



LOUISIANA PUBLIC DEFENDER BOARD

Friday, November 9, 2018

Goodwill Industries - 3400 Tulane Avenue – Training Room 183C

New Orleans, 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 Friday, November 9, 2018, at the Goodwill Industries Facility in New Orleans, at approximately 12:10 p.m.

The following Board members were present:

Flozell Daniels
Michael Ginart
Donald North¹

Patrick Fanning
Frank Holthaus
Chaz Roberts

W. Ross Foote
Katherine Gilmer
Moses Williams

The following Board members were absent:

Zita Andrus

Chris Bowman

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
Richard Pittman, Deputy State Public Defender, Dir. Of Juv. Defender Services
Tiffany Simpson, Juvenile Compliance Officer/Legislative Director
Erik Stilling, Information and Technology Director

Chairman Holthaus welcomed new Board member Chaz Roberts, commended Professor Ami Stearns for her service to the Board, announced that deputy public defender Richard Pittman is the 2018 recipient of the Catherine Lafleur Legal Advocacy for Children and Families Award and that Dr. Erik Stilling and Jean Faria will be attending and presenting at the American Society of Criminologists Annual Meeting on behalf of the LPDB.

2. Adoption of the Agenda. Mr. Flozell Daniels moved to adopt the agenda as presented. Judge Foote seconded the motion which passed unopposed.

¹ Professor Donald North arrived at approximately 12:23 p.m. Quorum/voting was not affected by his absence.
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3. Call for Public Comment. Mr. G. Paul Marx, District Defender, District 15 (Acadia, Lafayette, Vermilion) addressed the Board and reported that the public defenders statewide are backing the board's \$66,000,000 FY2020 budget request and that he has met with his local legislative delegation to discuss his district's fiscal needs. Chairman Holthaus and Mr. Daniels thanked Mr. Marx and urged him and other District Defenders to work with Legislative Director, Dr. Tiffany Simpson toward presenting a unified message in the upcoming session.
4. Adoption the Minutes, September 27, 2018 Meeting. Mr. Moses Williams moved to adopt the minutes of the September 27, 2018 meeting as presented. Mr. Mike Ginart seconded the motion. Ms. Katherine Gilmer indicated that the minutes do not reflect her absence at that meeting. Upon vote, the minutes passes as amended to reflect Ms. Gilmer's absence.
5. Executive Session. Chairman Holthaus indicated the Executive Session would be held at the end the of meeting.
6. Budgetary and Fiscal
 - a. Financial Report through Sep 30, 2018. Budget Officer, Natasha Carter, reported that as of September 30, 2018, \$31,480,761 expended or encumbered – which is 87% of the FY19 budget, \$4,480,086 projected to be expended or encumbered thorough the fiscal year, and zero funds available for reallocation. Mr. Daniels moved to adopt the financial report. Mr. Holthaus asked to defer action until such time as the Budget Committee Chairman could participate. Action was deferred on item 6.
 - b. 2020 Budget Request
The FY20 budget request is to be submitted no later than November 1, 2018.
7. Policy
 - a. Sexual Harassment Policy. Judge Foote proposed the possibility of a statewide uniform sexual harassment policy which would address all mandatory statutory requirements that were passed in the 2018 regular legislative session. He further stated that there is no recommendation from the Policy Committee at this time pending DDAC's opportunity to meet and discuss their options regarding the policy.
 - b. Public Defenders Servings as City Prosecutors. Judge Foote reported that the Board's current policy is that all paid employees and independent contractors of a District Defender's Office, including, but not limited to the District Defender, are prohibited from serving as prosecutors in any court within the judicial district(s) in which they perform public defender services. There have been some exceptions to the policy which needs to be formalized. Again, he would like the DDAC to address the issue and bring their input to the Policy Committee.
 - c. Open Meeting Law, Rules of Order, LPDB Meeting Protocol. Judge Foote indicated that from the perspective of a Board member, the current meeting format needs to be addressed including time lines. He indicated he would like to meet with the DDAC and work with them to come up with a meeting protocol for the whole Board.

Judge Foote then moved that the language of the Sexual Harassment Policy and policy concerning the Public Defenders Serving as City Prosecutors be continued to the Policy Committee for a recommendation at their next meeting. Mr. Moses Williams seconded the motion. Upon vote, there was no opposition and the motion carried.

Chairman Holthaus asked for a similar motion specifically on item 7b. Judge Foote indicated he made the same motion for item 7b (language of policy concerning the Public Defenders Serving as City Prosecutors be continued to the Policy Committee for a recommendation at their next meeting). Mr. Daniels indicated the motion was seconded. Mr. Holthaus clarified that item 7b is being referred to the Policy Committee for further study. There was no opposition.

Chairman Holthaus reported that item 7C, while not an action item, he is asking the Policy Committee to continue studying to solve the issues that are in 7C including Open Meeting Law, the description of the Rules of Order and the LPDB's meeting protocol concerns so that the Board can meet general rules of Robert's Rules of Order and also the unique aspects that the LPDB has to deal with that may not be within Robert's Rules of Order.

Chairman Holthaus then return to item 6 – Budgetary and Fiscal as the Budget Chairman was in attendance. Ms. Carter reiterated that as of September 30, 2018, \$31,480,761 expended or encumbered – which is 87% of the FY19 budget, \$4,480,086 projected to be expended or encumbered thorough the end of the fiscal year, and currently there are zero funds available for reallocation.

Judge Foote asked if the 5% has been expended. Ms. Carter indicated they have not, the 5% is reflected in the projected balance.

Mr. Daniels moved to adopt the financial report. Judge Foote seconded the motion which passed unopposed.

6b. Ms. Carter then reported on the Budget Request for FY2020. Ms. Carter reported the budget was due and submitted on November 1st and that customarily copies are provided to both the Board and Budget Committee Chairmen. She reported the total ask for FY20 is \$66,743,462 which includes a request of \$30,616,488 more than was received for FY19.

Mr. G. Paul Marx (District Defender, District 15) addressed the Board and stated that he is organizing an outreach campaign titled "Route 66" to reach out to some legislators, in advance of the governor approving the Board's request. Dr. Tiffany Simpson, Legislative Director urged a coordinated messaging effort with staff which Judge Foote, Mr. Fanning, Mr. Daniels, Mr. Ginart and Professor North each agreed. Chairman Holthaus requested that someone from Mr. Marx's group be appointed to report any legislative contact and communications to Professor North and Dr. Simpson so that everyone remains in the line of communication. Mr. Ginart requested that Dr. Simpson generate bullet points and provide them to Mr. Marx's group and the Board for discussion and follow up.

8. JLWOP Conflict Contract. Mr. Dixon reported that staff is asking the Board for approval to enter into a contract for representation in JLWOP conflict cases. The contract would follow the same form and monitoring protocol as the current one with LCCR. He reminded the Board that the Board previous set aside \$280,000 in anticipation of potential conflicts and for expert witnesses. He clarified of those funds \$130,000 would be used for the conflict contract. Professor North expressed concern about expending funds when districts are facing shortfall. Clarification

was made that the funds for JLWOP cases were specifically allocated to handle JLWOP cases and that other funds remain set aside in exigency to address district shortfall.

Judge Foote moved that staff be authorized to enter a conflict contract to handle JLWOP to be financed *only* out of the set-aside money dedicated to Miller/Montgomery cases. Mr. Daniels seconded the motion. After a brief discussion, Mr. Fanning moved to call the question. Ms. Gilmer seconded the motion, which passed unopposed. Upon vote on Judge Foote's motion, the motion passed seven in favor, with one in abstention.²

Chairman Holthaus then directed Mr. Dixon and staff to continue and intensify efforts to work with the Budget Committee to review ROS predictions – those now existing and those that are reasonably predictable -- and to endeavor to set a uniform accounting system before a district can say it is in ROS and a uniform standard of ROS so that the Board can oversee the **uniform** distribution of services across the state as the statute requires.

9. District Updates

a. Solvency Projections. For informational purposes Mr. Dixon gave a brief summary of the most current status of districts that are accruing and depleting funds. He reported that fund depletions are approximately \$2.5M and accruals \$1.25M resulting in a \$1.25M annual loss. He further stated that the \$5M shift by the Legislature (by statute) to the districts in 2016 didn't fix the fiscal problem, rather masked it, as local funding statewide has been dropping since 2009. The problem is not the DAF or how it is disbursed but that there is not enough funding. LPDB is being asked to disburse insufficient funds and there is no more money to shift.

District Defenders Tony Tillman (District 30) and Derwyn Bunton (District 41) each addressed the Board and reported on local issues totally out of their control have affected their funding through recent years. Mr. Dixon stated that the Board is going to have to decide how to redistribute funds so that some districts aren't accumulating at the same time others are failing. Professor North expressed his concern regarding this issue and requested a deadline/timeline for a plan of action. Mr. Daniels urged talking points including that the loss of revenue is twice as much as the income – to keep the Governor's Office up to date on what's happening.

b. District Defender Salary Increases. Mr. Dixon reported that staff has been in the field visiting all ROS as well as the districts in which District Defenders have requested salary increases. He reported no recommendation for Donald Kneipp's (District 2) salary increase as the site visit protocol is incomplete. Staff is requesting an interim increase to for Mr. Rick Candler in District 3 to \$90,000, subject to the opportunity for staff to discuss and a final approval at the next Board meeting. Mr. Fanning inquired about the salary increase protocol and its usefulness. Mr. Dixon indicated that the protocol is still followed and site visits are essential to recommendations. Professor North asked why these issued have not come before the Budget Committee. Mr. Fanning indicated certain questions that should be asked of each increase request and the answers provided to the Board prior to a decision.

² Chairman Holthaus did not vote; he indicated he would vote in the event of a tie.
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Chairman Holthaus directed that issue be passed to the Budget Committee for development of a uniform protocol. Mr. Daniels urged that the Board and Committee when making any changes be sensitive to people who are being affected. Chairman Holthaus re-urged that the Budget Committee is to shape up the protocol as it relates to money not the policy standards and focus on who has earned the pay increase. Mr. Williams urged a vetting process. It was agreed that any raise(s) that may approved could be made retroactive.

c. ROS Updates. Dr. Simpson gave a brief summary on the status of restriction of services. She reported that staff has completed site visits on 14 districts that are in ROS and are recommended five to exit (District 8, 20, 30, 33 and 34), three to remain in ROS (Districts 1, 19, and 41), one district (District 15) not yet finalized, and Restriction of Services notices pending for release to two districts (District 16 and 25). Dr. Simpson indicated that the larger districts already in ROS will have to institute additional restrictions in their districts in order to maintain solvency.

d. DAF FY2020 Formula. Dr. Erik Stilling reported that staff has transcribed the 2018 Posthlehwaite and Netterville formula (developed through the Arnold Foundation Grant and used with part of the hybrid plan to disburse funds last year) into the LPDB software using tentative numbers in an effort to have a starting point for a FY20 DAF. Once staff is assured that the formula has been properly transcribed, they are proposing a meeting with the DDAC to explain how it would work. Mr. Dixon clarified that this is not a recommendation, but rather one formula that has been considered in order to come up with a DAF formula and for discussion purposes. District Defender Deirdra Fuller spoke on behalf of the DDAC and indicated work in progress on a formula as well.

10. *Yarls v. Bunton*, 5th Circuit Court of Appeals. Mr. Dixon reported that the *Yarls* case has been dismissed.

11. *State v. Robinson*, Capital Subpoena. Mr. Dixon reported that the judge rescinded the subpoena in the *Robinson* matter and has asked for a special master.

12. Division Reports. Mr. Dixon reported that the Capital and Juvenile Division reports are available in the materials for review. No one presented any questions for discussion.

13. Other Business

a. DDAC. District Defender Deirdre Fuller (District 9) and SPD Dixon reported that the DDAC will meet in the next month to discuss the DAF formula for FY20 and other issues presented at the Policy Committee meeting. The issue of student loan repayment sources was addressed. Ms. Faria reported that the John R. Justice Student Loan Repayment Program is an available resource and the information is available on the LPDB website.

Mr. Ginart inquired about the status of the *Crimmins* matter in Orleans that was brought to the Board at the September meeting. He was informed that Professor North and Judge Foote obtained the necessary resources.

14. Next Meeting. The Board set its next meeting on January 31, 2019, at Noon, in Baton Rouge. The location of the meeting is to be determined.

5. Executive Session. Ms. Gilmer moved to go into Executive Session. Mr. Williams seconded the motion which passed unopposed. Professor North moved to leave executive session. Ms. Gilmer seconded the motion which passed unopposed.

15. Adjournment. Mr. Fanning moved to adjourn which was seconded by Mr. Ginart. The motion passed unopposed and the meeting adjourned at approximately 1:50 p.m.


Guests:

Tony Tillman
Paula Marx
Maggie Simon LeBlanc
Michael Mitchell

Jene O'Keefe Trigg
G. Paul Marx
Susan Kutcher Jones
Trisha Ward

Kerry Cuccia
Aaron Clark Rizzio
Lindsey Blouin
Richard Tompson

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 9th day of November, 2018, as approved by the Board on the 31st day of January, 2019 at Baton Rouge, Louisiana.



C. Frank Holthaus, Chairman