



# LOUISIANA PUBLIC DEFENDER BOARD

Bluebonnet Regional Library  
9200 Bluebonnet Boulevard  
Baton Rouge, LA  
Thursday, January 26, 2017  
1:30 p.m.

## AGENDA

1. Call to Order and Comments by Chairman, Frank Holthaus
2. Adoption of the Agenda - Action\* pgs. 1-2
3. Call for Public Comment
4. Adoption- Minutes/December 15, 2016 - Action\* **Tab 1**, pgs. 3-8
5. Board Committees – Discussion **Tab 2**
  - a. Policy Committee - Action\*
    - i. Proposed Draft Agenda - Information pgs. 9-10
  - b. Budget Committee - Action\*
    - i. Proposed Draft Agenda - Information pg.11
6. Report and Comments of the SPD - Information **Tab 3**
  - a. Meeting with Office of Planning and Budget pgs. 12-14
  - b. Meeting with Commissioner of Administration pgs.15-18
  - c. Joint Legislative Committee on the Budget
  - d. Board Meeting Locations/Board-Staff Travel/Expenses pgs.19-20
  - e. LPDB Internal Audit pg. 21
  - f. 2016 Annual Report – February 1, 2017
7. Budget and Fiscal **Tab 4**
  - a. Financial Report - Action\* pgs. 22-26
  - b. Contract Amendments – Action\*
  - c. Expert Witness Fund – Discussion
  - d. DAF Balance Distribution Scenarios – Information/Discussion pgs. 27- 28
  - e. DAF – Balance Distribution - Action\*
8. Break-away Public Defender Boards – Information/Discussion **Tab 5**, pgs. 29-33
  - a. Draft Resolution - Action\* pgs. 34 -35

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| 9.  | Justice Reinvestment Task Force – Information          | <b>Tab 6</b> , pgs. 36-49 |
| 10. | Juvenile Strategic Plan - Information                  |                           |
| 11. | ROS - Information                                      |                           |
| 12. | Outreach, 2017 - Information                           |                           |
| 13. | Mandatory Trainings/Financial Disclosure – Information | <b>Tab 7</b> , pgs. 50-55 |
| 14. | Other Business – Information/Discussion                | <b>Tab 8</b>              |
|     | a. New Items Arising Since Last Meeting                | pgs. 56                   |
| 15. | Next Meeting(s)/Proposed - Action*                     | <b>Tab 9</b> , pg. 57     |
| 16. | Executive Session <sup>1</sup> - Action*               |                           |
| 17. | Adjournment - Action*                                  |                           |

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<sup>1</sup> 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: *Darwin Yarbles, Leroy Shaw and Douglas Brown v. Derwyn Bunton and James T. Dixon, Jr.* Civil Action: 3:16-cv-31, Middle District of Louisiana; *LPDB v. Dorroh, et al.* Docket: 2015CA1401, First Circuit Court of Appeal; *State v. Landon Broussard*, Docket 2013-CR-140699, 15<sup>th</sup> JDC, Parish of Lafayette; *State v. Viator* Docket: 60737, 15<sup>th</sup> JDC, Parish of Vermilion; Southern Poverty Law Center; *LPDB v. Capital Assistance Project of Louisiana*, 19<sup>th</sup> JDC, Docket: 634,701, Section 27; EEOC complaint filed by Joy R. Jackson, charge no: 846-2016-30769.



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Thursday, January 26, 2017  
1:30 p.m.

### MINUTES

**1. Call to Order and Remarks by the Chairman.** A meeting of the Louisiana Public Defender Board, pursuant to lawful notice, was duly convened and called to order by its Chairman, Mr. Frank Holthaus, on Thursday, January 26, 2017 at 1:40 p.m. at the Bluebonnet Regional Library in Baton Rouge.

The following Board members were present:

Frank Holthaus, Chair  
Thomas Davenport  
Katherine E. Gilmer  
Moses Williams

Zita Andrus  
Patrick Fanning  
Michael Ginart

Flozell Daniels  
W. Ross Foote  
Donald North

The following Board member was absent:

Chris Bowman

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  
Richard Pittman, Dep. State Public Defender, Dir. Juvenile Defender Services  
Tiffany Simpson, Juvenile Compliance Officer, Legislative Affairs Director  
Erik Stilling, I.T. Director

**2. Adoption of the Agenda.** Mr. Patrick Fanning moved to adopt the agenda as presented. Judge Foote seconded the motion.

Mr. Thomas Davenport addressed the board concerning the procedure for Board members having items placed on an agenda.

After a brief discussion it was decided that items requested by Board members are to be placed on the agenda until the Policy Committee sets a proper protocol. Upon vote the agenda was adopted with one dissenting vote.

**3. Call for Public Comment.** Mr. Holthaus announced that staff has formatted a sign-in sheet for those who wish to speak on an agenda item which will be used pending the Policy Committee's protocol recommendation. He assured those present that not signing in does not prohibit anyone from speaking on an issue. Mr. Holthaus acknowledged Mr. Richard Stricks, Mr. Jim Looney and Mr. Richard Tompson who have asked to address the Board.

**4. Adoption- Minutes/December 15, 2016.** Mr. Flozell Daniels moved to adopt the Minutes of the December 15, 2017 meetings, as presented. Professor Donald North seconded the motion. Professor North raised a question about whether he had been appointed to chair the Budget Committee at the last meeting. Chairman Holthaus acknowledged the confusion and clarified (see Agenda Item 5 below). Mr. Davenport expressed his concern that the minutes do not contain any discussion regarding the encumbered funds currently being held by the Louisiana Appellate Project and that there was no mention of the Budget Committee which he believed was formed at the December meeting. Professor North moved to amend the minutes to include those issues. Mr. Ginart seconded the motion. After discussion, Mr. Holthaus asked Mr. Davenport to submit a letter with the language to be included so that the minutes could be amended to Mr. Davenport's satisfaction. The motion to amend the minutes passed. Mr. Fanning suggested that everyone should be required to read the minutes prior to meeting and submit any proposed changes to staff for inclusion in the draft minutes for approval.

Mr. Holthaus indicated the question was called and upon a vote of the motion to adopt the minutes, the motion passed with one dissention.

**5. Board Committees**

**b. Budget Committee.** (This item was brought for discussion out of place on the agenda.) Mr. Holthaus appointed Professor Donald North as Chairman of the Budget Committee. He further appointed Ms. Zita Andrus, Mr. Flozell Daniels, Mr. Thomas Davenport and Mr. Mike Ginart to serve on the committee. Judge Foote moved to accept the appointments to the Budget Committee as presented by the Chairman. Professor North seconded the motion which passed unopposed.

**i. Proposed Draft Agenda.** The draft agenda was not discussed.

**a. Policy Committee.** Mr. Holthaus appointed Judge Ross Foote as Chairman of the Policy Committee. He further appointed Mr. Chris Bowman, Mr. Patrick Fanning, Ms. Katherine Gilmer and Mr. Moses Williams to serve on the Policy Committee. Mr. Flozell Daniels moved to accept the appointments to the Policy Committee as presented by the Chairman. Professor North seconded the motion which passed unopposed.

**i. Proposed Draft Agenda.** The draft agenda was not discussed.

The Chairman reiterated that all actions of the Committees are subject to approval of the full board.

**6. Report and Comments of the SPD.**

**a. Meeting with Office of Planning and Budget.** State Public Defender Jay Dixon provided information on his recent meeting with OPB.



**b. Meeting with Commissioner of Administration.** Mr. Dixon provided information on his recent meeting with Commission of Administration Jay Dardenne.

**c. Joint Legislative Committee on the Budget.** Mr. Dixon informed the Board that the Joint Legislative Committee on the Budget is meeting on Friday, January 27, 2017.

**d. Board Meeting Locations/Board-Staff Travel/Expenses.** Mr. Dixon explained the documents outlining board member and staff projected travel expenses should the board choose to hold half of its meetings out of Baton Rouge. Mr. Davenport stated that every other board meeting should be held outside of Baton Rouge in order to get more exposure. Interim District Defender Bob Noel indicated that an auditorium in his district is available. District Defender Deirdre Fuller (District 9 – Rapides Parish) stated that the Police Jury Room in Rapides Parish is also available. Mr. Ginart indicated available space in Chalmette. Mr. Harry Fontenot (District Defender, District 14 – Calcasieu Parish) indicated space was available in Lake Charles. Mr. Jim Looney, Executive Director of LAP suggested videotaping the meetings and putting them on the website. Mr. Holthaus directed staff to study the feasibility of videotaping the Board meetings. Mr. Davenport indicated at least one meeting per year should be held in Shreveport.

Mr. Ginart moved to invite that proposals be made and submitted to staff as to where the meetings should be held and the available facilities. Mr. Fanning seconded the motion.

**e. LPDB Internal Audit.** Mr. Dixon informed the Board that LPDB’s internal auditing responsibilities lie with the Commissioner of Administration and that the process has begun for LPDB’s internal audit as required by La.R.S. 36:8:2.A.

**f. 2016 Annual Report – February 1, 2017.** Dr. Erik Stilling thanked the Districts for their seamless reporting submittals and informed the board that the annual report is completed ahead of scheduled and to be delivered next week.

## 7. **Budget and Fiscal**

**a. Financial Report.** Budget Administrator Natasha Carter reported \$31,626,504 expended or encumbered to date -- which represents 93% of the LPDB budget – and, \$2,499,606 projected to be spent through June 30, 2017, leaving a \$102,825 deficit.

Mr. Davenport expressed concern over operating under a deficit and inquired whether it is possible to disperse the remaining DAF balance due to the districts with the current deficit. Ms. Carter informed the Board that contracts would have to be reduced. Mr. Davenport requested further clarification for the issues impeding the dispersal of the 1.2M balance due to the districts. Mr. Dixon clarified that the LPDB budget is currently over-encumbered by \$102,825 and contracts will have to be cut by that amount in order to release the full \$1.2million to the districts. Mr. Dixon further iterated that it is not his recommendation at this time to disperse all funds, but rather that this be referred to the Policy and Budget Committees for a policy to be put in place outlining how the funds are to be dispersed in a reasoned and sensible manner.

Mr. Davenport further inquired how the deficit went from approximately \$507,000 last month to \$102,000. Mr. Dixon explained that contracts had been cut, including funding to the Louisiana Appellate Project for the Expert Witness Fund in the amount of \$100,000. Mr. Davenport asked for clarification regarding the cuts to Mr. Looney’s contract, specifically if the funds were taken from “encumbered” amounts. He specifically asked Mr. Looney if LAP’s budget was reduced. Mr. Looney clarified that

the balance remaining on the EWF contract to be distributed in 1/12 increments was reduced but no money returned.

Ms. Carter clarified that contracts would have to be cut for the full DAF amount of \$1.2M to be released which would take about three weeks.

Mr. Dixon gave a brief history of how the EWF came to be administered by LAP and the protocols that are in place to track fund balances and payments. After discussions Mr. Fanning stated that staff should do what is needed to release the \$102,825 and provide their recommendation to the Budget Committee for dispersal. Professor North requested a committee deadline. Mr. Fanning requested that there be specific deadlines for the Committees to address these issues prior to the next board meeting. Mr. Holthaus directed the chairmen of both Policy and Budget committees to meet and resolve the \$102,825 deficit and provide recommendations for the subsequent dispersal of DAF to the districts prior to the next Board meeting

Mr. Dixon then brought impending shortfall in District 5 (Franklin, West Carroll, Richland Parishes) to the attention of the board. Interim District Defender Bob Noel reported his district will not have operating funds in March of 2017 and will need approximately \$50,000 to get through the fiscal year. Professor North moved to direct staff to submit a voucher to disperse \$50,000 to District 5 at the earliest possibility but no later than 72 hours from today. Mr. Flozell Daniels seconded the motion which passed unopposed.

Mr. Holthaus directed Budget Committee to make recommendations on how to free up the DAF money and directed the Policy Committee to make recommendation on how to disperse the DAF money.

Mr. Holthaus asked to schedule the next Board meeting. The Board agreed to meet on Thursday March 23, 2017, at 1:30 at the Bluebonnet Library in Baton Rouge, if possible.

Mr. Holthaus then turned the discussion back to item 7a for public comment. Mr. Richard Tompson, District Defender for District 24 (Jefferson Parish), Mr. Paul Marx, District Defender for District 15 (Acadia, Lafayette, Vermilion) and Mr. Alan Robert, District Defender, District 23 (Ascension, Assumption, St. James) each addressed the board, requesting clarification on proposed cuts to contracts and the expert witness fund, the \$1.2M projected sweep of LPDB funds and a reform of the DAF formula policy, respectively.

Mr. Daniels moved to adopt the financial report as presented. Mr. Ginart seconded the motion which passed with one vote in in opposition.

**b. Contract Amendments.** Mr. Dixon reported that staff will do what is necessary to have a balanced financial statement at the next Board meeting.

**c. Expert Witness Fund.** Mr. Dixon reported that staff provided the board with numerous documents in a drop box explaining the expert witness fund questions which arose at the last meeting. Mr. Davenport expressed his concern that the documents did not address the discussions at the December meeting regarding encumbered funds.



Discussion followed on the Board's policies and protocols for providing board members' access to confidential files. Mr. Davenport expressed concern that assurances need to be made that funds are truly encumbered and further that staff needs to clarify what "encumbered" means. Mr. Davenport suggested that a protocol needs to be written for board members to get information that they want. Mr. Davenport expressed concern that the information he is requesting is not being provided. A Confidential Review Committee was suggested.

Pending formal Policy Committee action on the issue, Mr. Holthaus directed that Mr. Davenport be provided with the information he is requesting. Mr. Dixon suggested Mr. Davenport come to the office and look at the records. Mr. Holthaus asked whether providing this information in Executive Session would eliminate the problem. General counsel suggested that this might not fall within the definition of ongoing litigation. Professor North suggested that allowing Mr. Davenport to review the documents in the state office might solve the problem because the Budget Committee does not want to see the documents. Mr. Fanning suggested that something akin to a Protective Order might solve the problem. Judge Foote suggested having the Policy Committee set up a protocol for reviewing this type of information, including potential creation of a Confidential Review Committee. Chairman Holthaus explained that the staff is following policies implemented by the previous Board. Mr. Flozell Daniels expressed opposition to the release of the information pending a formal protective policy and requested that the Policy Committee take into consideration protection of the Board from exposure to liability. Chairman Holthaus directed that Mr. Davenport have access to look at the documents and send the Board his points either through the Committee or as an individual. Mr. Kerry Cuccia, Executive Director of the Capital Defense Project of Southeast Louisiana explained the concerns of expert witness requestors and the application which they are required to complete in order to get funding. It was clarified by Chairman Holthaus that the document being referred to was the payment voucher without reference to the application and strategic revelations.

Mr. Richard Stricks, District Defender for District 40 (St. John the Baptist Parish) addressed the board. He requested a policy consideration by the Board that once a capital case that has been assigned to one of the programs and capital expert witness funds are formally requested, approved, and encumbered or dedicated, if the case then becomes non-capital and is assigned to the local public defender office for representation, that the approved funds for the same expert witness remain available to the local public defender. Capital Case Coordinator Jean Faria was directed to consider the issue and make a recommendation to the Policy Committee.

Mr. Mark Plaisance, District Defender for the 17 Judicial District (Lafourche Parish) asked the Policy Committee to adopt a policy in order to take a united stand when private counsel is hired and then makes a move to access the funds of the district court.

- d. DAF Balance Distribution Scenarios.** This issue was deferred to the policy and budget committees.
- e. DAF – Balance Distribution.** This issue was deferred to the policy and budget committees for recommendations to the Board.



**8. Break-away Public Defender Boards.** Mr. Dixon reported on an ongoing issue in District 16 as a result of Act 638 which formed independent local boards in city courts in New Iberia, Franklin, Breaux Bridge, Jeanerette and Morgan City and the dangers of the action spreading to other jurisdictions.

a. Draft Resolution - Action\*. Mr. Dixon asked the Board to consider a resolution stating that in the event any of the city courts referenced in Act 638 of the 2016 Regular Session have collected funds owed to the judicial indigent defender fund in order to fund an independent Indigent Defender Board or counsel independent of the local District Defender, then that District Defender shall not provide public defense services in that court and shall not contract with the court to provide those services. Litigation and repeal of the legislation were both mentioned as potential remedies to this particular legislation. District Defender Bonin (16<sup>th</sup> Judicial District) expressed concerns with the legislation and urged the Board to adopt the resolution. Mr. Fanning moved to adopt the Resolution as presented. Mr. Daniels seconded the motion which passed unopposed.

**9. Justice Reinvestment Task Force.** Mr. Dixon reported that he serves on the Justice Reinvestment Task Force which was established by legislation and attempts to amend criminal justice system. He further reported that the Task Force's recommendations will be issued soon and urged full Board support. Chairman Holthaus reported that it had been suggested to him that the Board should invite the Pew Charitable Trust to present to the board. Mr. Flozell Daniels, also on the Task Force, stressed the importance of the Pew Charitable Trust and that the role of public defense should be included. Policy folks are looking at what it would be like to shuttle funds to the public defense function as a mechanism to reduce incarceration. Mr. Daniels urged Board members and District Defenders to weigh in particularly in light of the fact that there is a push to further cut Public Defender funds as a result of the fiscal crisis.

Professor Donald North took the opportunity to outline several issues that his appellate circuit district defenders have asked the Policy Committee to address: 1) recommend that the Board make an effort to meet with legislators regarding traffic tickets and diversion money; 2) that the Board address the DAF Formula and caseloads; 3) that the Board consider statewide base salaries and a range of salaries for each Public Defenders; and, 4) that the Board review the contract programs, their allocated funds, their budget requests and their fund balances.

Professor North also requested information on how long it takes a jurisdiction to make a determination as to whether or not they are going to charge a case as first degree murder. Capital Case Coordinator Jean Faria indicated that she has the data that shows the time from an arrest to indictment which she would provide.

**13. Mandatory Trainings/Financial Disclosure.** This agenda item was taken out of place on the agenda. Executive Assistant Anne Gwin informed the board members that their personal financial disclosure statement (Form 417 - Tier 2.1) are due by May 15, 2017 and that there are no extensions. She assured the members that they would get regular reminders from staff on the first Monday of each month until the reporting deadline. She further informed the Board that mandatory training in governmental ethics and preventing sexual harassment are due annually before December 31.

**10. Juvenile Strategic Plan.** Deputy Public Defender-Director of Juvenile Defender Services Richard M. Pittman informed the Board of updates on the Juvenile Division's progress on its strategic plan initiatives, including hosting the first in a series of webinars, upcoming



Juvenile Defender Training in February on post-dispositional representation among other topics, seeking funding for a train-the-trainers event, preparing revised delinquency performance standards, and sending out data on juvenile representation to the districts.

**11. ROS.** Trial Level Compliance Officer Carol Kolinchak reported fourteen districts currently in ROS and that she is looking forward to working with the Policy Committee on a formal policy for going out of ROS to provide to the districts.

Ms. Kolinchak further reported that LPDB co-sponsored a Miller/Montgomery Sentencing and Resentencing training in Baton Rouge in December. Funding litigation in these cases is beginning to move forward and she and Mr. Dixon have been subpoenaed to testify and have testified in two cases thus far. Absent a legislative fix this session, Ms. Kolinchak anticipates that this type of litigation will increase around the state and wanted the board to be aware of this issue.

**12. Outreach, 2017.** Director of Legislative Services Dr. Tiffany Simpson informed the Board that the Governor has indicated there will be a special session to deal primarily with funding issue to begin February 13 through February 28, 2017. She reported that the Regular Legislative Session of 2017 begins April 10 and the deadline to pre-file bills is March 31, 2017. She informed the Board of staffs' past procedure for tracking bills and inquired if the Board wanted to change procedure. Staff was instructed to move forward as usual pending further notice. Dr. Simpson reported that she is currently compiling information for a 2017 outreach document to provide Legislators and other stakeholders however the recent 2016 flood data is still limited at this time. She encouraged Board members to use the outreach documents to reach out to legislators.

**14. Other Business.** Mr. Davenport expressed concern that items which he requested be put on the agenda were not and he brought those items to the attention of the board. He reported that he believes items 6, 7, and 8 of the agenda items he submitted (Tab 8) to be cost-saving measures and that they should go before the Budget Committee in addition to agenda items 3 and 4. He agreed to defer agenda item 5 to the policy committee. The policy committee is not precluded from considering any of these items that were deferred to the budget committee.

Judge Foote urged everyone to submit any issue for discussion by the Policy committee to him for inclusion on agendas. Mr. North made the same request for the Budget committee.

Mr. Dixon reported on the on-going workload study which is being conducted through contract with Postlethwaite & Netterville and the ABA. The grant ends on January 31 so it is anticipated that the report will be issued before then. He further reported that he has been told that *60 Minutes* will be airing an episode on public defense in Louisiana. A member of the audience reported that it is currently scheduled for February 12, 2017. Mr. Bob Noel reported that a Seattle law school professor and his students have visited PD offices, interviewed PD clients and observed court in the northern part of the state (they are believed to be affiliated with SPLC). They have also made public record requests to the districts and to the state office. Mr. Noel met with them and they indicated to him that they will be filing suit against the Board soon (next month).

**15. Next Meeting(s)/Proposed.** The next meeting is scheduled for Thursday, March 23, 2017, at 1:30 p.m. The location will be announced when confirmed. Other future meetings were not set.

16. **Executive Session.** No one moved to go into Executive Session.

17. **Adjournment.** Mr. Fanning moved to adjourn. Professor North seconded the motion and the meeting adjourned at 4:48 p.m.


Guests:

Christopher Murell  
Steve Thomas  
Tony Champagne  
Kimya Holmes  
Marie Scavetta  
Vic Bradley  
Richard Tompson  
Richard B. Stricks  
E. King Alexander  
Jim Looney  
Mark D. Plaisance  
Cecelia Bonin  
John Burkhardt

Dwight Doskey  
G. Paul Marx  
David Price  
Aaron Clark-Rizzio  
Pamela Smart  
Herman A. Castete  
Paul Fleming  
David E. Marcantel  
Harry P. Fontenot  
Kerry Cuccia  
Alan J. Robert  
Robert Noel  
Barry Scheck

Deirdre Fuller  
Ella Kliebert  
Bruce Unangst  
Gary Clements  
Don Kneipp  
John Hogue III  
Lisa Parker  
Mike Courteau  
Chris Aberle  
Brian McRae  
Reggie McIntyre  
Derwyn Bunton  
Emily Maw

**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 26th day of January, 2017, as approved by the Board on the 23rd day of March, 2017, at Baton Rouge, Louisiana.



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C. Frank Holthaus, Chairman