



LOUISIANA PUBLIC DEFENDER BOARD

BOARD MEETING

Tuesday, March 24, 2015

LSU Law Center, 2nd Floor, Tyson Room, 2:00 pm
Baton Rouge LA 70806

MINUTES

1. Call to Order and Remarks of the Chairman. A meeting of the Louisiana Public Defender Board, pursuant to lawful notice, was duly convened and called to order by its Chairman on Tuesday, March 24, 2015, at 2:10 p.m. at the LSU Law Center, Tyson Room, in Baton Rouge, Louisiana.

The following Board members were present:

Robert Burns
Addison Goff
Herbert Larson
Herschel Richard

Franz Borghardt
Leo Hamilton
Hector Linares
Stephen Singer

Hampton Carver
Robert Lancaster
Tom Lorenzi

The following Board members were absent:

Frank Holthaus
Jacqueline Nash
Gina Womack
Rebecca Hudsmith, Ex Officio

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

Jay Dixon, State Public Defender
Barbara Baier, General Counsel
Natashia Carter, Accountant
Jean Faria, Capital Case Coordinator
Anne Gwin, Executive Assistant
Richard Pittman, Dep. State Public Defender, Dir. Juvenile Defender Services
Tiffany Simpson, Juv. Justice Compliance Officer/Director of Legis. Affairs
Erik Stilling, Program Development and Resource Management Officer

Judge Burns announced the formal appointment to the Board of Mr. Steven Singer, appointed by the Governor, representing Loyola University School of Law, Mr. Herbert Larson, appointed by the Governor, representing Tulane University School of Law and Mr. Franz Borghardt, one of two Governor at-large appointments. All three were welcomed.

2. Call for Public Comment. Judge Burns called for public comments. East Baton Rouge Parish Family Court Judges Pamela Baker, Charlene Day and Lisa Woodruff-White addressed the Board. Specifically, they voiced their concerns regarding the potential removal of Public Defenders in their courts as a result of restriction of services. The judges reported that a new system for the review of the payment of fees to the public defender's office has recently been implemented and is being monitored for results. District Defender Mike Mitchell (19th District/EBR Parish) reported that he has implemented his Restriction of Service Plan but that his office may not remain solvent through the month of June, 2015.

Mr. Lorenzi moved that staff monitor the Family Court fee payment review system and provide the Board with a 60-day report with input from the Family Court judges and Mr. Mitchell. Mr. Hamilton seconded the motion which passed unopposed.

3. Adoption of the Agenda. Mr. Hamilton moved to adopt the agenda. Mr. Lorenzi seconded the motion, which passed unopposed.

4. Review of the January 13, 2015, Meeting Minutes. Mr. Richard moved to accept the Minutes of the meeting as presented. Mr. Hamilton seconded the motion which passed unopposed.

5. Ratification of Board Issues: February 10, 2014 – January 13, 2015*. Because of the lengthy delay in the appointment of both Steve Singer and Herbert Larson, Mr. Dixon requested that the Board ratify all votes of the Board between the dates of February 10, 2014 and January 13, 2015. Mr. Lorenzi moved to ratify all votes of the Board between the dates of February 10, 2014 and January 13, 2015. Mr. Hamilton seconded the motion which passed unopposed.

6. Executive Session^{1, 2*}. Mr. Lorenzi moved to go into Executive Session. Mr. Hamilton seconded the motion which passed by unanimous vote. Mr. Alan Golden, District Defender for the 1st Judicial District (Caddo Parish) informed the Board that he is waiving executive session and requested public forum. Mr. Borghardt moved to leave executive session. Mr. Lorenzi seconded the motion which passed by unanimous vote.

¹ 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 character and professional competence of a person; provided, however, such person(s) may require that such discussion be held at an open meeting pursuant to La. R.S. 42:17(A)(1). No final or binding action will be taken during executive session. The Board may or may not discuss the applicants for the District Defender position in District 17 (Lafourche Parish), District 16 (Iberia, St. Martin, St. Mary Parishes), and the status of the searches in District 33 (Allen Parish), District 2 (Claiborne, Iberville, Jackson Parishes) and District 3 (Lincoln, Union Parishes), records request in the 22nd and the DAF in Caddo.

² 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: State v. Barthelemy, 11th JDC, Dockets: 13-CR-072667, 668 and 669; State v. Kenneth Willis, Docket No.: 304,806, Division 3, Caddo Parish; State v. Tarika Wilson, Docket No.: 315,973, Division 1, Caddo Parish; State v. Stacey Blount-Juneau; State v. Finister, et al, 19th JDC, Docket: 04-14-0380, 2014-KW-1440; State v. Arkansas, Docket: 330,655, 1st JDC, Caddo Parish.

7. **Changes to DAF – FY16***. Mr. Dixon reported staff is requesting a reduction in the DAF for FY16 to the 1st Judicial District PDO as a result of the discovery of an issue regarding the misdemeanor case count in that district. Caseloads are a key factor in the formula which derives at each district's funding amount. Staff completed several site visits to the Caddo district office, the courts and the jail in an effort to examine the situation, and determined that, based on a variety of reasons, that the number of misdemeanor cases being reported by the district is erroneous. Mr. Dixon reported that Mr. Golden, District Defender for the 1st Judicial District was made aware of staff's concerns in writing in order to respond to the Board.

Mr. Golden addressed the Board and expressed his concerns for the manner in which the situation was being handled and presented documentation in his defense. He also presented and questioned two witnesses, Mr. Alex Rubenstein, the staff attorney handling the district's misdemeanor cases and Ms. Debra Jacobs, secretary to Mr. Rubenstein.

After a lengthy discussion, Mr. Larson moved that action be deferred until the next meeting and that a joint report from Mr. Dixon and Mr. Golden be provided on the discrepancy in the case numbers. Mr. Franz Borghardt amended the motion to include that Mr. Golden provide information concerning the number of motions filed in the misdemeanor cases at question, the number of misdemeanor trials held and the number of cases plead. Mr. Larson accepted the amendment to his original motion. Mr. Linares seconded the motion as amended which passed unopposed.

Mr. Goff moved to amend the agenda which Mr. Singer seconded and which passed unopposed. Mr. Goff moved to address item number 9, District Defender Appointments, before item 8. Mr. Singer seconded the motion which passed unopposed.

9. **District Defender Appointment(s)**. Mr. Dixon reported that staff has concluded all interviews of applicants submitted by the Selection Committees in Districts 16 and 17.

a. **District 16.**

i. **Ratification of Appointment of Interim and Salary***. Mr. Dixon requested ratification of the appointment of Ms. Cecelia Bonin as Interim District Defender for District 16, and her interim salary of \$7,500 per month. Mr. Richard moved to ratify Ms. Bonin's interim appointment and her salary of \$7,500 a month. Mr. Larson seconded the motion which passed unopposed.

ii. **Appointment and Salary of District Defender***. Mr. Borghart moved to appoint Ms. Bonin as the District Defender for District 16 at an annual salary of \$97,500 pursuant to staff's recommendation. Mr. Larson seconded the motion which passed unopposed.

b. **District 17.**

i. **Ratification of Appointment and Salary of Interim***. Mr. Dixon requested ratification of the appointment of Mr. Mark Plaisance as Interim District Defender for District 17 and his salary of \$6,333 per month. Mr. Richard moved to ratify Mr. Plaisance's interim appointment and his salary of \$6,333 per month. Mr. Borhardt seconded the motion which passed unopposed.

ii. **Appointment and Salary of District Defender**. Mr. Borghart moved to appoint Mr. Plaisance as the District Defender for District 17 at an annual salary of \$76,000 pursuant to staff's recommendation. Mr. Richard seconded the motion which passed unopposed.

c. District 33 –District Defender Selection Status*. Mr. Dixon reported that Mr. Alex Chapman, District Defender for District 13 is acting as Interim District Defender pending the selection process. After a brief discussion, Mr. Borghardt moved that Mr. Chapman be offered the position permanently, in addition to maintaining his District Defender position in District 13, at a combined annual salary of \$90,000. Mr. Goff seconded the motion which passed unopposed.

d. District 2 – Ratification of Appointment of Interim and District Defender Selection Discussion*. Mr. Dixon requested ratification of the appointment of Mr. Herman Castete as Interim District Defender for District 2 at a monthly salary of \$2,500 pending the appointment of a permanent District Defender. Mr. Richard moved to ratify Mr. Castete’s interim appointment and salary. Mr. Goff seconded the motion which passed unopposed. Mr. Dixon reported the selection committee process will start immediately.

e. District 3 – Ratification of Appointment of Interim and District Defender Selection Discussion. Mr. Dixon requested ratification of the appointment of Mr. Herman Castete as Interim District Defender for District 3 at a monthly salary of \$2,500 pending the appointment of a permanent District Defender. Mr. Richard moved to ratify Mr. Castete’s interim appointment and salary. Mr. Goff seconded the motion which passed unopposed. Mr. Dixon reported the selection committee process will start immediately.

8. Budget and Fiscal Issues and Committee Recommendations

a. Financial Report*. Acting Budget Officer Natasha Carter reported \$30,858,230 expended or encumbered this fiscal year to date, \$2,913,845 projected to be expended or encumbered through the end of the fiscal year, and approximately \$80,298 available for reallocation. Ms. Carter advised that staff is requesting \$30,000 to be set aside to cover the pending office relocation. Ms. Faria indicated that another approximately \$6,000 could also be needed to cover a proposed training in District 22. After a brief discussion on the training issue, Mr. Larson moved that \$7,500 be set-aside from the \$50,000 for training in District 22. Mr. Singer seconded the motion which passed unopposed. Mr. Larson then moved to adopt the financial report as presented. Mr. Lorenzi seconded the motion which passed unopposed.

b. Executive Budget Recommendation, FY 16.

i. Proposed Resolution – Position Cuts*. Mr. Singer moved to defer items 8(b) and 8(b)(i) to the next scheduled Board meeting. Mr. Linares seconded the motion which passed unopposed.

c. FY15 – Year End DAF Update. Mr. Singer moved to defer item 8(c) to the next scheduled Board meeting. Mr. Carver seconded the motion which passed unopposed.

d. DAF – FY 2016*. This item, in direct relationship to Item 7 -- Changes to the DAF-FY16 -- is deferred to the next scheduled Board meeting, as a result of the deferral of Item 7.

e. Capital Program Contracts – Amendments*. Capital Case Coordinator Jean Faria reported that the Budget Committee is recommending the allocation of the remaining \$355,000 in FY15 capital funds for CAPOLA to the three capital trial programs handling the capital cases removed from CAPOLA. Three hundred thousand dollars is to be split equally between the three capital trial programs (BRCCO, LCAC and CDPSELA) with the remaining \$55,000 to be applied to the Expert Witness Fund and

used to defer expert expenses incurred in those cases. Mr. Lorenzi seconded the recommendation which passed unopposed.

Further, Ms. Faria reported the Budget Committee is recommending an additional \$51,603 for FY16 from the Capital Budget to be allocated to the Expert Witness Fund for specific use by the capital contract trial programs on experts for the CAPOLA cases in which they are providing representation. Mr. Lorenzi seconded the recommendation which passed unopposed.

f. ABA Proposal – Work Load Study Funding* Ms. Faria reported that the Budget Committee is recommending an additional \$32,500 toward the completion of the Work Load Study for a total amount of \$76,000. Mr. Lorenzi seconded the recommendation that passed unopposed.

g. Ratification – JLCB Report*. Mr. Larson moved to defer this issue to the next scheduled Board meeting. Mr. Lorenzi seconded the motion which passed unopposed.

10. Policy Committee Reports and Recommendations.

a. Revised Expert Witness Funding Request Protocol*. Ms. Faria reported that the Policy Committee is recommending a revised protocol which changes the monthly installment limits currently in place to one total annually encumbered amount and makes the fund accessible to all experts rather than only to core team members. Ms. Faria reported that General Counsel has established that, with the application and payment protocols and safeguards in place, that deficit spending will not occur. Further, Ms. Faria explained that all fund applicants will be advised of payment policies at the time of the approval of the application. Mr. Singer seconded the recommendation which passed unopposed.

b. POLICY: DAF Annual Distribution*. Mr. Lorenzi moved to defer action until the next scheduled Board meeting. Mr. Larson seconded the motion which passed unopposed.

c. RESOLUTION: Proposed Board Support*. Mr. Dixon reported that the Policy Committee is recommending that the Board declare its full support -- in the form the proposed Resolution -- to any district in or facing restriction of services, discouraging and condemning any action that sanctions a line defender, supervisor, district defender, or member of staff for any action taken by a District or any employee of the District as part of an approved Restriction of Services plan. Mr. Richard seconded the recommendation to adopt the resolution as presented. The recommendations passed unopposed.

d. POLICY: Juvenile ROS*. Deputy Public Defender/Director of Juvenile Services Richard Pittman reported that the Policy Committee is recommending a Juvenile Restriction of Services policy that, in the event that public defenders must implement a service restriction plan would ensure that youth in Louisiana's juvenile justice system are protected, in accordance with their uniquely vulnerable status. Mr. Lorenzi seconded the recommendation that passed unopposed.

11. Juvenile Strategic Plan Development*.

a. Proposed Resolution*. Mr. Dixon submitted for Board approval a Resolution instructing staff to engage stakeholders from around the juvenile defense and public defense community to engage in strategic planning for the future of juvenile defense. Mr. Lorenzi moved that the Board adopt the Resolution as presented. Mr. Larson seconded the motion which passed unopposed.

12. **Restriction of Services – Update.** Mr. Dixon thanked Jee Park (Deputy District Defender – District 41), Harold Murray (Public Defender, District 9) and Brett Brunson (District 10 District Defender and current LACDL president) for their support and assistance in these early days of ROS. Mr. Dixon informed the Board that staff is working on a Board member secure section of the website in which to place all of the approved ROS plans for their review.
13. **Public Records Request.** General Counsel Barbara Baier reported that staff is in receipt of three Public Records Act requests for which they are currently compiling information. Both the Juvenile Justice Project of Louisiana and the Southern Poverty Law Center are juvenile defense in focus. The third, from *The Advocate's* Covington, Louisiana office, pertains to issues in the District 22 PDO.
14. **Capital Punishment Fiscal Impact Commission – Update.** Ms. Faria reported that this newly formed Commission has met several times. The Commission will have to be renewed in the upcoming session. There are no upcoming meeting dates at this time.
15. **Open Meeting Law – Capital Certification Appeals Panel.** Ms. Baier reported that the panel formed to hear certification appeals is required to follow the state's open meeting laws.
16. **Legislative Session, 2015.** Mr. Dixon reported that staff has begun monitoring 2015 filed bills and will keep the Board updated.
17. **Ethics Reporting – Due annually May 15.** Executive Assistant Anne Gwin reminded all Board members of the mandatory Personal Financial Disclosure Statement requirements. All members were provided with a blank form and the link to online filing.
18. **SPD Report.** Mr. Dixon reported that Staff activities since the last meeting are available in the SPD report.
19. **Other Business.** Mr. Lorenzi requested that the Board commend attorney Marty Stroud for his recent statement regarding the history and current plight of indigent defense. Mr. Lorenzi moved that staff draft a commendation for the next Board meeting. Mr. Linares seconded the motion which passed unopposed.
20. **Next Meeting*.** The Board set the next two meetings in Baton Rouge, as follows: Tuesday, May 12, 2015 and Tuesday, June 16, 2015. The location will be announced once it is confirmed.
21. **Adjournment.** Mr. Linares moved to adjourn which was seconded by Mr. Borghardt.

GUESTS:

Reggie McIntyre
 Sarah Ottinger
 Cecelia Bonin
 David Price
 Herman Castete

Richard Tompson
 John Burkhardt
 Jim Looney
 Richard Bourke
 Mike Courteau

Tony Champagne
 Matt Robnett
 G. Paul Marx
 Kerry Cuccia
 Brett Brunson

Paul Fleming
John W. Lindner
Mark D. Plaisance
Alan Golden

Alan Robert
Gary Clements
Josh Perry
Debra Jacobs

Harry Fontenot
Forrest L. Moegle
Alex Rubinstein

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 24th day of March, 2015, as approved by the Board on the 12th day of May, 2015, at Baton Rouge, Louisiana.


Robert Burns (Ret.), Chairman