



LOUISIANA PUBLIC DEFENDER BOARD

May 22, 2018

Bluebonnet Regional Library

9200 Bluebonnet Boulevard

1:30 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 Tuesday, May 22, 2018, at Bluebonnet Regional Library, Baton Rouge, at 1:30 p.m.

The following Board members were present:

Zita Andrus

Patrick Fanning

Katherine Gilmer

Moses Williams

Chris Bowman

W. Ross Foote

Mike Ginart

Flozell Daniels

C. Frank Holtaus

Donald North

The following Board member was absent:

Ami Stearns

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

Richard Pittman, Deputy Public Defender, Dir. of Juvenile Defender Services

Tiffany Simpson, Juvenile Compliance Officer, Legislative Affairs Director

Erik Stilling, Information and Technology Director

2. Adoption of the Agenda. Mr. Chris Bowman moved to adopt the agenda as attached which was seconded by Mr. Mike Ginart and passed unopposed.

3. Call for Public Comment.

Mr. Tom Gernhauser, District Defender, District 34 announced the passing of line defender Thomas Delahaye Dunn; Mr. G. Paul Marx, District Defender, District 15 introduced public defenders who have dedicated their careers to indigent defense and their children who are

following in their footsteps: Ms. Janet Brown and her daughter Courtney, Mr. Ed Marquet and his son Jean Pierre; and Mr. Randal McCann and his daughter Lauren Hue. Mr. Ginart moved to recognize by Resolution of the Board Mr. Dunn for his years of service. Judge Foote seconded the motion. Mr. David Marcantel announced the death of his father, Bernard N. Marcantel. Professor North moved to recognize by Resolution of the Board Mr. Marcantel for his years of service which was seconded by Ms. Zita Andrus.

4. Adoption the Minutes, April 4, 2018 Meeting. Mr. Flozell Daniels moved to adopt the Minutes of the April 4, 2018 meeting as presented. Mr. Mike Ginart asked to amend the minutes to include discussion at Item 8-Legislative Update, that Dr. Tiffany Simpson, Legislative Director be directed to provide the Board with updates on the current bills regarding health benefits to the district offices and the options that may be available, which was omitted. Mr. Daniels accepted the amendment. Judge Foote seconded the motion and the minutes as amended passed unopposed.

5. Regular Legislative Session Report. Dr. Simpson reported that the Regular Legislative Session ended early without passage of a budget, with House Bill 1 likely to be vetoed by the Governor. A special session is to end Jun 4, 2018. She further reported the failure of HB 167 which would have increased the percentage of the Public Defense Fund to 70%, the passage of SB 317 which addresses Board member meeting attendance; the passage of SB 400 which un-dedicates the CINC fund in 2021; the passage of HB677 which provides districts with the option for parochial healthcare; and, the passage of the SB 243 will abolish non-unanimous juries in felony cases if passed by the voting public. Mr. Aaron Clark-Rizzio, Executive Director of the Louisiana Center for Children's Rights (LCCR) gave a brief summary of the juvenile bills this session and Ms. Emily Maw announced her position as director of IPNO ending effective June 1, 2018 to be replaced by Ms. Jee Park. Ms. Park quickly summarized the successful passage of HB 38 which impacts the way police conduct eyewitness identification investigation and witnesses.

6. Policy Committee Report and Recommendations

a. Restriction of Services. State Public Defender Jay Dixon presented parameters for remaining in or exiting ROS that were developed at the recent Policy Committee and the district "snap shots" developed by staff. Chairman Holthaus stated that staff has been tasked with incorporating these parameters and any other brought for discussion into a policy for consideration by the Board. Mr. Dixon clarified that parameter number 2 as presented should read "six months" and not "one year". Mr. Flozell Daniels then moved to accept the parameters as amended. Mr. Chris Bowman seconded the motion and upon vote the motion passed unanimously.

A brief discussion continued with Mr. Alan Robert (District 23) suggesting "partial" ROS which would remove capital caseload from a district's responsibilities and Mr. Derwyn Buntun (District 41) suggesting a "stress test" for determining a district's stability before being able to leave ROS – and/or meeting certain requirements before exiting be considered. Mr. Dixon indicated all of those suggestions could be considered.

i. Capital ROS. Mr. Dixon presented current capital caseload information and reported that the programs are at capacity and can no longer provide capital representation. Mr. Holthaus reported that a letter notifying the Governor, President of the Senate, Speaker of the House and Chief Justice of the Supreme Court of this critical status has been issued.

b. FY19 - Miller-Montgomery Funding Administration. Mr. Dixon reported that the Governor is recommending an additional \$1.34M in LPDB's FY19 budget for *Miller* and *Montgomery* representation. He further reported that staff's recommendation to the Policy Committee is to segregate the funds – which are not statutorily dedicated – from the Public Defense Fund, to be disbursed to the districts only for *Miller/Montgomery* cases. He indicated that for discussion is how to manage the fund and reported that Mr. Richard Bourke has suggested the pooling of resources which would be allotted to the districts which have smaller *Miller/Montgomery* caseloads and using those funds to contract with a team or program equipped to handle them on a regional and/or statewide basis. Mr. Dixon indicated funds would also be needed for experts. Ms. Pamela Smart reported that the District Defender Advisory Council (DDAC) is meeting in June and will be also be discussing the issue. Judge Ross Foote, chairman of the Policy Committee, reported that the recommendation of the Policy Committee is that a policy be developed that all proposed funds go directly to the districts and be divided by percentages to be determined for caseload, grants and experts.

Professor North expressed concern on the accounting of the funds. Mr. Holthaus stated that both Policy and Budget Committees are to be involved in determining the process on how to distribute and control the fund.

Mr. Chris Bowman moved to suspend action on the issue pending further information from Mr. Richard Bourke and the DDAC. Professor North seconded the motion. Mr. Holthaus referred the matter for consideration by both committees.

c. Legislative Activity Policy. Mr. Dixon presented two draft policies addressing legislative activity and a third draft policy based on discussions at the recent Policy Committee meeting for further discussion and Board consideration. Mr. Holthaus thanked the Policy Committee for its work and moved to pass this issue. Mr. Mike Ginart seconded the motion which passed unanimously.

7. Budget Committee Report and Recommendations

a. Solvency Projections. Mr. Dixon presented current solvency projections for informational purposes only.

b. FY18 District Office Exigency Requests and c. FY18 – Final DAF Disbursement. Mr. Dixon reported that five districts have requested funding pending the first disbursement of FY19 DAF (District 8 - \$40,000; District 13 - \$5,500; District 16 - \$88,477; District 19 - \$358,112; and District 28 - \$15,000) and the Budget Committee is recommending disbursement of FY18 funds to those districts as presented. Mr. Dixon reported that after exigency payments totaling \$507,089, the Budget Committee is recommending the distribution of the remaining DAF in the amount of \$208,802.77, pro rata, to all districts, following the original FY18 distribution formula. Mr. Pat Fanning moved to distribute the funds as presented. Mr. Bowman seconded the motion and upon vote the motion passed unanimously.

Professor North moved to amend the agenda and to recommend for adoption the current Financial Report through April 30, 2018, which has been approved by the Budget Committee. Mr. Flozell Daniels seconded the motion which passed unopposed.

d. Authority to Disburse FY18 Year End Funds*. Mr. Dixon reported approximately \$149,238 currently available in LPDB operating funds available for reallocation to the districts and requested authority to distribute the funds as best to protect the districts as recommended by the Budget Committee. Professor North reiterated that the Budget Committee is recommending that staff be authorized to disburse the funds as needed. Mr. Flozell Daniels seconded the motion which passed unopposed.

e. FY18 501(c)3 Contract Overages. Capital Case Coordinator Jean Faria explained, for informational purposes, that pursuant to agreement and as part of their compliance, three programs are notifying staff (voluntarily in FY18) that they are currently exceeding their contractual obligations. Professor North asked for clarification. Ms. Faria explained that the three programs which have sent notice have exceeded their contractual amount by more than 5% and are now technically working for free; and, if they want to implement the provision in their contracts allowing them to request payment for the overage, they may.

f. FY19 Executive Budget Recommendation. Mr. Dixon reported that as of today House Bill 1 has failed to pass and the LPDB budget for FY19 is still unknown so all figures being presented are estimates based on the governor's recommended amounts.

1. 24% FY19 Budget Reduction Request and Response. On Thursday, May 10, 2018, staff was asked to submit the presented scenario for a 24.2% cut to the LPDB FY19 recommended budget.

2. FY19 DAF. Mr. Dixon reported that when calculating the DAF, the \$1.34M additional proposed funding for *Miller-Montgomery* cases was removed to make sure that those funds all go to the districts (like CINC) and not incorporated it the Public Defense Fund which would subject it to the 65 percent. law. He reported the projected FY19 DAF amounts (less *Miller/Montgomery*) are pursuant to the Board approved i2B Hybrid formula (85% pursuant to the Postlethwaite and Netterville Plan, 10% pursuant to the PDAL plan and 5% reserved for exigency). He clarified that the same formula will apply to whatever funding LPDB is allocated for FY19.

Mr. Daniels moved to accept the DAF disbursement as presented. Mr. Bowman seconded the motion. A brief discussion was had and Mr. Bowman offered an amendment to the motion that staff be authorized to disburse the initial first quarter of DAF subject to the formula with the Board to address the remainder at the July meeting. Mr. Daniels accepted Mr. Bowman's amendment and upon vote, the motion passed unanimously.

3. FY19 CINC. Mr. Dixon reported \$979,680 in CINC funds available for disbursement pursuant to the policy. Professor North moved that the CINC disbursement be accepted as proposed by staff. Mr. Daniels seconded the motion which passed unopposed.

g. Salary Increase Request, District 14. Mr. Dixon reported the Budget Committee is recommending a salary increase for District Defender Harry Fontenot in District 14 from \$105,000 to \$120,000. Mr. Fanning seconded the recommendation which passed unopposed.

8. 501(c)3 Contracts – FY19. Mr. Dixon presented the program contracts implementing Board terms for approval. Judge Foote moved to accept the contracts as presented. Professor

North seconded the motion which passed unopposed.

9. District Defender G. Paul Marx Email of April 4, 2018. Mr. Flozell Daniels addressed the Board and expressed his dismay and concern over a recent email communication containing inconsistencies, but deferred to the Board for further discussion. Mr. Holthaus thanked Mr. Daniels for bringing the issue to the public and urged everyone present to work in unity.

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

11. The State of Capital Defense in Louisiana. Mr. Holthaus presented the notification letter submitted by Mr. Dixon and he as reported earlier in item 6ai.

12. District Defender Advisory Council. Mr. Dixon reported that the DDAC election was held and the council's first meeting will be held in June.

13. Division Updates are available in the materials.

14. Other Business.

a. District Defender Harry Fontenot (District 14) reported career public defender Eugene Bouquet is retiring after 25 years of service. A motion was made to extend the Board's commendation for Mr. Bouquet's service to the state of Louisiana which was seconded and passed unopposed.

b. Mr. Richard Pittman introduced Mr. Ahmed Lavalais of the University of California at Berkeley Law School, Clinical Program who addressed the Board briefly regarding his pending research on fines, fees, monetary sanctions and bond in the Louisiana Juvenile Court system.

Jean Faria asked for permission to expend \$5,200 on statewide annual membership to the National Association for Public Defense. Mr. Holthaus instructed the issue to be placed on the next agenda for action.

Professor North asked for discussion of a cost of living adjustments for Board staff to be placed on the next agenda.

15. Next Meeting. The Board set its next meeting for July 17, 2018.

16. Adjournment. Mr. Mike Ginart moved to adjourn. Professor North seconded the motion which passed unopposed. The meeting adjourned at approximately 3:45 p.m.


Guests:

John W. Lindner
Alan Robert
Kyla Romanach
Mark Plaisance
Derrick Carson
Deirdre Fuller
Jason Hessick
Reggie McIntyre
G. Paul Marx

Randall McCann
Richard Bourke
Tony Champagne
Herman Castete
Aaron Clark-Rizzio
Pam Smart
Paul Fleming
Harry Fontenot

Lauren Hue
Bruce E. Unangst, II
Ella Kliebert
David E. Marcantel
Jill Pasquarella
Judy Pugh
Kerry Cuccia
Maggie Simon LeBlanc

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 22nd day of May, 2018, as approved by the Board on the 17th day of July, 2018, at Baton Rouge, Louisiana.



Donald North, Vice Chairman