approved on capital cases if and when that case should be reduced to non-capital. He indicated that the Policy Committee is recommending that the Board form a Working Group made up of District Defender(s), 501(C)3 program director(s) and a Board member to create 1) a mechanism to fund expert witnesses in non-capital cases; and, 2) study the feasibility of maintaining either one expert fund split to support both capital and non-capital expert witnesses or alternatively, to have two separate funds. He stressed that the funding of non-capital expert witnesses cannot come from the 65% allocation of LPDB's budget to the DAF. The working group is to address the criteria for the continued funding of experts in reduced cases.

Judge Foote further reported that in the matter of *State v. Boys*, (a capital case) experts have been approved for services. The case has recently shifted to non-capital. Under the current rule, those experts can no longer be funded. **After discussion, Judge Foote moved that if an expert has been approved in a case and that case shifts to non-capital, upon review of the justification for the need for the expense, the capital expert witness fund is to be made available in order for those experts to complete work relevant to the non-capital case, rather than make the district start over. Mr. Holthaus amended the motion to be specifically for State v. Boys. Judge Foote accepted the amendment. Upon vote, the recommendation passed seven in favor and one in opposition.**

b. Contracts*

i. 501(C)(3). Judge Foote reported that at the May 19, 2017 Policy Committee meeting, the Committee voted to restructure the 501c3 contracts to make all programs in more in line with the Louisiana Capital Assistance Center's (LCAC) business mechanism, incorporating more accountability. He indicated that the Executive Directors of the programs are to work with LPDB General Counsel to draft amendments to the existing contracts to reflect modifications. At the Policy Committee meeting it was agreed that these contract modifications would be presented to the full Board by the end of July, 2017; however, there may be some delays. **There was no action taken on this issue by the Board.**

10. Executive Session³*. The Board did not go into Executive Session.

11. Legislation, 2017. Dr. Tiffany Simpson gave a brief report on session outcomes that affect public defense and/or the LPDB.

³ The Board may vote to go into executive session pursuant to La. R.S. 42:16 and 42:17 (formerly La. R.S. 42:6 and 42:6.1), by a two-thirds vote of the members present. The executive session is limited to matters allowed to be exempted from public discussion pursuant to La. R.S. 42:17, including strategy sessions with respect to litigation and prospective litigation after formal demand. In accordance with La. R.S. 42:19(A)(b)(iii), the Board may discuss the following: *Joseph Allen et al v. John Bel Edwards*, et al, Docket: C655079, Section 27, 19th JDC, Parish of East Baton Rouge.

12. LPDB Division Reports. Mr. Dixon reported that reports from the juvenile and capital divisions are available for review in the Board materials.

13. Other Business

a. OPB-COA Potential Budget Reduction Scenarios. Mr. Dixon reported that LPDB's budget analysts at the Office of Planning and Budget (OPB) have informed staff that there is the potential for an 8% decrease to LPDB's FY18 proposed budget. As the proposed FY18 LPDB budget is \$33,920,091, the 8% cut would be \$2,713,607. The materials contain two scenarios for information purposes only.

Mr. Fanning requested a Resolution thanking Mr. Thomas Davenport for his service. Judge Foote indicated the Resolution should be by acclamation. Mr. Holthaus instructed staff to draft the Resolution for the next meeting.

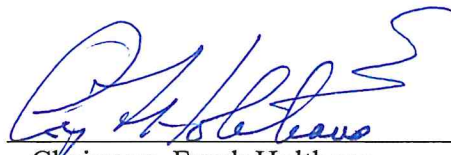
14. Next Meeting(s) Scheduled. The Board scheduled the next meeting for Wednesday, August 23, 2017. The location will be announced once it is confirmed.

15. Adjournment. Professor North moved to adjourn and was seconded by Mr. Williams. The meeting adjourned at approximately 4:20 p.m.

Guests:

Chris Murell	Aaron Clark-Rizzio	Tony Champagne
Ella Kleibert	Mike Courteau	Jim Looney
Richard M. Tompson	Colin Reingold	Emily Maw
Richard B. Stricks	Kimya Holmes	Harry Fontenot
Margaret Lagattuta	John Lindner	Kyla Romanach
Bruce Unangst	Kerry Cuccia	David Wallace
Herman Castete	Susan K. Jones	Raven Hunter
Remy Starnes	Anthony Hamilton	Michael A. Mitchell
Deirdre Fuller	Mark Plaisance	

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 27th day of June, 2017, as approved by the Board on the 23rd day of August, 2017, at Baton Rouge, Louisiana.



Chairman, Frank Holthaus