

LOUISIANA PUBLIC DEFENDER BOARD

**BOARD MEETING**

Thursday, November 8, 2012

Goodwill Industries, 3400 Tulane Avenue, New Orleans

2:00 p.m.

**MINUTES**

**1. Call to Order and Remarks by the Chairman.** A meeting of the Louisiana Public Defender Board, pursuant to the call of its Chairman and lawful notice, was duly convened and called to order by its Chairman at 2:25 p.m. on Thursday, November 8, 2012, at Goodwill Industries in New Orleans, Louisiana.

The following Board Members were present:

Frank Neuner, Chairman  
Robert Burns  
Add Goff  
Leo Hamilton  
Dan Krutz  
Luceia LeDoux  
Tom Lorenzi  
Pam Metzger  
Gina Womack

The following Board Members were absent:

Frank Holthaus  
Jacqueline Nash  
Herschel Richard  
Majeeda Snead

The following *ex officio* Board Members were absent:

Judge Robert Brinkman  
Rebecca Hudsmith

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

Jean M. Faria, State Public Defender  
Julie Kilborn, First Assistant State Public Defender–Director of Training  
John Di Giulio, Trial-Level Compliance Officer  
Anne Gwin, Executive Assistant  
Roger Harris, General Counsel  
Heather H. Hall, Projects Advisor  
Erik Stilling, Information Technology and Management Officer  
Angel Williams, Budget Officer  
Juliet Yackel, Capital Case Coordinator

Mr. Neuner congratulated Professor Majeeda Snead and LPDB Compliance Officer John Di Giulio on their recent awards. Professor Snead was recipient of the Juvenile Justice Project of Louisiana's 2012 Justice for Youth Award recognizing her advocacy on behalf of incarcerated youths. Mr. Di Giulio is to receive the Louisiana Association of Criminal Defense Lawyers' 2012 Justice Albert Tate Jr. Award in recognition of his career-long excellence as a criminal defense practitioner and contributions to equal justice for indigent defendants in Louisiana. Mr. Neuner announced the other LACDL award recipients as well, and greeted guest Autumn Town. Ms. Town was featured in the October issue of NACDL's publication, The Champion. He commended all for their contributions to public defense.

**2. Review and Approval of the Agenda.** There being no changes, the agenda was approved as presented.

**3. Review and Approval of the Minutes of the Meeting.** There were no changes to the proposed Minutes from the September 11, 2012, meeting and upon motion of Mr. Hamilton, seconded by Prof. Metzger, the Minutes were adopted.

**4. Budget Committee Updates and Reports.**

**a. Financial Report, Nov. 5, 2012\*.** Budget Officer Angel Williams gave a brief financial update based on available information as of November 5, 2012. Ms. Williams reported that, of the \$33.5M budget, \$16.6M was spent or encumbered to date and \$192,000 is available for re-allocation.

**b. FY13 Funding**

**i. Districts\*.** Ms. Williams reported that \$15.7M was allocated to the District Assistance Fund for FY 12-13 and reminded the Board that districts have received only one-half of their allocation to date. Ms. Williams reported that the second half of the DAF available for distribution totals 7.8 million and CINC funds total \$489,840.

Initially, staff had recommended that Act 578 data (\$10 fee increase) be included to re-calculate the second distribution portions of DAF to the districts. However, Dr. Stilling reported that current available data indicates only a slight increase in local funds to the district offices from Act 578.

Budget Committee Chairwoman Luceia LeDoux informed the Board that staff recently learned that the Division of Administration may be pulling \$565,000 from LPDB's budget this fiscal year. Ms. LeDoux recommended on behalf of the Budget Committee that the second half of the



DAF and CINC funds allocated to the districts, as originally calculated without included Act 578 increases, be distributed immediately, rather than waiting for new data, to avoid the risk of losing any remaining funds to budget cuts.

Mr. Lorenzi moved that staff distribute the second half of the DAF and CINC funds, as originally calculated, immediately. Mr. Hamilton seconded the motion which passed unopposed.

**ii. Contract Programs\*.** The Budget Committee recommended that the contract program offices be given the second half of their budgeted expenditures with their new six month contracts for the period January 1, 2013 to June 30, 2013. Mr. Lorenzi seconded the motion which passed unanimously.

**c. Holdridge – Supplemental Contract\*.** The Budget Committee recommended an additional supplement in the amount of \$25,000 for Mr. John Holdridge to continue his work with the capital attorney certification process and training of the Capital Case Coordinator, as needed. Prof. Metzger seconded the recommendation which passed unopposed.

**d. FY 14**

**i. Budget Request\*.** Ms. Williams reported that staff has submitted a budget request of \$42.5M, which includes \$500,000 to fund Sex Offender Assessment Panel (SOAP) cases, for Fiscal Year 2014. The \$42.5M budget was presented as a recommendation to the Board by the Budget Committee. Mr. Hamilton seconded the recommendation, which passed unopposed.

**ii. T. O. Request\*.** First Assistant State Public Defender Julie Kilborn explained the need to increase LPDB's current Table of Organization (T.O.) from 16 to 19. The three positions which are already being staffed and in the current operating budget are the Administrative Assistant to the IT Division, Assistant Training Director, and Special Projects Advisor. The recommendation to approve staff to request authority to seek up to three additional T.O. positions was presented by the Budget Committee. Mr. Lorenzi seconded the recommendation which passed unopposed.

**5. Policy Committee Recommendations & Updates.**

**a. Expenditure and Revenue Data\*.** Mr. Neuner informed the Board that he had recently spoken with Mr. Charles DeRosier, District Attorney, (District 14/Calcasieu) and agreed to provide requested information. Subsequently, subpoenas duces tecum for financial and caseload information in the Reponde/Vincent cases (Calcasieu) were served on LPDB and the contract programs currently providing conflict representation. The contract programs have retained counsel to file motions to quash their subpoenas. Mr. Hamilton moved for LPDB to also retain counsel to challenge the subpoena and file a motion to quash. A brief discussion followed regarding the retaining of local (Calcasieu Parish) counsel to assist LPDB. Mr. Lorenzi seconded Mr. Hamilton's motion which passed unopposed.

**b. Staff Actions for Ratification.** Ms. LeDoux reported that because of unforeseeable imposed deadlines staff must occasionally make prompt decisions without the input or approval of Committees or Board members. Rather than submit decisions to the Board after-the-fact, staff has inquired on how best to communicate issues with Committee and/or Board members while remaining compliant with public meeting law and maintaining respect for members' time. After a brief discussion, staff was instructed to contact those Board or Committee members necessary to make a definitive decision and follow up with notification to the full Committee or Board of the action(s) taken.

**c. SOAP Contracts\*.** Roger Harris reported that contracts for attorneys to handle 2013 SOAP cases have been drafted and are awaiting Board approval. The contracts place a cap



of \$6,000 on each case for attorney fees with a cap of \$2,000 for investigators/mitigation experts. The following non-public defender attorneys have agreed to contract to provide defender services in SOAP cases in the following areas: Mr. Chris Edwards in Jefferson Parish; Ms. Marci Blaize and Mr. Rodney Baum in East Baton Rouge and Central Louisiana; and, Mr. Joe Grassi in North Louisiana. The recommendation to approve the contracts was presented by the Policy Committee and seconded by Mr. Lorenzi. It passed unopposed.

**d. Capital Updates**

**i. Attorney Certification Denials.** Capital Case Coordinator Juliet Yackel reported that there are three pending capital attorney certification appeals. In order to fairly hear the appeals, staff is recommending the formation of an appellate panel comprised of three Board members who did not participate in the original certification process.

**1. Board Appeal Review Panel.**

**a. Appeal Procedure\*.** After review of the capital certification denial appeal procedure, Mr. Neuner asked for volunteers to staff the panel. Professor Metzger and Judge Burns agreed to participate and Professor Snead was added with the understanding staff would contact her for confirmation. On recommendation of the Policy Committee, seconded by Ms. LeDoux, the capital certification denial appeal procedure and three-member review panel was approved and passed unopposed.

**ii. District Issues**

**1. District 1.** Compliance Officer John Di Giulio briefed the Board on the Caddo Parish capital case, *State v. Beverly Arthur*, in which the public defenders handling the case have filed motions to withdraw from the case based on their other caseload and supervisory responsibilities and their withdrawal from the capital certification process. Mr. Di Giulio suggested several scenarios for consideration. Mr. Lorenzi urged the Board not to consider changes to the capital certification process that took months to establish. A hearing date on the matter has been set for December 12, 2012, which staff will attend and continue to monitor.

**2. District 19.** One defense attorney handling capital cases in the 19<sup>th</sup> Judicial District was denied capital certification. The Baton Rouge Capital Conflict Office (BRCCO) has agreed to enroll in the case and resume representation.

**3. District 40.** Mr. Di Giulio reported that the 40<sup>th</sup> District Public Defender Office is facing serious funding problems due to a severe reduction in traffic ticket issuance. The District has requested representation assistance with one capital case. The Capital Defense Project of Southeast Louisiana (CDPSELA) has agreed to take the case.

**e. Suspension of Out-of-State Travel\*.** Due to budgetary constraints, the Policy Committee has recommended a freeze on LPDB funded out-of-state travel for Board and Board staff. Out of state travel on LPDB business being reimbursed by other agencies/organizations is allowed. Mr. Hamilton seconded the recommendation which passed unopposed.

**f. Third Party Notification.** Special Projects Advisor Heather Hall explained the newly implemented notification of LPDB meetings to interested third parties. Staff was instructed to circulate the policy to the districts and contract programs.

**g. Capital Appellate Project.** Ms. Kilborn reported as an information item only that the Capital Appellate Program (CAP) is restructuring to include other areas of capital work.

**6. Proposed Legislative Changes, 2013 Session\*.** General Counsel Roger Harris reported on the proposed statutory changes to be presented in the 2013 Legislative Session. Because the 2013 session is a fiscal session only, each legislator is limited to filing five non-fiscal bills during

the session. Staff has combined four statutory changes into one bill to be presented during session. On recommendation of the Policy Committee, seconded by Mr. Hamilton, the proposed changes were approved unopposed.

**7. Interagency Transfers, FY 14.** Ms. Kilborn informed the Board that \$58,000 in unexpected costs to the Division of Administration is to be taken out of LPDB's FY 14 budget for human resource and accounting services performed by the Division. This is an increase of \$57,336 from FY 12-13.

**8. Orleans Office Assessment.** Mr. Di Giulio reported on Orleans Parish District Defender Derwyn Bunton's response to the Ernie Lewis/Dan Goyette report.

**9. Juvenile Division**

**a. Working Group Update.** State Public Defender Jean Faria briefed the Board on the *Miller v. Alabama* decision which will result in approximately 300 additional juvenile cases in Louisiana requiring representation.

**b. Train the Trainers.** Ms. Kilborn reported on the December 3 "Train the Trainers" program sponsored by LPDB in which six juvenile defenders have registered. The goal is to train juvenile defenders to help grow juvenile attorney capacity and leadership statewide.

**c. Models for Change Conference.** Ms. Faria recently attended the Cross Action Network conference in Washington, DC. Mr. Neuner will be attending the Models for Change annual meeting also in Washington, DC, in December.

**10. Service Restriction Update**

**a. Districts In or Preparing for Restriction.** Ms. Kilborn reported on districts to be faced in the near future with submitting restriction of services notice.

**i. District 7.** (Catahoula/Concordia). District 7 is facing a \$50,000-\$70,000 shortfall for the year. The district has made a number of cuts to lessen the severity of the shortage including cutting Westlaw subscriptions, cancelling cell phones and reducing salaries.

**ii. District 8** (Winn). The Winn Parish PDO has reduced its attorney employees to two contract attorneys in an effort to avoid service restriction.

**iii. District 14.** Mr. Neuner reported that Calcasieu is currently in service restriction. District Defender Jay Dixon reported that a local judge has recently ordered LPDB to provide defense funds. Mr. Dixon informed the Board that the district office has received a five percent increase in local fees from the Act 578 increase which will still result in a \$100,000 shortfall for the year. Mr. Dixon expects a \$450,000 shortfall for FY 13-14.

**iv. District 37.** (Caldwell). District 37 has implemented a number of small measure cuts in efforts to delay service restriction.

**v. District 41.** Mr. Di Giulio reported Mayor Landrieu's budget goes to the City Council for vote on December 1, 2012. The current proposal for the Orleans Public Defender Office is \$400,000 less than last year.

**b. Cy Pres Grant.** Ms. Kilborn reported that the Louisiana State Bar Association has \$30,100 in grant funds resulting from Bayou Sorrel class action litigation. Districts 7 (Catahoula/Concordia), 8 (Winn) and 37 (Caldwell) submitted a joint proposal for the funds last week. If awarded, the shared funds will resolve service restriction in Districts 8 and 37, and partially resolve the service restriction in District 7.



**11. District 25 (Plaquemines) Update.** Richard Tompson, Interim District Defender for District 25, reported that a draft audit of the district's financial condition should be available by November 12, 2012. After a brief report on the district office's current situation, Mr. Tompson agreed to remain interim District Defender pending the formation of a selection committee and permanent appointment of someone from the district. There was no further discussion.

**12. Financial Audits**

**a. Louisiana Appellate Project (LAP)**

**b. Juvenile Regional Services (JRS)**

Ms. Kilborn reported that both LAP and JRS audits resulted in favorable reports from LPDB forensic auditor David Greer. There was no further discussion.

**c. Remaining 501(c)3 Organizations.** Mr. Greer will continue auditing the remaining contract offices.

**13. Staff Updates.** Ms. Faria presented briefly on other recent staff activity, grant status and the annual survey.

**14. Next Meeting Date.** The next Board meeting date is scheduled for Wednesday, January 16, 2013. Several Board members asked to hold the meeting at the Capitol, if possible. Once secured, the meeting location is to be announced.

**15. Other Business.** There was no additional business presented for discussion.

**16. Executive Session.**

Upon motion of Chairman Neuner, seconded by Mr. Hamilton, the Board went into executive session.

**17. Adjournment\*.** Upon motion of Mr. Lorenzi, seconded by Professor Metzger, the meeting adjourned at 4:35 p.m.

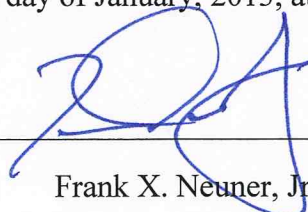
Guests:

Heather Kindschy  
Jordan McEntyre  
James T. Dixon, Jr.  
Autumn Town  
Richard Tompson  
Susan Kutcher Jones  
Shelley Goff

Reggie McIntyre  
Tony Champagne  
Herman A. Castete  
J. Clay Carroll  
Vic Bradley  
Jim Looney  
Chris Aberle

Derwyn Bunton  
Michael A. Mitchell  
Michael Bradley  
Chanel D. Long  
Richard B. Stricks  
Kerry Cuccia  
Lindsey Hortenstine

**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 8th day of November, 2012, as approved by the Board on the 16<sup>th</sup> day of January, 2013, at Baton Rouge, Louisiana



Frank X. Neuner, Jr.