



LOUISIANA PUBLIC DEFENDER BOARD

Thursday, May 9, 2019
Bluebonnet Regional Library, Baton Rouge, LA
12:30 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 Thursday, May 9, 2019, at the Bluebonnet Regional Library in Baton Rouge, Louisiana, at approximately 12:30 p.m.

The following Board members were present¹:

Zita Andrus	Chris Bowman	Flozell Daniels
Patrick Fanning	W. Ross Foote	Michael Ginart
Frank Holthaus	Donald North	Chaz Roberts

The following Board members were absent:

Katherine Gilmer	Moses Williams
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The following members of the Board's staff were present:

James T. Dixon, Jr., State Public Defender
Barbara Baier, General Counsel
Natashia Carter, Budget Administrator
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

2. Adoption of the Agenda. Professor Donald North moved to adopt the agenda. Mr. Chris Bowman seconded the motion which passed unopposed.

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

4. Adoption the Minutes, January 31, 2019. Judge Ross Foote moved to adopt the Minutes of the January 31, 2019 meeting. Professor North seconded the motions which passed unopposed.

¹ Mr. Flozell Daniels arrived at approximately 12:40 pm.; Mr. Patrick Fanning arrived at approximately 12:45; Mr. Mike Ginart arrived at approximately 12:55p.m. Voting quorum was not affected by the late arrival of the three Board members.

Chairman Holthaus announced that item 10a – District 17 – District Defender Selection - would be taken out of place on the agenda and in Executive Session.

10a. District 17 – District Defender Selection. State Public Defender James Dixon reported having received from the Selection Committee an alphabetical list of three candidates for the district defender position in District 17 (Lafourche Parish), that staff had completed all interviews and that their recommendation for the position is attorney Andrea Stentz.

5. Executive Session. Professor North moved to go into Executive Session. Mr. Bowman seconded the motion which passed unopposed. Professor North moved to leave Executive Session. Ms. Zita Andrus seconded the motion which passed unopposed.

Chairman Holthaus called the regular meeting to order at approximately 1:05 p.m.

10a. (continued). Chairman Holthaus reported the recommendation of Andrea Stentz for the District Defender position in District 17. Judge Foote moved to adopt the recommendation and appoint Ms. Stentz as the District Defender in District 17. Ms. Andrus seconded the motion. Upon vote, the motion passed with one abstention by Professor North. Professor North then rescinded his abstention and the vote was made unanimous.

6. Strategic Plan. State Public Defender Dixon reported that the Strategic Plan as presented is required by the Board. Professor North moved for adoption. Judge Foote seconded the motion which passed unopposed.

7. Budgetary and Fiscal

a. Financial Report through March 31, 2019. Ms. Carter reported \$33,786,377 encumbered or expended as of March 31, 2019; \$1,765,792 projected to be expended or encumbered through June 30, 2019; and, \$114,121 available for reallocation less several thousand inadvertently omitted for administrative expenses through the end of the fiscal year. Professor North reported that the Budget Committee is recommending the report for adoption, as presented. Mr. Chaz Roberts seconded the recommendation which passed unopposed.

b. FY19

i. Solvency Projections. SPD Dixon gave a brief summary of the district projections made with data through February 28, 2019 which were reviewed by Budget Committee and an updated version with March 31, 2019 data. He reported that the March projections indicate that Districts 11, 19, 35 and 41 will experience shortfall and those districts have requested exigency, two of which have been review by the Budget Committee (District 11 (Sabine Parish) and District 19 (EBR Parish) and come with recommendations by that Committee. District 35 (Grant Parish) and District 41 (Orleans Parish) exigency requests were received on May 6th and have not been before the Budget Committee.

ii. Exigency Funding*

a. District 11 (Sabine Parish) - \$10,000. Mr. Dixon reported that District 11 (Sabine Parish) has requested and the Budget Committee is recommending exigency funding in the amount of \$10,000. District Defender Steve Thomas reported that the funds

are absolutely necessary to get his district through July, 2019. Mr. Flozell Daniels seconded the recommendation which passed unopposed.

b. District 19 (East Baton Rouge Parish)- \$600,000. Mr. Dixon reported that District 19 (EBR Parish) has requested \$600,000 and the Budget Committee is recommending exigency funding in the amount of \$452,593; however, since the Budget Committee's review, the district received a one-time influx of funds from LDR tax refunds in the amount of \$169,122. Staff is recommending that the \$452,593 recommendation be reduced by the \$169,122 for a total exigency disbursement – at this time – of \$283,481. Mr. Dixon clarified that a June Board meeting will be necessary to discuss and finalize year end FY19 exigency needs. If these payments are made as discussed, there would be approximately \$491,000 left in the exigency fund. Judge Foote moved to approve exigency funding to District 19, as amended in the amount of \$283,481. Mr. Mike Ginart seconded the motion which passed unopposed.

c. District 35 (Grant Parish)- \$24,000. Mr. Dixon reported being unclear as to the actual request being made by District 35 (Grant Parish) stating the need for \$8,000 to make payroll in June but a total of \$24,000 needed to get through July, 2019. Professor North expressed disappointment and concern over the district's late submittal and the request not having gone through proper channels (Budget Committee/review/recommendation process). Mr. Dixon suggested, alternatively, to give staff the authority to provide up to \$8,000 in the event the district has an emergency, pending the opportunity for the Budget Committee to meet and review the request. Mr. Chaz Roberts moved to submit the district's request for exigency to the Budget Committee for recommendation to the Board. Professor North seconded the motion which passed unopposed.

d. District 41 (Orleans Parish) – \$700,000. Professor North reiterated his concern for the review/recommendation process and this request not having been before the Budget Committee. Mr. Chris Bowman moved to refer the request to the Budget Committee for recommendation. Professor North seconded the motion. Mr. Ginart reported that District 41 (Orleans Parish) District Defender Derwyn Bunton has been keeping the Budget Committee and the Board apprised of his fiscal situation for some time. Mr. Bowman expressed concern that districts would begin to establish a practice of bypassing the Budget Committee. Mr. Dixon clarified that staff is recommending a reduced allocation of \$228,811 and not the full \$700,000 request. Mr. Bunton addressed the Board and explained why his submittal comes before the Board at this time. Dr. Tiffany Simpson reported that even with this \$228,811 allocation, Mr. Bunton, whose district is already in ROS and who has submitted an updated ROS plan, will still have to make service restriction cuts. Mr. Dixon reported the \$228,811 to Orleans and other exigency payments would leave \$515,900 in exigency for dispersal in June. A friendly amendment was made to Mr. Bowman's motion

authorizing the State Public Defender to disburse exigency funds in the amount of \$228,811 to District 41 (Orleans Parish) only in the event of an emergency; otherwise, the request is to be referred to the Budget Committee for review and recommendation. Mr. Bowman accepted the amendment and the question was called. Upon vote, the motion as amended carried six in favor and three (Fanning/North/Roberts) against.

c. Catastrophic ROS*. Mr. Dixon reported that the Budget Committee is recommending this issue to the Policy Committee for review and update of the existing ROS protocol/guide. Judge Foote seconded the recommendation which passed unopposed.

d. FY20 Appropriation.

i. CINC FY20 Funding. Deputy State Public Defender/Director of Juvenile Defender Services Richard Pittman gave an update regarding funding for partial reimbursement by the federal government for parent and child representation in child welfare cases. He reported that because of the complicated structuring the process will most likely start out slowly which will mean the funding will not be as much as was hoped to begin, but as the attorneys and programs are set up the funding matches should grow with it. He further reported the potential for pilot programs in districts that parallel with existing DCFS parish programs. He reiterated from earlier meetings a timekeeping requirement likely to be tied to the funding.

e. FY2020 Contract Amounts. The Budget Committee's original recommendation was to maintain funding for FY20 as presented (staff recommendation column) equal to what each contractor was initially approved for in FY19. After discussion and concerns expressed regarding increases in some professional contracts when the same services are provided by salaried staff, missing data that was requested on the 501(c)3 programs in order to adequately access their funding needs and whether the Board is required to provide funding for McCoy issue cases, action continued on each contract section below, as follows:

i. Professional and Consulting. Judge Foote moved to authorize the contract amounts for the five professional and consulting contractors at the bottom of page 190, as invoiced in the past. Mr. Daniels seconded the motion. Upon vote, the motion carried with seven in favor and two (Bowman/North) in opposition.

ii. 501(C)3 Programs. Mr. Chaz Robert moved to approve the contract amounts as recommended in order to allow staff to start the contract process and, if necessary, to amend the contract amounts at a later date. Mr. Daniels seconded the motion. Upon vote, the motion carried with seven in favor and two in opposition (Bowman/North).

iii. McCoy Remand Contracts. Mr. Daniels moved to approve each contract at \$20,000 each, as recommended. Judge Foote seconded the motion. It was clarified before vote that the contractors would submit monthly invoicing. Upon vote, the motion carried six in favor and three in opposition (Bowman/Fanning/North).

f. DAF FY20. SPD Dixon reported having worked closely with the DDAC on various plans and a consensus reached on Method 14 in the materials that was presented to the Budget Committee with three other viable plans (out of 28). Method 14, which assumes \$24.08M available for distribution to the districts, gets all but

one district (District 41 (Orleans Parish)) through FY20 is being recommended for adoption by the Budget Committee. Mr. Dixon also reported that although there are four districts in this plan that get zero funding for FY20, this plan also results in an additional one million dollars to be combined with the usual 5% withheld (approximately \$1.2M) from the DAF for a total of approximately \$2M available for exigency distribution. Several board members expressed concern for not funding district that have exhibited good stewardship and administration over districts that may overspend and are then rewarded. Mr. Dixon reminded the Board that there needs to be a policy regarding fund balances, an issue which has not been addressed. Mr. Bowman suggested funding the districts that get zero funding at FY19 amounts using the \$1M additional funds that this plan provides. Mr. Dixon indicated doing that would result in some districts accruing huge fund balances. Mr. Reginald McIntyre (District 21 (Livingston, St. Helena, Tangipahoa, District Defender) reminded the Board that a decision is needed because the districts are required to prepare and advertise their budgets by mid-June.

Mr. Pat Fanning moved to adopt the recommendation of the Budget Committee with the exception that the four or five district that received zero funding would be funded at 50% of their FY19 DAF amount. Professor North seconded the motion with the exception that the 50% cap be removed allowing the “zeroed” districts the option to apply for available funding from the one million additional dollars in order to make them whole.

Discussion continued. Chairman Holthaus requested that Mr. Fanning reiterate his motion. Mr. Fanning moved that the Board adopt the recommendation of the Budget Committee with the exception that the five districts that got nothing get 50% of what they got last year. Professor North then seconded the motion without condition.

Discussion continued and Mr. Chaz Roberts offered a substitute motion to adopt the Budget Committee’s recommendation (Consensus Method 14) and refer the residual one million dollars to the Budget Committee for consideration for disbursement across the state, as needed. Mr. Flozell Daniels seconded the motion. Mr. Fanning did not accept the substitute motion and Chairman Holthaus called for a vote on Mr. Fanning’s original motion. Upon oral vote, Mr. Fanning’s motion failed to carry as a tied vote. (Four in favor: Bowman, Fanning, Ginart, North. Four against: Holthaus, Daniels, Foote, Roberts).

Discussion continued and Chairman Holthaus repeated Mr. Roberts’ motion that the Board adopt the (Budget Committee’s Consensus Method 14) recommendation and refer the available million dollars to the Budget Committee for consideration for disbursement across the state, as needed. He confirmed that the motion had been seconded and called for a vote. Upon vote, the motion passed with 5 in favor and 3 in opposition (Bowman/Fanning/North)².

² Board member Zita Andrus left the meeting at 3:00 p.m. affecting voting numbers, but not quorum.
5-Board_May 9 2019_Minutes

8. ROS Updates. Dr. Tiffany Simpson gave a brief report on statewide ROS and reported having received updated ROS plans from District 19 (EBR Parish) and District 41 (Orleans Parish) which are in the materials.

9. Resolutions and Policies. SPD Dixon reported that the Board requested at a prior meeting that General Counsel seek an Attorney General Opinion on the issue of email strings possibly violating Open Meeting Laws and proper email procedures among Board members and the field. AG rules require a current Board Resolution be attached to the opinion request at submittal time. Judge Foote moved that the Resolution be passed giving authority to seek the opinion. Mr. Ginart seconded the motion which passed unopposed.

10. District Information

a. District 17 – District Defender Selection. The item was taken up earlier in the agenda after Executive Session.

b. District 25 - Resignation of District Defender (Plaquemines Parish)

i. Search for District Defender – Status. Mr. Dixon reported that the final appointment the Selection Committee has set a deadline for applications and the position has been announced in various media venues.

ii. Interim District Defender, District 25. Mr. Dixon indicated that Tom Gernhauser has been appointed as Interim District Defender at a salary of \$3,000 per month pending selection of a permanent district defender and he is requesting ratification of the actions. Mr. Daniels moved to ratify the appointment and salary and Mr. Ginart seconded the motion which passed unopposed.

c. LLA District Compliance Report, 2019. Mr. Dixon reported that the annual report released by the LLA on district compliance is in the materials.

11. LPDB – JLCB 2018 Report. Mr. Dixon reported that the JLCB report in the materials is an abbreviated version on the annual report and is submitted annually to JLCB on March 1.

12. Legislative Session, 2019. Legislative Director Dr. Tiffany Simpson reported on recent legislative activity specifically HB – which forms a new indigent defense board in City Court in Lafayette Parish. She reported that this bill is to be heard on the House floor May 15, 2019.

13. Division Reports. Mr. Dixon reported the Capital and Juvenile reports are in the materials for review.

14. Announcements. SPD Dixon reported the Trial Level Compliance Officer and Director of Training positions have been announced, applications received and interviews are to be scheduled in the near future. Board members will be provided with the interview schedules for participation.

Judge Foote reported that he would like for the Policy Committee to focus on policies to “rebrand” indigent defense not as a public defender problem but as a problem of the criminal justice system as a whole and wants to start looking at funding mechanisms, among other things. He indicated he will be addressing this and other issues at the upcoming state judges meeting this summer.


Executive Session: Professor North moved to go into Executive Session. Mr. Ginart seconded the motion which passed unopposed. Professor North moved to leave Executive Session. Mr. Daniels seconded the motion which passed unopposed.

15. Next Meeting. The Board set the next meeting for June 11, 2019 at 1:00 p.m. The Budget Committee will meet the same date at 12:00 p.m.
16. Adjournment. Mr. Ginart moved to adjourn which was seconded by Mr. Roberts. The motion passed unopposed and the meeting adjourned at approximately 4:10 p.m.

Guests:

Richard Stricks	Irlane Lee	Olivier Carriere
Herman Castete	Andrew Wise	Damon Stentz
Maria Dugas	Andrea Stentz	Steven Thomas
Ella Kliebert	G. Paul Marx	Reggie McIntyre
Chuck Reid	Alan Robert	Mike Courteau
Jee Park	Cecelia Kappel	Kyla Romanach
Carlton Cheramie	Yvette Beamon	Jack Wagar
Thomas Gernhauser	Richard Bourke	Paul Fleming
Richard Tompson	Kerry Cuccia	David E. Marcantel
Derwyn Bunton	Bob Noel	Mike Courteau
Rachel Conner		

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 May, 2019, as approved by the Board on the 11th day of June, 2019 at Baton Rouge, Louisiana.



C. Frank Holthaus, Chairman