



LOUISIANA PUBLIC DEFENDER BOARD

Wednesday, August 23, 2017
Bluebonnet Regional Library
9200 Bluebonnet Boulevard, Room 2
1:30 p.m.

MINUTES

1. Call to Order and Comments by Chairman, Frank Holthaus. A meeting of the Louisiana Public Defender Board, pursuant to lawful notice, was called to order by its Chairman, Mr. Frank Holthaus, on Wednesday, August 23, 2017, at Bluebonnet Regional Library, Baton Rouge, at 1:35 p.m.

The following Board members were present:

Frank Holthaus	Zita Andrus	Flozell Daniels
W. Ross Foote	Patrick Fanning	Katherine Gilmer
Mike Ginart	Donald North	Ami E. Stearns
Moses Williams		

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
Richard Pittman, Deputy Public Defender, Dir. of Juvenile Defender Services
Tiffany Simpson, Juvenile Compliance Officer, Legislative Affairs Director
Erik Stilling, Information and Technology Director

2. Adoption of the Agenda. Mr. Pat Fanning moved to adopt the agenda. Mr. Mike Ginart seconded the motion which passed unopposed.

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

4. Adoption the Minutes, June 27, 2017 Meeting. Judge Ross Foote moved to adopt the Minutes of the June 27, 2017 meeting. Ms. Katherine Gilmer seconded the motion which passed unopposed.

5. Executive Session. Ms. Gilmer moved to go into executive session. Mr. Fanning seconded the motion. Ms. Gilmer moved to leave executive session. Judge Foote seconded the motion.

Mr. Holthaus reported that Dr. Ami Stearns has agreed to fill the position on the Budget Committee left vacant with Mr. Davenport's departure from the Board. Mr. Holthaus formally appointed Dr. Stearns to the Budget Committee.

6. Financial Reports as of July 31, 2017. Budget Officer Natasha Carter reported a FY18 budget of \$34,001,525 of which \$20,964,265 has been disbursed to the districts representing 60% of the annual DAF due to them. Mr. Flozell Daniels moved to adopt the financial report as presented. Mr. Ginart seconded the motion which passed unopposed.

7. Budget Committee Report and Recommendations

a. OPB Budget Reduction Scenarios. Mr. Dixon reported on a recent meeting with the Office of Planning and Budget and gave a synopsis of three, five-percent budget cut scenarios that have been provided to OPB and an additional one that has not. He reported that Scenario One cuts all aspects of the LPDB budget, pro rata, by five percent; under Scenario Two all cuts are absorbed by the non-profit programs; Scenario Three, OPB's recommendation, implements a five percent decrease in LPDB's administrative budget with the balance being absorbed by the non-profit programs. In all scenarios, the DNA and Indigent Parent Representation Fund are both reduced by five percent and the total reduction for the LPDB fund would be \$1,645,961. Mr. Dixon further reported that he has been told by OPB not to distribute the balance of the CINC funds (\$490,340). Additionally, he reported, it is also OPB's recommendation that one of the statutorily mandated positions, currently vacant, not be filled. In the fourth scenario, which has not been provided to OPB, Mr. Dixon submits for the Board's consideration, that the districts take a 2% cut from the 5% DAF already being withheld.

i. Declaration of Emergency. Mr. Dixon stated that his recommendation would be that the Board certify that there is in fact an emergency and that the Board request that the Chief Justice consider issuing a Declaration of Emergency, pursuant to the Budget Committee's recommendation. Mr. Fanning so moved and Judge Foote seconded the motion which passed unopposed.

ii. Director of Training. Mr. Dixon reported that staff is requesting that the Board wait to fill the vacant position until notification is given about budget cuts. Mr. Ginart expressed his concern that mandated positions should be filled. Ms. Zita Andrus inquired whether the Board could sustain the position if faced with a 5% cut. Mr. Moses Williams inquired when the Division was to notify agencies of the cut. The Board was informed that the Division could institute cuts at any time throughout a fiscal year. Mr. Williams urged that the Board should review its current Table of Organization to see what structure makes sense to accomplish what is needed to fulfill its duties. Mr. Holthaus indicated that a policy is needed to move forward. Mr. Dixon reported that trainings are vital to the public defenders and the training program has suffered over the years due to lack of funding. Mr. Richard Stricks (District 40) informed the Board that taking away state office produced trainings has resulted in the districts having to pay for the mandated 10 hours of annual criminal defense training.

Mr. Williams stated that the State Public Defender should report to the Policy Committee what the Board's current administrative positions do and provide full job descriptions, statutory and non-statutory. Mr. Holthaus directed the Policy Committee to review, with respect to filling vacant statutory positions, the roles and functions of each position that the Board currently has and report back to the Board. Mr. Williams moved to take no action and to put this item on the next Board meeting agenda. Ms. Andrus seconded the motion which passed unopposed.

b. Final FY18 CINC Disbursement*. Mr. Dixon reported that the Board approved one half dispersal of the CINC monies at the last meeting (\$490,340) and instructed the Budget Committee to submit a recommendation for the dispersal of the remaining funds. He further reported that the Office of Planning and Budget has been clear that they are recommending LPDB disperse only 45% of the remaining CINC balance pending budget cuts (\$441,306) withholding five percent (\$49,034). The Budget Committee's recommendation is disbursement of the full balance, pro rata, in the total amount of \$490,340. Mr. Reggie McIntyre and Mr. John Lindner from Districts 21 and 22, respectively, both reported that the CINC cases that their districts handle far outweigh the funds that they receive for CINC. Mr. Harry Fontenot (District 14) asked the Board to consider a policy that addresses the CINC funding statute which states that CINC cases are handled to the extent that the districts are funded.

Budget Officer Natasha Carter addressed the Board. She advised that the CINC funds that OPD is recommending being withheld (\$49,034) is a relatively small amount versus the collateral damage that could be done to the good rapport staff has developed with OPB analysts who have worked to help LPDB maintain its standstill budgets over the years. Judge Foote stated that the 5% CINC funds should be held back, but kept designated as CINC if not taken by the state. He then moved that the Board accept the Budget Committee's recommendation, that 5% to be withheld pending budget cut notification, and that the 5% remain dedicated as CINC monies. Mr. Daniels added that CINC funds less 5% be distributed immediately and seconded the motion which passed unopposed.

Professor North asked that the 5% budget cut be added to the next Board agenda. Mr. Holthaus directed staff to include the budget cut issue to each agenda hereafter and to inform the board when cuts and/or dispersals can or will be made.

c. DAF Formulae. Mr. Dixon reported that the districts, staff, and the Public Defender Association of Louisiana (PDAL) are all working on development of a new formula. Mr. Bob Noel (District 5) asked for a deadline from the Board for presentation of a formula. Professor North reported that the Budget Committee is recommending a deadline of January 9, 2018 to present the new formula and asked the districts if that was reasonable. After discussions, the Board set a November 1, 2017 deadline for the presentation of a working DAF model to the Board.

i. Grants*. Mr. Dixon added that staff has several grants to assist in the development of the formula. Professor North, on behalf of the Budget Committee, submitted the recommendation that staff be authorized to accept the grant funds and that they move forward as expeditiously as possible. Mr. Daniel's seconded the recommendation which passed unopposed.

d. HB 239 – Act 360 of 2017. Mr. Dixon presented a brief synopsis of the analysis to Mr. Pat Fanning’s question of whether Act 360 would affect the flow of income from court costs. After a brief discussion, Mr. Holthaus asked General Counsel Barbara Baier to submit a memo to the Board at the next meeting on how court costs are distributed statewide, for the Board review and possible action.

e. Salary Increase – District 41, Derwyn Bunton. Mr. Dixon reported that the Budget Committee is recommending a salary increase to the District Defender in District 41 within the salary range of \$130,000 – 137,000. Mr. Fanning asked if the recommendation is for a \$7,000 raise. Mr. Dixon clarified that the Committee is recommending a raise within the District Defender 4 *range* of \$130,000-\$137,000. He further reported that staff completed site visits to the district office. After discussion, Professor North clarified that the salary increase is to be \$137,000. Mr. Bunton reported that he has not had a raise in nine years and has undergone three salary reductions in the last five years as a result of budget cuts. He further reported that his office is nationally recognized. Professor North then moved to approved a salary increase to \$137,000. Judge Foote seconded the motion.

f. Final FY17 DAF and Supplemental Disbursements. Mr. Dixon reported the final FY17 DAF and CINC disbursement amounts are in the materials for review.

g. Initial FY18 DAF and CINC disbursements. Mr. Dixon reported the initial FY18 DAF and CINC disbursement amounts are in the materials for review.

h. FY19 Budget Process. Ms. Carter reported that in addition to the items included in the outline, this year’s budget request is due to OPB no later than October 16th.

8. 501(c)3 Contract Program Fund Balances – Prior Years balances (“old money”). Mr. Dixon reported that the Board had instructed the Budget Committee to review the current fund balances being held by the contract programs. Staff provided a detailed chart using the same spend-down policy that is required of the districts – using a 3-month balance and 6-month balance for comparison, as the programs are contracted with differently. Specifically, Mr. Kerry Cuccia was asked why his program’s (Capital Assistance Program of Southeast Louisiana-CPSLA) fund balance is currently at \$934,031. Mr. Cuccia explained that his program has always had a higher contract amount to maintain the level of service he provides, resulting in a fund balance higher than a six-month cap. Mr. Gary Clement (Capital Post Conviction Project of Louisiana – CPCPL) is in the same situation. Mr. Williams expressed concern that LPDB is contracting with the programs for the same amount but that caseloads are going down. Professor North inquired whether attorneys could be contracted with to do the work rather than the programs having to expend funds toward travel and lodging and then those attorneys could be receiving much needed capital training. Mr. Holthaus agreed that the knowledge needs to be spread. Ms. Faria reported that capital training is provided by LPDB annually. Mr. Richard Bourke (Louisiana Capital Assistance Center – LCAC) reported that his program actively trains its own staff and employees; however, the instability in funding and the reduction of capital indictments has created problems and the Board needs to provide the resources to the people who are doing the work.

9. Resolutions / Certificates of Appreciation. The Board thanked staff member Carol Kolinchak, Board Member Thomas Davenport, Jr., BRCCO executive director David Price (deceased) and District 9 (Rapides) public defender Marc Lampert (deceased) for their tireless dedication to the indigent persons of Louisiana and to public defense. Judge Foote personally acknowledged Mr. Lampert and moved to recognize him for his sense of humor and years of dedication. Professor North seconded the motion which passed unopposed.

10. Committees/Working Groups
 - a. Budget Committee. Mr. Holthaus reiterated that Dr. Stearns replaces Mr. Davenport on the Budget Committee.
 - b. Contract Restructure. Judge Foote reported that the Policy Committee has not had an opportunity to meet but will address the contract restructure at its next meeting.
11. LPDB Division Reports. Mr. Dixon indicated the required Juvenile and Capital Division reports are in the materials for review.
12. Other Business
 - a. Vacant Statutory Positions – Applicants. Mr. Dixon reported that both the Trial Level Compliance Office and Director of Training positions were advertised statewide and nationally and all qualified applicants are listed in the materials. In the event the Board decides to move forward with hiring of either or both positions, notice will go out as the interviews are scheduled for members to participate.

Professor North announced that the LSBA Diversity Committee is trying to host a CLE at Southern University and he has spoken with the Chancellor and has cleared making the facility available to the districts to meet to have a training session. He asked Mr. Mike Mitchell and Mr. Bob Noel assist with a presentation on capital issues and post-conviction, if the districts are interested.

Mr. Dixon announced that LCCR provided the handout on Juvenile Life Without Parole Cases.

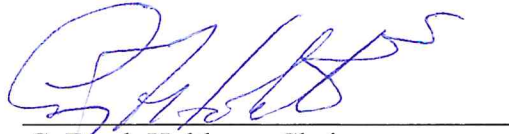
Mr. Bob Noel announced that there is a training scheduled in District 4 on Jury Selection.

13. Next Meeting(s). The Board scheduled the next meetings for Thursday, November 30, 2017; Thursday, January 11, 2018 and Wednesday, March 7, 2018. The location of the meetings will be announced once confirmed.
14. Adjournment. The meeting adjourned at approximately 4:20 p.m.

Guests:

Chris Murell	Aaron Clark-Rizzio	Tony Champagne
Ella Kleibert	Mike Courteau	Jim Looney
Richard M. Tompson	Emily Maw	Richard B. Stricks
Harry Fontenot	John Lindner	Bruce Unangst
Kerry Cuccia	Herman Castete	Remy Starnes
Michael A. Mitchell	Deirdre Fuller	Steve Thomas
Brian McRae	Richard Bourke	Brett Brunson
Alan Robert	Reggie McIntyre	Bob Noel
Gary Clements	Gabriel Loupe	Paul Fleming
Lindsay Blouin	Derwyn Bunton	Tom Gernhauser
Cristine Cordona	Kenn Barnes	Olivier Carriere

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 23rd day of August, 2017, as approved by the Board on the 30th day of November, 2017, at Baton Rouge, Louisiana.



C. Frank Holthaus, Chairman