



## LOUISIANA PUBLIC DEFENDER BOARD

Tuesday, June 11, 2019  
East Baton Rouge Parish Main Library  
7711 Goodwood Boulevard  
Baton Rouge, LA 70806  
1:00 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 Tuesday, June 11, 2019, at the Goodwood Regional Library in Baton Rouge, Louisiana, at approximately 1:25 p.m.

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

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

The following Board members were absent:

Flozell Daniels	Katherine Gilmer
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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. Ms. Zita Andrus seconded the motion which passed unopposed.

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

4. Adoption the Minutes, May 9, 2019. Professor Donald North moved to adopt the Minutes of the May 9, 2019 meeting. Mr. Chris Bowman seconded the motions which passed unopposed.

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<sup>1</sup> Mr. Williams arrived after roll call; however, voting quorum was not affected by the late arrival.  
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5. Executive Session<sup>2</sup>. Judge Foote moved to amend the agenda to move executive session to the end of the agenda. Professor North seconded the motion which passed unopposed and executive session was deferred to later in the meeting.

6. State Public Defender

a. Resignation of James T. Dixon, Jr. State Public Defender James Dixon announced his resignation effective July 19, 2019 and his new employment in Massachusetts. Chairman Holthaus thanked Mr. Dixon for his service.

b. Senate Resolution, "Jay Dixon Day". Chairman Holthaus reported briefly on the Resolution presented by the Senate declaring June 3 at Jay Dixon Day and again thanked Mr. Dixon for his service.

c. Appointment of an Interim SPD\*. Mr. Chris Bowman moved to defer this issue to Executive Session as a personnel matter. Professor North seconded the motion which passed unopposed.

Professor North inquired how long the process of hiring a new State Public Defender would take. Mr. Dixon indicated that staff would assist in the search but that the interviews of all applicants would be done by the Board as staff would not be involved in the interview process.

d-e. Appointment of Personnel Working Group and Statutory Qualifications and Duties of the State Public Defender. Mr. Holthaus indicated items 6d and 6e would be discussed after Executive Session is held.

7. Budgetary and Fiscal

a. Financial Report through April 30, 2019. Budget Administrator Natashia Carter reported that the financial report as presented is being recommended for adoption by the Budget Committee and reflects \$33,952,313 expended or encumbered; \$1,658,888 projected to be expended by the end of the fiscal year and approximately \$89,645 available for reallocation to the districts. Mr. Bowman seconded the Committee's recommendation for adoption which passed unopposed.

b. FY19

i. Solvency Projections-informational. Mr. Dixon gave a brief summary of the solvency projections as they relate to the exigency requests below. He further reported that the Budget Committee is recommending exigency payments as follows: District 15 (Acadia, Lafayette and Vermilion Parishes) requested \$175,737; however, projections indicated the district will remain solvent through July 15, 2019 with the addition of the final year-end DAF distribution so his recommendation is zero exigency funding to that district; \$8,000 to District 35 (Grant Parish) and \$121,086 to District 41 (Orleans Parish). Judge Foote seconded the Committee's recommendation which passed unopposed.

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<sup>2</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: *Joseph Allen et al v. John Bel Edwards, et al*, Docket: C655079, Section 27, 19<sup>th</sup> JDC, Parish of East Baton Rouge.

c. Final FY19 DAF Disbursement. Mr. Dixon reported that after exigency distributions in the approved amounts, his recommendation is to distribute all remaining FY19 DAF on a pro rata basis to all districts following the original FY19 distribution formula. He further reported that the Budget Committee is favorably recommending the pro-rata distribution. Judge Foote seconded the Budget Committee's recommendation which passed unopposed.

d. FY19 501(c)3 Contract - Capital Defense Project of Southeast Louisiana. Chairman Holthaus reported that the Budget Committee took no action on this item as they were satisfied with Mr. Kerry Cuccia's report to the Board on the issue of his current fund balance.

e. Authority to Disburse FY19 Year End Funds. Mr. Dixon reported approximately \$89,000 remaining in administrative funds which he is requesting authority to distribute to the districts, based first on need, following the original DAF distribution formula. He indicated the Budget Committee's recommendation to grant the authority to distribute the funds, as needed. Judge Foote seconded the recommendation which passed unopposed.

f. FY20 – HB105 – Informational. Mr. Dixon reported that HB 105 has passed both house and senate and is awaiting the Governor's signature. The bill allocates \$39,193,193 to the Public Defense Fund of which 65% (\$25,275,575) is allocated to the districts, pursuant to La. R.S. 15:167(E), leaving \$13,717,618. Additionally, the districts will receive their pro rate share of the CINC monies of \$979,680 (based on CINC caseloads). The DNA funds in the amount of \$50,000 are distributed by staff pursuant to court orders. There is an additional \$50,000 provided for interagency transfers for a total allocation to LPDB for FY20 in the amount of \$40,272,872.

g. FY2020 CINC. Mr. Dixon reported that the Budget Committee is recommending CINC disbursement to the districts based on estimated FY20 caseloads using May 1, 2018 – April 20, 2019 case counts. Mr. Fanning seconded the Committee's recommendation for disbursal which passed unopposed.

h. FY2020 DAF – One Million Residual Disbursement. The Board approved the Method 14 consensus DAF distribution plan at the May 9th meeting. That plan results in approximately one million residual dollars to be disbursed to the districts. Mr. Dixon reported his recommendation to the Budget Committee to disburse a portion of those funds to cover funding needs by a large number of districts through July of 2020, and to reserve the balance for disbursal at a later date has been deferred without action by the Committee to the full Board. Mr. Dixon reported that while the Board has the authority to expend any funds that no districts are facing shortfall through July of 2020.

Mr. Mike Ginart and Mr. Chris Bowman each expressed concern for districts either receiving no DAF or were cut drastically from last year's allocation. Specifically, District 2 (Bienville, Claiborne, Jackson Parishes) is down \$100,000 and District 34 (St. Bernard Parish) cut almost 80% from FY19. The district defenders from those parishes reported to the Board. Board member, Chaz Roberts, expressed concern for giving any district funding at this point when none are in trouble. He urged the Board to withhold the funds until such time as need could be established and exigency requests brought before the Board. He also expressed concern regarding providing funds to districts with large projected fund balances.

The discussion that followed resulted in several concepts for the distribution of the residual monies for Board decision/action: 1) use a portion (later determined to be one-half (\$500,000)) which would "re-pay" those districts whose DAF was lessened in order to get

all districts through the FY20 year, adding the balance to the remaining 5% DAF exigency fund; 2) hold all funds (\$2.2M) as exigency and get a greater focus on where the greater need is; and/or, 3) use a hybrid and disburse a portion of the funds to Districts 2 and 34 and withhold the remainder to be disbursed on a case-by-case basis, based on documented need.

Professor North then moved to provide District 2 (Bienville, Claiborne, Jackson Parishes) with the requested funds, to withhold the balance and for the remainder of the districts to bring their requests to the Board.

Discussion continued in order to clarify the amounts being requested, requested by whom, and the amounts to be disbursed. It was determined that District 2 (Bienville, Claiborne, Jackson Parishes) is requesting \$100,000 in addition to his proposed DAF allocation (\$107,000) which would bring him equal to his FY19 allocation. Mr. Tom Gernhauser, District Defender, District 34 (St. Bernard Parish) indicated that with the 80% cut in DAF that his district would expend all fund balances in FY20 and he would be a zero.

Chairman Holthaus asked for a second to Professor North's motion to provide District 2 (Bienville, Claiborne, Jackson Parishes) with \$100,000. Mr. Bowman seconded the motion. Mr. Dixon clarified that the full amount to District 2 (Bienville, Claiborne, Jackson Parishes) under Professor North's motion would be \$107,154.

Mr. Roberts addressed the issue of districts accruing fund balances and inquired the status of District 2 (Bienville, Claiborne, Jackson Parishes). Mr. Kneipp clarified that his district is experiencing reduction in local revenues but that the budgets aren't out yet. Mr. Roberts expressed concern regarding how the Board will address future requests by the other districts who experienced reduction in their DAF. Mr. Moses Williams also expressed concern about giving out funds at this time to districts not in trouble.

Mr. Pat Fanning offered an amendment to Professor North's motion that District 34 (St. Bernard Parish) receive funding as well. Professor North agreed to accept any amendment that would provide assistance to them. Mr. Richard Pittman stated that dollar amounts were needed to clarify the motion. After discussion, Professor North offered a substitute motion that the Board provide funding to District 2 (Bienville, Claiborne, Jackson Parishes) and District 34 (St. Bernard Parish) in the amount of \$75,000 in addition to the allocated DAF. Mr. Bowman seconded the substitute motion. Upon vote, the motion passed with five in favor (Bowman, Fanning, Ginart, North, Williams) and four against (Andrus, Holthaus, Foote, Roberts).

i. FY20 501(c) Contract Amendments. Mr. Dixon reported the proposed budget in HB 105 would have approximately \$1.4M available for reallocation to the contract programs and pursuant to that he is recommending increases to the Louisiana Capital Assistance Center (LCAC) in the amount of \$600,000 (\$1,110,009 to \$1,170,009), \$345,000 to the Capital Post Conviction Program of Louisiana - CPCPL (\$1,110,009 to \$1,455,009) and \$345,000 to the capital trial expert witness fund (\$250,000 to \$595,000). The remaining capital trial programs Baton Rouge Capital Conflict Office (BRCCO) and the Capital Defense Project of Southeast Louisiana (CDPSLA) would remain at FY19 allocations of \$1,110,009 each. Mr. Dixon indicated that the increase to LCAC is to fund an additional full team in order to alleviate the growing waitlist and that group is currently fully staffed

and in the best position to move forward with an additional team. Additionally, CPCPL has been underfunded and the expert witness fund is running out of funds.

Mr. Kerry Cuccia and Ms. Kyla Romanach, Executive Directors of the CDPSLA and BRCCO, respectively, addressed the Board. Mr. Cuccia stated that LCAC, currently underfunded for two full teams in the same way that BRCCO and CDPSLA is underfunded for two full teams, would be using the \$600,000 first to fully fund its current two teams. He suggested that an equal split of the available funds allowing each program to fully fund two full teams is the most equitable disbursement and the best way to address the growing waitlist. Mr. Cuccia explained that in the next fiscal year his group has three capital trials scheduled, and without additional funding he will be expending his fund balance. Mr. Cuccia also expressed his dismay that there was no conversation between staff and the programs this year as in the past as to how best to distribute available funds and address capital needs.

Ms. Romanach indicated her office is similarly structured to Mr. Cuccia's and a standstill budget will result in having to expend reserves. Her group also has trials statewide this fiscal year. She agreed with Mr. Cuccia that allocating the money equally between the programs would provide equal capacity and the three groups could then maintain two full teams as opposed to two offices having to go down to one and a half teams, cutting capacity while expending reserves.

After a brief discussion, Mr. Chris Bowman moved to adopt staffs' recommendation. Judge Foote seconded the motion. Mr. Moses Williams asked for clarification on the impact of staffs' recommendation. Mr. Dixon reported that, at the least, the waitlist would go down. Mr. Mike Ginart asked how many cases one team would be able to take. Ms. Jean Faria, Capital Case Coordinator indicated three to five, based on their capacity to take the case which is based on what they currently have, whether they're going to trial, whether they are in trial, distance, and the discretion of the executive director.

Mr. Ginart asked what problems would be caused by deferring a decision on this issue. Ms. Faria indicated the programs would not be able to staff up or start working on the waitlist that would continue grow. Mr. Holthaus inquired if a program could be required to take a determined number of cases if the Board funded them as a means to get the waitlist down. Ms. Faria reported the programs at set up on an "hour purchase" basis and all have a full caseload. They are each set up to take three to five cases. Mr. Holthaus inquired that even if LPDB should agree to pay for more hours, how is LPDB ensured new (waitlisted) cases are taken rather than just more hours expended on current cases. Mr. Dixon indicated that they would have a new team to assist.

Given the information from the discussion, Mr. Bowman withdrew his motion to adopt staffs' recommendation.

Mr. Roberts asked for clarification on why one group is better suited to handle these cases than the other two. Ms. Faria reported LCAC has an international reputation, is able to bring in people from all over the country and world, has a massive number of interns that come in free and is able to utilize what funding that they get from LPDB to assist in getting

other funds from other entities to help bring in people. Mr. Roberts asked Mr. Cuccia if \$600,000 seemed reasonable to staff one full team. Mr. Cuccia agreed.

Mr. Moses Williams then moved to table this matter until the next Board meeting with a request that the Board get a detailed explanation on how we can be assured that the extra expenditure will in fact have a positive impact in reducing the caseload by a certain number. Mr. Fanning agreed and indicated that LCAC should at least be at the next meeting to address the board and seconded the motion. Mr. Holthaus asked to exchange the word “table” with “defer”. Upon a vote, the motion passed with eight in favor and one (Ross Foote) in opposition to deferring the capital trial program contract amounts to the next meeting.

j. District 17 Salary Ratification. Mr. Dixon reported that the Budget Committee is recommending an annual salary of \$90,000 for Ms. Andrea Stentz, District 17 (Lafourche Parish) District Defender. Mr. Fanning seconded the recommendation which passed unopposed.

8. District Issues

a. District Defender – District 25. Mr. Dixon reported that the Selection Committee has completed the interview process and should be submitting the list of applicants for the position for second round of interviews in the next few days.

9. Legislative Session, 2019. Dr. Tiffany Simpson, Legislative Director, provided a brief summary of the 2019 session as it pertained to indigent defense and LPDB.

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

6c. Chairman Holthaus then returned to Item 6c – Personnel Working Group. Mr. Holthaus reported that historically the Board has formed committees to hear all applicants and attend interviews and indicated his desire to form a search committee comprised of three to five members who are to develop the process and start the search for the next State Public Defender. Mr. Holthaus indicated he was appointing the two Committee Chairs -- Donald North and Ross Foote -- and himself to the Search Group and asked for other volunteers. Mr. Chris Bowman and Mr. Moses Williams volunteered. Mr. Ginart stated his opinion that five members to the group is too many. Discussion continued as to the duties of the Committee. Clarification indicated duties are to include the dissemination of the position notice, receipt of resumes, spreadsheet tracking, application criteria, vetting of applicants for qualifications, interview preparation and interviews. Clarification was also made that the committee would not exclude any applicant unless unequivocally unqualified but that a list all applicant names would be submitted to the full board for review nor would the committee vote on any applicant as a committee.

5. Executive Session. Mr. Bowman moved to go into Executive Session. Mr. Ginart seconded the motion. Professor North expressed opposition and stated his desire to discuss the hiring of an interim. Mr. Bowman indicated no action would be taken in Executive Session and that discussion would be had in regular session. Mr. Ginart then took the opportunity to thank Mr. Dixon for his service after which Mr. Holthaus called Executive Session and asked all staff and guests to leave.


Chairman Holthaus called the regular meeting to order at approximately 4:00 p.m. Upon return to Regular Session, Mr. Pat Fanning moved to appoint Mr. Richard Pittman as Interim State Public Defender for 60 days, subject to renewal, at the same salary as the current State Public Defender during the interim period. Mr. Ginart seconded the motion which passed unopposed.

11. Announcements. No announcements were made.
12. Next Meeting. The next meeting was set for August 8, 2019, at 12:00. Location to be announced.
13. Adjournment. Mr. Fanning moved to adjourn. Ms. Andrus seconded the motion which passed unopposed.

Guests:

Paul Fleming	Renee Bourg	Richie Tompson
Kevin Fouquier, II	Gary Clements	Kyla Romanach
Cecelia Kappel	Jee Park	Derwyn Bunton
Deirdre Fuller	John Albert Ellis	Chris Aberle
G. Paul Marx	Don Kneipp	Alan Robert
Bob Noel	John Lindner	Herman A. Castete
Robert L. Kennedy	Michael A. Mitchell	Lindsay Blouin
Stephen Stanford	Edmund (LNU)	Kerry Cuccia
Mike Courteau	Maggie LeBlanc	John Burkhart
David Marcantel	Thomas Gernhauser	Bruce E. Unangst, II

**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 11th day of June, 2019, as approved by the Board on the 8th day of August, 2019 at Baton Rouge, Louisiana.

  
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C. Frank Holthaus, Chairman