



## LOUISIANA PUBLIC DEFENDER BOARD

Friday, June 2, 2023  
Bluebonnet Regional Branch Library  
9200 Bluebonnet Boulevard  
Baton Rouge

### MINUTES

**1. Call to Order and Comments, Chairman Michael C. Ginart, Jr.** A meeting of the Louisiana Public Defender Board, pursuant to lawful notice, was called to order by Chairman Michael C. Ginart, Jr. on Friday, June 2, 2023, at approximately 12:05 p.m.

The following Board members were present<sup>1</sup>:

Adreja Boutté	Lou Daniel	Pat Fanning
Michael Ginart	Holly Howat	Lyn Lawrence
Charles Porter	Frank Thaxton	

The following Board members were absent: Zita Andrus and Frank Holthaus.

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

Rémy Voisin Starns, State Public Defender  
Barbara Baier, General Counsel  
Kevin Broussard, Budget Administrator  
Anne Gwin, Executive Assistant  
Michael A. Mitchell, Trial Level Compliance Officer  
Richard Pittman, Dep. Public Defender, Director Juvenile Defender Services  
  
Tiffany Simpson, Juvenile Compliance/Legislative Director  
Erik Stilling, IT Director

**2. Adoption of the Agenda.** Mr. Pat Fanning moved to adopt the agenda which was seconded by Judge Daniel and passed unopposed.

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<sup>1</sup> Board Members Holly Howat and Lyn Lawrence arrived at appx 1:10 and 1:15, respectively. Quorum was not affected by their absence. New Board members Adreja Boutté and Charles Porter replace Professor Donald North and Flozell Daniels, respectively. Board Member Allyson Melancon resigned effective 5/19/23.

3. **Public Comment**<sup>2</sup>. Chairman Ginart indicated public comment would be taken with each agenda item.

4. **Adoption of Minutes – March 9, 2023.** Mr. Fanning moved to adopt the Minutes of the March 9, 2023 meeting. Judge Frank Thaxton seconded the motion which passed unopposed. Chairman Ginart asked that the Board take other agenda items out of order pending the arrival of delayed board members. There was no opposition.

7. **Budget and Financial**

a. **Financial Report through May 15, 2023\***. Budget Administrator Kevin Broussard reported \$48,333,771 either expended or encumbered for FY23 with \$2,691,067 remaining that is either to be expended or is encumbered and approximately \$736,481 remaining in the LPDB FY23 budget as of May 31, 2023.

b. **Solvency Projections**

Dr. Erik Stilling gave a detailed explanation of the solvency projections, fund balances, conviction and user fees (CUFs) and expenditures in the districts, Title IV-E monies and pro-forma budgeting as presented in the materials on pages 100-102. He indicated that \$521,207 is remaining in FY23 DAF monies; however, \$60,000 is needed for an initial disbursement to four districts to ensure solvency through July 15, 2023 (District 8-Winn Parish, \$10,000; District 15-Acadia, Lafayette and Vermilion Parishes, \$35,000; District 28-LaSalle Parish, \$10,000; and, District 34-St. Bernard Parish, \$5,000), leaving \$461,207 for final pro-rate FY23 DAF disbursement to all districts. This final DAF disbursement will carry all districts through the first FY24 pay period pending the LPDB budget loading and the initial FY24 DAF disbursement. Dr. Stilling then reported that the *estimated* appropriation for FY24 is \$47,558,291. Based on that estimated amount and the allocated percentage in FY23 of 68.79%, the districts' FY24 allocation will be \$32,715,348. Withholding \$1.24M for Title IV-E/CINC payments and \$1.2M for emergencies (O-Level funding) the proposed estimated initial FY24 pro-rata disbursement is \$30,272,250 to the districts.

c. **FY 23 FINAL DAF/O-Level Funding Disbursements.** After Dr. Stillings presentation and a brief discussion, Judge Lou Daniel moved to adopt the FY23 final DAF disbursement. Mr. Fanning seconded the motion. Upon vote, the motion passed with five in favor (Boutté, Daniel, Fanning, Porter, Ginart) and one against (Thaxton).

i. **FY23 “Scrub” Authority\***. Mr. Starns asked the Board to authorize him to disburse remaining administrative monies at the end of the fiscal year. Budget Administrator Broussard indicated that amount is approximately \$286,000; however, there are invoices remaining to be paid and the agency has until August 15 to finalize FY23 close-out so the amount will change. Judge Daniel moved to give the State Public Defender authority to disburse remaining year end monies to the districts. Mr. Fanning seconded the motion which passed unopposed.

d. **FY24 Initial DAF Disbursement.** Mr. Starns asked that the Board consider the FY24 DAFDM (District Assistance Fund Distribution Mechanism) disbursement as presented on page 102. Judge Daniel moved to adopt the FY24 disbursement, as presented by Dr. Stilling and in the materials. Judge Frank Thaxton seconded the motion which passed unopposed.

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<sup>2</sup> Public Comment must relate to current agenda items. All comments are limited to three minutes. Please address comments to the Chairman.

**10. Division Reports - Informational**

**a. SPD Report**

**i. District 14 (Calcasieu Parish) Public Defender's Office Building.** SPD Starns reported that District Defender Harry Fontenot has purchased a building in Calcasieu Parish after years of searching. Mr. Fontenot was present and indicated that he will also be receiving an additional \$600,000 from the parish which was unexpected. He thanked everyone. Mr. Starns reported the building is located at 120 Pujou Street in Lake Charles and he is working with the legislature to get additional funding for other public defender's offices statewide.

**b. Juvenile Report.** Director of Juvenile Defender Services, Richard Pittman, indicated his report is in the materials.

**c. Legislative Report.** Legislative Director Dr. Tiffany Simpson reported HB1, which is still not on the agenda, still currently provides 70% to the districts.

**5. SPD Strategic Plan\*.** Mr. Starns reported his plan sets forth his recommendations for what he believes are the best way to fund contract programs and asked the Board to approve the recommendations for FY24 as presented in the materials. Chairman Ginart indicated that the Board would address each recommendation individually.

**Recommendation 1:** The LPDB should contract with the LAP program for \$ 1,223,891 for FY24 to represent people on direct appeal in noncapital cases. Time and effort sheets from LAP are required reflecting aggressive, well-trained attorneys who will write briefs and conduct oral arguments in all non-capital appellate cases. This is the negotiated transition plan for FY24, Year One.

**Recommendation 2:** LPDB should contract with a lawyer and eventually 1-3 additional lawyers for the drafting of supervisory writs in all courts of appeal and the Louisiana Supreme Court. This tremendous practice improvement will cover courts in all 42 districts and all 64 parishes. LPDB will allocate up to \$300,000 previously used in the LAP contract from FY23.

Dr. Holly Howat moved to approve Recommendation 1 on page 93 as presented. Judge Thaxton seconded the motion. Mr. Starns reported he has been in discussions with Louisiana Appellate Project (LAP) Executive Director Chris Aberle for several years regarding the development of a writ program and his recommendation for FY24 includes a \$300,000 reduction to the Louisiana Appellate Project for Year One. After public comment and discussions which incorporated Recommendation 2 on page 93, Dr. Howat amended her motion to include approval of Recommendation 2, as presented. Mr. Lyn Lawrence seconded her motion as amended. Upon vote, the motion as amended passed with seven in favor (Boutté, Fanning, Howat, Lawrence, Porter, Thaxton, Ginart) and one opposed (Daniel).

**Recommendation 3:** Non-renew the Juvenile contract with LCCR for Orleans Parish. Orleans is free to represent juveniles as they see fit. LPDB will allocate \$460,000 to the Orleans Public Defenders for this purpose in Year One (FY 24).

Mr. Starns gave a brief history of the contract with the Louisiana Center for Children’s Rights (LCCR) that provides juvenile representation services to the Orleans Public Defender Office. He stated, while not his first choice, that in Year One he would agree to provide LCCR’s contractual funding amount of \$460,000 to the Orleans Public Defender’s Office. That office would have the option to contract for juvenile defense representation with whomever it chooses. Chairman Ginart indicated that LCCR uses funding from LPDB to obtain matching funds and urged the Board to renew the FY24 contract with LCCR to continue its juvenile representation at OPD for one more year. Co-Executive Director Aaron Clark-Rizzio addressed the Board requesting renewal for FY24. Dr. Howat moved to approve Recommendation 3, as written. Judge Charles Porter seconded the motion. Upon vote, the motion passed with five in favor (Boutté, Daniel, Howat, Lawrence, Porter) and three opposed (Fanning, Thaxton, Ginart).

**Recommendation 4:** Assign the *Miller and Montgomery* cases to certified counsel, looking first to the capital programs who are well-suited for this work. LCCR presently has about 8 of these cases and efforts will be made for continuity of representation. A negotiate a cap on each case is recommended, maybe \$10,000 per case going forward with a time/effort sheet requirement. SPD should have the flexibility to exceed the cap in an extraordinary case. These appointments will not be “65%” or “district-side” money and the administration of these appointments will be done by SPD staff and the capital programs. LPDB should allocate \$ 400,000 for this representation including expert witness funds.

Mr. Starns reported he has been in negotiations with Mr. Clark-Rizzio for the last two years regarding LPDB’s *Miller-Montgomery* contract with LCCR. He reported that the Board has expended \$4.8M to LCCR beginning in 2019 for less than 100 *Montgomery* cases. He indicated that there are approximately 14 *Montgomery* cases remaining. Mr. Starns stated that attorneys should be certified to handle *Miller* cases. Co-directors of LCCR, Mr. Clark-Rizzio and Ms. Kristen Rome addressed the Board and proposed a FY24 contract for \$420,000 for the remaining cases which they would match dollar-for-dollar and, they will continue to represent *Miller* cases, should the Board so choose. Mr. Starns asked the Board to consider his recommendation for non-renewal of the LCCR *Miller/Montgomery* contract for FY24 and instead assign the cases individually for flat rate fees. Chairman Ginart reiterated that LCCR is proposing a \$420,000 contract for one year to finalize the remaining 14 *Montgomery* cases.

Mr. Lyn Lawrence moved to approve Recommendation 4, as written. Dr. Howat seconded the motion. Upon vote, the motion carried with six in favor (Daniel, Fanning, Howat, Lawrence, Thaxton, Ginart) and two in opposition (Boutté, Porter).

**Recommendation 5:** Renew all capital trial-level contracts at the same FY23 amounts. Plus, whatever additional moneys for *Miller* or *Montgomery* representation.

LCAC	\$ 1,390,000	CDPSLA	\$ 1,280,000
BRCCO	\$ 1,280,000		

Discussion was had to approve Recommendations 5 – 8, *in globo*. Dr. Howat so moved. Judge Thaxton indicated his preference to hear each recommendation individually and Chairman Ginart concurred. Dr. Howat moved to approve Recommendation 5, as written. Judge Thaxton seconded the motion. Upon vote, the motion failed with four in favor (Boutté, Howat, Porter, Ginart) and four in opposition (Daniel, Fanning, Lawrence, Thaxton). Judge Daniel then moved to approve Recommendation 5, as written, provided \$200,000 is added back to the Louisiana Appellate Project’s FY24 contract. Judge Daniel’s motion failed for lack of a second.

**Recommendation 6:** Renew the CAP operations contract for \$1,050,000 reflecting the new scopes of work including an expanded number of capital post-conviction cases.

Dr. Howat then moved to approve Recommendation 6, as written. Judge Charles Porter seconded the motion. Upon vote, the motion failed with four in favor (Boutte, Howat, Porter, Ginart) and four in opposition (Daniel, Fanning, Lawrence, Thaxton).

**Recommendation 7:** Renew the MCJ (formerly CPCPL) contract for the FY23 amount of \$1,265,036.00.

**Recommendation 8:** Renew the contract with IPNO at the FY23 amount, \$360,000. With contract provisions requiring time/effort sheets and reimbursement to LPDB for exonerations.

After a brief discussion, the Board agreed to defer items 5-8.

**Recommendation 9:** Renew the IT services contracts.

Brian Buel	\$	1,800.00
Don Dovie	\$	7,200.00
David J. Newhouse	\$	4,000.00

Dr. Howat moved to approve Recommendation 9, the IT services contracts, as presented. Judge Thaxton seconded the motion which passed unopposed.

**Recommendation 10:** Renew the legal services contract with Stanley, Reuter law firm to continue representation in *Allen et al v. Edwards et al.* and *Hebert v LPDB*

Mr. Fanning moved to approve Recommendation 10, legal services contract with the Stanley Reuter Law Firm, as presented. Mr. Lawrence seconded the motion which passed unopposed. Clarification was made that the FY24 contract renewal amount is \$60,000.

**Recommendation 11:** LPDB canceled the contracts after the March 9, 2023, meeting for the *Miller/Montgomery* (“M/M EWF”) as well as a Capital post-conviction Expert Witness Fund (“CPCEWF”) for the remainder of FY23. This is not a fund sweep. Each of these funds has a healthy fund balance that can be carried over to FY24 at which time we will supplement the funds in FY24. Neither fund is expected to have any activity until next fiscal year.

Mr. Starns reported that Recommendation 11 was informational for the Board as the action has already occurred.

**Recommendation 12:** Allocate \$500,000 for the ULM contract.

Dr. Howat moved to amend Recommendation 12 to read “allocate *up to* \$500,000 for the ULM contract”. Judge Porter seconded the motion. Upon vote, the motion to approve Recommendation 12, as amended, passed with six in favor (Boutte, Fanning, Howat, Lawrence, Porter, Ginart) and two in opposition (Daniel, Thaxton).

**Recommendation 13:** Approve the DAFDM tiered-funding disbursement mechanism including initial FY24 disbursements described in the materials, and the FY23 O-level funding disbursements also described in the materials. The actual dollar amount for FY24 will not be known until the end of the legislative session.

Mr. Starns reported that Recommendation 13 was approved with item 7d (FY24 Initial DAF Disbursement).

**11. Executive Session<sup>3</sup>.** Mr. Fanning moved to go into Executive Session. Mr. Lawrence seconded the motion which passed unopposed. Judge Daniel moved to return to regular session. Judge Porter seconded the motion which passed unopposed.

**6. FY24 Contract Recommendations\***

**a. 501(c)3 Programs / Professional and Consulting.** This item was addressed in item five.

**b. Districts.** Upon return to regular session, Dr. Howat moved to renew all District Defender FY24 contracts except District 19 (EBR Parish - Lisa Parker) and District 25 (Plaquemines Parish - Chanel Long). Clarification was made on the salaries in District 15 (Acadia, Lafayette and Vermilion Parishes) for \$129,000 annually (Amanda Martin) and District 40 (St. John the Baptist Parish) for \$95,000 annually (Fontella Baker)<sup>4</sup>. Mr. Lawrence seconded the motion.

After a brief discussion regarding district defender cost-of-living salary increases and the on-going statewide salary restructuring discussions, Dr. Howat’s motion was called for vote. Upon unanimous vote, the district defender FY24 contracts were renewed as amended excluding District 19 (EBR Parish/Parker) and District 25 (Plaquemines Parish/Long).

**8. District Issues**

**a. District 25 (Plaquemines Parish).** Mr. Starns recommended that Mr. Tom Gernhauser be appointed as interim District Defender in District 25 (Plaquemines Parish) at

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<sup>3</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. Pursuant to La. R.S.42:17, executive session is limited to matters exempt from public discussion/open meetings including strategy sessions with respect to prospective or pending litigation against the Board.

<sup>4</sup> The chart in the materials incorrectly reported these salaries at \$115,000 and \$90,000.

\$3,000 per month. Judge Daniel so moved and Mr. Lawrence seconded the motion. Mr. Gernhauser addressed the Board and requested his salary be at least \$3500 per month. Mr. Fanning moved to amend the salary to \$3500. Mr. Lawrence seconded the motion. Upon vote the motion passed unopposed.

**i. Ratification of Appointments of Interim District Defenders\*.** Mr. Starns asked the Board to ratify his prior appointments in District 25 (Plaquemines Parish) of Mr. Gernhauser and subsequently of Trial Level Compliance Officer Michael Mitchell who is currently maintaining operations in that office pending permanent appointment of a district defender. He then summarized the events leading to these appointments. Mr. Fanning moved to ratify the previous appointments. Mr. Lawrence seconded the motion.

Mr. Gernhauser addressed the Board and reported he wanted clarification regarding Ms. Long's employment status. After discussion, Mr. Fanning moved that Ms. Long be placed on leave from the first date that she failed to appear for duty, grant all due sick and annual leave until exhausted, and thereafter that she be placed on Leave Without Pay. Mr. Lawrence seconded that motion. Discussion continued and Mr. Fanning withdrew his motion. He then moved that Ms. Long be placed on leave per her request until the end of her contract, that she be paid all due benefits, until those benefits are exhausted, at which time she will be placed on Leave Without Pay. Mr. Lawrence seconded that motion. Upon vote, the motion passed without opposition.

**b. District Defender Search Process.** This issue was not discussed.

**9. Next Meeting(s)\*** Proposed dates on Thursdays, in Baton Rouge at 1:00 p.m. September 28, 2023; November 30, 2023; February 29, 2024; June 20, 2024. Upon concurrence, Mr. Lawrence moved that all proposed future meeting dates be set. Dr. Howat seconded the motion which passed unopposed.

**12. Adjournment\*.** Judge Porter moved to adjourn. Judge Daniel seconded the motion which passed unopposed.

**Guests:** See attached sign in sheet.

**I HEREBY CERTIFY** that the foregoing is a full, true, and correct account of the proceedings of the meeting of Louisiana Public Defender Board meeting held on the 2nd day of June, 2023 in Baton Rouge, LA, as approved by the Board on the 22<sup>nd</sup> day

of June, 2023, Baton Rouge, LA:



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MICHAEL C. GINART, JR., CHAIRMAN