



LOUISIANA PUBLIC DEFENDER BOARD

Bluebonnet Regional Library
9200 Bluebonnet Boulevard, Room 2
Baton Rouge, LA
Thursday, March 23, 2017
1:30 p.m.

AMENDED MINUTES

1. Call to Order and Comments by Chairman, Frank Holthaus. A meeting of the Louisiana Public Defender Board, pursuant to lawful notice, was duly convened and called to order by its Chairman, Mr. Frank Holthaus, on Thursday, March 23, 2017 at 1:37 p.m. at the Bluebonnet Regional Library in Baton Rouge.

The following Board members were present:

Frank Holthaus, Chair
Thomas Davenport
Katherine E. Gilmer
Moses Williams

Zita Andrus
Patrick Fanning
Michael Ginart

Chris Bowman
W. Ross Foote
Donald North

The following Board member was absent:

Flozell Daniels

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

Jay Dixon, State Public Defender
Barbara Baier, General Counsel
Natashia Carter, Budget Officer
Anne Gwin, Executive Assistant
Carol Kolinchak, Trial Level Compliance Officer
Richard Pittman, Dep. State Public Defender, Dir. Juvenile Defender Services
Tiffany Simpson, Juvenile Compliance Officer, Legislative Affairs Director

Chairman Holthaus stated that everyone would be given the opportunity to speak and asked that everyone treat one another with respect and that a recent incident at the Policy Committee meeting in February is being handled by Human Resources.

2. Adoption of the Agenda*. Judge Ross Foote moved to adopt the agenda as presented. Ms. Katherine Gilmer seconded the motion which passed unopposed.

3. Call for Public Comment. No one presented for public comment. Mr. Holthaus acknowledged that Mr. Richard Bourke indicated on the public comment sign in sheet that he would like to address access to the capital expert witness fund when that issue arises.

4. Adoption- Minutes/January 26, 2017*. Mr. Mike Ginart moved to adopt the minutes of the January 26, 2017 meeting as presented. Mr. Richard Tompson requested that the misspelling of his last name on pages 63 and 65 be amended. Staff indicated the change would be made. Professor North seconded the motion and the minutes were adopted as amended, unopposed.

5. Requesting Placement of Items on the Agenda – Policy*. Two draft resolutions regarding the placement of items on an agenda were provided for review. After a brief discussion, Mr. Chris Bowman moved to remove paragraph 2 from the resolution presented on page 70. Mr. Tommy Davenport seconded the motion. Mr. Chris Bowman then moved to adopt the resolution on page 70 with the amendment that the Chair shall be copied with the request. Ms. Gilmer asked for clarification regarding whether the request for information is to be included in this resolution. Mr. Bowman stated that “information” in subparagraph 1 is to be deleted and the final resolution to read, “Any board member can make a request for agenda item placement to the State Public Defender with a copy to the Chair.” Upon vote, having no opposition, the motion passed.

6. Report and Comments of the SPD - Information

a. FY18 – Governor’s Executive Budget. Mr. Dixon reported that the Office of Planning and Budget has recommended a budget for FY18 to LPDB in the amount of \$33,995,091. Budget Officer Natasha Carter reported that when the FY18 budget was submitted there was no board in place and all agencies are bound by a deadline for submittal. She then clarified that the budget amount reported by Mr. Dixon is not the budget amount submitted by LPDB but rather is OPB’s recommendation that is subject to change before being made final by the legislature. She further clarified that the budget cannot be changed by LPDB except through the legislative process, that the Office of Planning and Budget determines how LPDB’s allocation is spread (how much money is allocated to which line items approved for LPDB); that monies can be moved within line items within the public defense fund; and, that monies dedicated to the DNA Test Fund, Indigent Parent Representation Fund and grants can only be used for those specific needs. Mr. Bowman moved that LPDB’s budget request for FY18 be referred to the Budget Committee for review and determination on how the appropriated money will be spent for FY18. Professor North expressed his desire for the Budget Committee to work actively with the Budget Officer to learn the state’s budgeting processes and to be able to apportion LPDB funds to the areas most in need. Mr. Holthaus asked that the minutes reflect that the Budget Committee has asked to have a meeting with the Budget Officer in an effort for the Committee to begin to develop the expertise to guide the whole Board on fiscal and budgetary issues.

b. Justice Reinvestment Task Force – Report. This report is provided on disk.

c. JLCB Report, 2016. This report was submitted to the JLCB on February 27, 2017 and is in the board materials for review.

7. Case Weighting Study*and NACDL Report. Mr. Dixon introduced Mr. Steve Hanlon and Mr. Norman Lefstein to address the board with respect to the significance of the case weight study. Mr. Hanlon and Mr. Lefstein each gave brief summaries of the recently released report

which is the result of the study funded by the Laura and John Arnold Foundation and co-issued by Postlethwaite & Netterville and the American Bar Association. Mr. Marx was recognized and noted that the Board needed to be sure to include the District Defenders in any future action as a result of the report/study. Mr. Davenport stated that he felt it impolite to receive a comment that 81% of the cases are not being handled in a competent manner and the Board should not accept such a cruel statement. Professor North clarified that 81% of the cases are not being handled correctly.

8. Financial Report*. Ms. Carter reported current year to date expenditures \$28,600,984; total expenditures or encumbrances of \$31,976,707; projected expenditures to the end of the fiscal year of \$2,130,032; and, zero fund for reallocation. Mr. Holthaus asked for confirmation that LPDB is currently working within a balanced budget. Ms. Carter confirmed that staff was given permission by OPB to move funds in the salary category and had cut operating funds in order to offset the negative operating balance reflected in last month's financial report. Mr. Pat Fanning moved to adopt the financial report as presented. Ms. Gilmer seconded the motion which passed unopposed.

9. Expert Witness Fund*. Discussions from previous meetings continued regarding Board member access to confidential expert witness records in capital cases. Mr. Chris Bowman has scheduled a visit to the LPDB offices to review documents under the Board's previous agreement that documents be reviewed in-house. Discussion continued regarding the Board's duty to supervise and regulate but also to maintain sensitive case-specific information in confidence. Mr. Richard Bourke addressed the Board and provided a possible solution amenable to the contract programs. Mr. Ginart moved to amend the agenda to change item #9 from the Expert Witness Fund to Any Entity or Person that Receives Funds from this Board. Mr. Bowman seconded the motion which passed unopposed. Mr. Ginart then moved that the Board authorize any member to request information provided by any person or entity to Staff to request funding, that access to such information be provided as part of the Board responsibilities pursuant to La. R.S. 15:147, that the Board member shall maintain the information confidential pursuant to La. R.S. 15:147, and the State and Federal Constitution, and that any entity that objects shall file for a protective order in any district court within five days. Mr. Bowman seconded the motion. Mr. Davenport offered a friendly amendment that upon notice or receipt of a subpoena, deposition notice, or any other request for information obtained pursuant to this policy, the counsel for the Board shall file for a protective order in an appropriate district court within three calendar days and shall alert the State Public Defender and the Chairman of the Board.

Mr. Richard Pittman then read the following resolution:

BE IT RESOLVED THAT, the Board authorizes any member to request information provided by any person or entity to Staff to request funding that is then approved, that Staff shall provide access to such information; and, that the members shall maintain the information confidential pursuant to the provisions of La. R.S. 15:147, the Louisiana Constitution of 1974, and the Constitution of the United States of America. Upon notice or receipt of a subpoena, deposition notice, or any other request pursuant to this policy, the counsel for the Board shall file for a protective order in an appropriate District Court within three calendar days, or the business day following if the deadline is on a weekend or holiday, and shall alert the State Public Defender and the Chairman of the Board.

Mr. Ginart accepted the amendments to his motion and upon vote, the resolution passed unopposed.

10. Budget Committee Report and Recommendations

- a. DAF Distribution Recommendation*. Mr. Dixon reported. Mr. Moses Williams seconded the Budget Committee recommendation. Mr. Mike Mitchell, District Defender 19th JDC, EBR Parish, addressed the board and reported that he has submitted a letter to SPD Dixon asking for additional funding. Mr. Paul Marx, District Defender 15th Judicial District, Lafayette Parish, requested clarification that any remaining funds after the dispersal would be issued pro rata and would be FY17 funds and not counted toward FY18 DAF. Mr. Dixon confirmed both.
- b. Recommendation for Protocols for Board members to obtain Financial information*. This issue was address within the expert witness discussion.
- c. Working Group Formation. Mr. Dixon reported that the Budget Committee formed a working group to address the district assistance formula, locating alternate stable funding mechanisms, and establishing statewide uniform salaries for public defenders. Mr. Dixon reported they are scheduled to meet on April 7 and that an email survey has been sent out to the district defender. He urged all district defenders to participate as their input is critical to the issues.
- d. Referrals to the Policy Committee
 - i. Whether expert funds allotted to a case but unspent should be made available to the districts*. Mr. Dixon reported that this issue is being referred to the policy committee.
 - ii. Whether the funds allotted to a capital case later reduced to second degree should be made available to the district PDO handling the case to pay for the continued use of the same expert* Mr. Dixon reported that this issue is being referred to the policy committee. Mr. Bob Noel clarified that it is not just when the case is reduced to second degree but rather reduced to non-capital.
- e. Expert Witness Fund*. The Budget Committee considered recommending using the expert witness funds to cover the earlier negative LPDB operating balance; however, that issue has been resolved by the transferal of unused FY 17 salary funds and operating monies.

Chairman Frank Holthaus requested that Executive Session be moved on the agenda to address those issues sooner to meet time constraints. Ms. Gilmer moved to go into executive session. Mr. Ginart seconded the motion. Executive staff was excused from executive session.

Upon return to regular session, Mr. Holthaus moved that Mr. Steve Hanlon create a report stating his position on the ABA/Postlethwaite & Netterville Louisiana Report (Case Weighting Report) for the Board's consider and that he provide a draft pleading. Mr. Hanlon agreed. Judge Foote seconded the motion.

Mr. Chris Bowman moved to accept Mr. Remy Starns to represent the Board or individual Board members who so choose to be represented in the Southern Poverty Law Center litigation and that Mr. Starns is to be paid by the Division of Administration. Professor North seconded the motion.

11. Policy Committee Report/Recommendations/Policies
 - a. Contract Reduction/Cancellation – Policy.* Policy Committee Chairman Ross Foote submitted the draft policy addressing staff authority to reduce exiting contracts. Upon discussion, Mr. Bowman moved to amend the draft as presented to include a provision that the Board must approve the cuts. Mr. Williams indicated that would defeat the purpose of the policy. Mr. Davenport seconded Mr. Bowman’s motion. Upon vote, the motion failed to pass with two in favor and six in opposition. Upon further discussion Professor North moved to amend the original draft policy as presented authorizing the State Public Defender to reduce contracts as needed, and to notify the Board of his actions, and that reductions should not exceed \$20,000 which is Staff’s cap for contract approval without authorization, seconded by Judge Foote. Mr. Ginart stated that sometimes compromise does not work and that the draft policy should stay as originally presented. Upon vote, Prof. North’s motion failed to pass with four in favor and five in opposition. Mr. Ginart then moved to accept the contract reduction policy as originally written. Ms. Gilmer seconded the motion which passed seven in favor and three against.
 - b. Meeting Protocol Recommendation*. Judge Foote submitted the Policy Committee’s recommendation to accept the meeting protocol as amended by the Policy Committee to include a five-day materials posting period prior to meetings. Professor North seconded the motion which passed unopposed.
 - d. Capital Case Status Report - Policy*. Mr. Chris Bowman moved to adopt the Capital Case Status Report Policy as presented. Ms. Gilmer seconded the motion which passed unopposed. Professor North asked that the expert witness fund be included in that report.
 - e. Amended ROS Reporting Period – Resolution*. Judge Foote submitted the Policy Committee’s recommendation to accept the policy amending ROS reporting requirements. Ms. Gilmer seconded the motion which passed unopposed.
 - f. Audio/Video Archival Policy*. Judge Foote submitted the Policy Committee’s recommendation to accept the policy for maintaining and providing access to its taped meetings. Mr. Bowman moved to amend the policy as written to make the stored audio and video files available to the public and not just to Board members. Professor North seconded the motion which passed unopposed.
 - g. Gmail Accounts. Mr. Bowman moved to approve LPDB email accounts for any Board member who wants one and payment for them by LPDB. Mr. Ginart seconded the motion which passed unopposed.

Board member Thomas Davenport requested items 12 – 20 below be included on the Board agenda for the March 23, 2017 meeting. Mr. Holthaus asked Mr. Davenport to lead discussion on his agenda topics.

12. (1) “To hear from all public defenders and district defenders during the meeting of the Board. Specifically, to hear from PDs and DDs at the start of each meeting and on every agenda item if any of them wish to be heard.”
 - i. Create a sign-in sheet for people wishing to speak.

Mr. Davenport by-passed discussion on this topic.
13. (2) “To require each public defender district to develop and maintain a reserve, which shall not be accessed until such time of a showing of economic hardship. All amounts

less than \$1,000,000.00 held in this reserve shall not be considered (in any way) by the Board or staff for the purposes of funding or financial assistance from the Louisiana Public Defender Board.”

Mr. Davenport reported that as a good business practice all district offices should be required to maintain a “rainy-day” fund. Mr. Dixon stated that the problem with the \$1,000,000 reserve is it will allow some districts to amass huge fund balances while others will still fail due to circumstances out of their control. Mr. Dixon suggested an amount equal to six months of a districts expenditures. Mr. Ginart suggested a year’s balance or a specific amount determined for each district. Mr. Bowman moved to refer the issue to the Budget Committee. Mr. Ginart seconded the motion. Chairman Holthaus directed the issued to the Budget committee and no vote was taken.

14. (3) “To invite Southern University Law Center, Louisiana State University School of Law, Tulane Law School and/or Loyola Law School to study the cost and feasibility, societal costs and ramifications of the death penalty in Louisiana.”

Mr. Davenport asked that the Board support an invitation to the Louisiana Law Schools presented by the State Public Defender to take part in this study. Upon discussion, Mr. Bowman moved that the board adopt items 14, 15, and 16, and authorize the State Public Defender to invite the Louisiana Law Schools to participate in the described studies. Mr. Dixon indicated he would submit his invitation to Mr. Davenport for review before sending. Judge Foote seconded the motion which passed unopposed.

15. (4) “To invite Southern University Law Center, Louisiana State University, School of Law, Tulane Law School and/or Loyola Law School to study the cost and feasibility, societal costs and ramifications of mass incarceration in Louisiana.”

16. (5) “To invite Southern University Law Center, Louisiana State University School of Law, Tulane Law School and /or Loyola Law School, in conjunction with the Innocence Project of New Orleans, to study the casual relationship, effect, implication and correlation of exonerations resulting from a nonunanimous jury verdicts, pursuant to La. Const. Art.1 § 17.

17. (6) “To prohibit undesignated staff members from advancing legislative agendas beyond that permitted by Act 571, Sec 147 B (4) (a).”

Mr. Davenport passed discussion on this item.

18. (7) “To obtain all relevant information on all past and pending capital cases pending against all indigent defendants in the State of Louisiana.”

Mr. Davenport indicated this issue was resolved in the earlier Budget Committee discussion.

19. (8) “To receive information of whether LPDB funds or funded another “expert witness” fund with LCCR, or CPCPL, or any other post-conviction relief organization/entity. Further, to receive information of whether there are any other reserves or funds held by anyone or organization, who is holding money belonging to the LPDB.”

Mr. Davenport indicated this was addressed with the adopted Resolution.

20. (9) “To discuss the issues raised in the correspondence of February 15, 2017, and March 6, 2017, both of which are attached as Exhibits “A” and “B,” respectively.

Mr. Davenport and Mr. Bowman expressed that Board decisions should not be discussed with the Louisiana Attorney Disciplinary Board.

21. Juvenile Strategic Plan – Information. The Board asked Mr. Pittman to provide his reports in writing for future meetings.
22. Capital Case Report. This report is provided in the materials.
23. Restriction of Services. Trial Level Compliance Officer Carol Kolinchak indicated all relevant issues had been discussed.
24. Outreach, 2017. Dr. Tiffany Simpson presented the 2017 outreach document. Mr. Dixon was directed to decide on its distribution.
25. Other Business. Professor North scheduled a Budget Committee training. The date and time will be announced.
26. Next Meeting(s) Scheduled. The Board scheduled its next meeting for Wednesday, April 26, 2017 at the Bluebonnet Regional Library in Baton Rouge, at 1:30 p.m.
27. Executive Session. There was no other discussion for executive session.
28. Adjournment - Action*. Mr. Bowman moved to adjourn. Mr. Fanning seconded the motion and the meeting adjourned at approximately 5:34 p.m.

Guests:

Susan K. Jones	Chris Murell	Richard Bourke	Bruce Unangst
Don Kneipp	Clark Beljean	Harry Fontenot	Lisa Parker
Richard B. Stricks	John W. Lindner	Kerry Cuccia	Reggie McIntyre
G. Paul Marx	Pamela G. Smart	Jim Looney	Bob Noel
Brian C. McRae	Remy Starns	Gary Clements	Norman Lefstein
Steve Hanlon	Richard Tompson	Kirschelle McGown	Thomas Gernhauser
Herman A. Castete	Aaron Clark-Rizzio	David E. Marcantel	Rick Candler
Mike Courteau	Brett Brunson	Deirdre Fuller	Derwyn Bunton
Paul C. Fleming, Jr.	Jim Murray	John Burkhardt	Mike Mitchell
Lindsey Blouin	Margaret Lagattuta	Jodi Edmonds LeJeune	

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 March, 2017, as approved by the Board on the 26th day of April, 2017, at Baton Rouge, Louisiana.

Signature Pending
Chairman, Frank Holthaus