



LOUISIANA PUBLIC DEFENDER BOARD

Friday, June 5, 2020

12:00 p.m.

Zoom¹

Minutes

1. A meeting of the Louisiana Public Defender Board, pursuant to lawful notice, was called to order by its Chairman Frank Holthaus on Friday, June 5, 2020, via ZOOM video-conference (see footnote) at approximately 12:03 p.m. Mr. Holthaus acknowledged quorum.

The following Board members were present²:

Zita Andrus	Chris Bowman	Flozell Daniels
W. Ross Foote	Michael Ginart	Frank Holthaus
Lyn Lawrence	Donald North	Chaz Roberts
Moses Williams		

The following Board member was absent:

Pat Fanning

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

Rémy Voisin Starns, State Public Defender
Barbara Baier, General Counsel
Natashia Carter, Budget Administrator
Jean Faria, Capital Case Coordinator
Anne Gwin, Executive Assistant
Richard Pittman, Dep. Public Defender, Dir. Juvenile Defender Services
Erik Stilling, Information and Technology Director
Tiffany Simpson, Legislative Director – Juv. Compliance Officer

2. Adoption of the Agenda. Judge Ross Foote moved to adopt the agenda which was seconded by Mr. Chaz Roberts and passed unopposed.

¹ This meeting is being held via a ZOOM video-conference pursuant to Executive Proclamation 75-JBE-2020, Section 2(C).

² Mr. Daniels, Ms. Andrus and Mr. Lawrence arrived late at approximately 12:28 pm. Voting on action item prior to their arrival was not affected as quorum was noted with 7 members present.

3. Call for Public Comment. Mr. Holthaus indicated public comment would be taken up with each item.
4. Adoption of the Minutes. Professor Donald North moved to adopt the Minutes of the May 8, 2020 meeting as presented. Mr. Roberts seconded the motion which passed unopposed.
5. Budget Issues
 - a. Solvency Projections. Dr. Erik Stilling gave an explanation of the solvency projections updated since the last meeting (May 29, 2020). Mr. Starns informed the Board that the Office of Planning and Budget has approved the salary waiver (statutory positions) approved by the Board at the last meeting. The disbursement of the waived salary funds (included in the projections) left the residual and exigency set-aside funds virtually intact for disbursement to the districts.
 - b. District – Immediate Needs. Professor North asked that each item below be taken up individually. Mr. Starns reported on the financial needs of each district as follows: District 11 (Sabine Parish) - \$30,551; District 13 (Evangeline Parish) - \$31,637; District 35 (Grant Parish) - \$4,025; District 37 (Caldwell Parish) - \$12,074. He reported a need for \$1,118 in District 34 (St. Bernard Parish), but District Defender Tom Gernhauser stated that with his recent mitigation cuts and recent funds received from the Sheriff, his district could make it through June. Professor North moved to adopt the recommendation of the SPD as presented. Mr. Lawrence seconded the motion. Clarification was made that District 34 (St. Bernard Parish) would need the \$1,118 and that amount would be included in the disbursement. Professor North amended his motion to include \$1,118 to District 34 (St. Bernard Parish) and Mr. Ginart seconded. Upon vote the motion passed unopposed.
 - c. DAF FY21. Mr. Starns reported that staff continues to work on a plan for the disbursement of funds for FY21 and the two drafts included in the materials are not recommendations but presented to start discussions and are based on an assumed standstill budget from FY20. Professor North stated he wanted no district to get a zero disbursement and for staff to research the districts that had to come back to the Board for funding six months out from the initial disbursement.
6. *Miller – Montgomery* Contracts – FY21. SPD Starns reported that last week the Board resolved to renew all contracts; however, there is an unresolved issue regarding the *Miller Montgomery* contract with LCCR. Specifically, the Board will need to decide what the ramifications are of the withdrawal by 34 of the 42 districts from the Memorandum of Understanding between the districts and LCCR and how they will now treat the statutory funding split. He indicated he has submitted his recommendation in the proposal provided in the materials. Mr. Roberts asked to hear SPD Starns' recommendation before discussion. Mr. Starns outlined his recommendation as follows: There are 20 Miller cases and 63 Montgomery cases.

Of those cases, 54 are with the 8 districts³ that did not withdraw their agreement to the Memorandum of Understanding. Twenty-nine cases are from the 34 districts that did withdraw. If a dollar amount is assessed to each case, the money could follow the cases. The cost per case -- considering the total allotment with the number of cases -- is a little over \$16,000 per case. One-half of that amount (\$8,000 per case) sent back to each district by case is \$232,000. The money for the other 54 cases is \$432,000.00. It would stay with the 8 districts that did not withdraw and could be used to contract with a program. The remainder of \$673,009 would go into a *Miller-Montgomery* reserve fund that the Board would hold for any case that may need litigation beyond the initial \$8,000. Application would be made to staff and brought to the Board for dispersal on a case by case basis, as needed.

Discussion followed. Judge Foote expressed concern that discussion was focused on pure money and not the service delivery. He asked for the chance to look at the shift in the policy concept of delivery. Further he asked that the districts that opted out provide a plan on how they would deliver the services.

Professor North stated that based on the numbers provided no one is overworked with *Miller-Montgomery* cases and this is not a matter of urgency that needs to be dealt with today. Mr. Ginart disagreed and stated that the Board asked SPD Starns for a recommendation and a decision should be made. He also agreed that the Policy Committee should review to determine if this is this best way to provide the service, that Mr. Clark-Rizzio should have an opportunity to ask questions and provide information, and that the District Defenders should provide their plans to take their cases or leave them with LCCR after which the Board can make a decision from policy and budget perspectives. He then moved that the issue go to the next Budget Committee meeting and the next Policy Committee meeting and thereafter be a recommendation made to the Board at the next Board meeting. Mr. Daniels and Mr. Roberts seconded the motion.

SPD Starns clarified that the issue to focus on is the funding involved is \$1,337, 009 appropriated to the Public Defender Board (non-statutory dedication). Those funds are at the Board's discretion to use. Last fiscal year the Memorandum of Understanding treated that funding as 65%-side money that was then contracted to LCCR. For FY21, 34 of the 42 districts have withdrawn their consent pursuant to the Memorandum of Understanding. The Board needs to decide for FY21 how to treat the funding - as 35%-side money and/or 65%-side money. That decision has a sense of urgency because it affects everything else.

Mr. Holthaus stated that FY 21 is the issue here and the Board does not have to have this solved on July 1, rather solved correctly. He indicated he would like for Budget and Policy to review the issue.

Mr. Lyn Lawrence indicated he would need more information on the status of the cases – what stage they are in – and assessing funding to them, before voting.

³ The eight non-revoking districts are District 10 (Natchitoches Parish), District 19 (EBR Parish); District 24 (Jefferson Parish); District 26 (Bossier and Webster Parishes); District 29 (St. Charles Parish); District 35 (Grant Parish); District 40 (St. John the Baptist Parish); and District 41 (Orleans Parish).

Judge Foote reiterated that the transition of the cases needs further policy review.

Mr. Moses Williams stated that the Board should have a better understanding why the Districts decided to withdraw from the MOU and that there is not enough information to vote at this time.

Mr. Roberts disagreed that the information is not available rather the decisions are tough and that he supports the ideas provided to try to save money.

Mr. Ginart reiterated that that SPD Starns was asked for a plan, he did a lot work, a lot a discussion has been had and the issue needs to go to Budget and Policy in order for the Board to make a decision. He called the question. The motion was restated: that this issue (Miller-Montgomery Case/MOU) be sent to both the Budget Committee and the Policy Committee to consider at the very next meetings and to make recommendations back to the Board for its first meeting after those recommendations come in. Mr. Roberts seconded the motion.

Professor North asked to amend the motion to leave the resources where they are right now and for policy and budget review any recommendations afterward.

Mr. Williams clarified again that the motion is for this matter to be referred to both the Budget and the Policy Committee for recommendation to be brought back to the Board and that in itself leaves everything at a standstill, so no amendment is needed.

Mr. Holthaus stated that the question has been called and asked for a vote. Upon a roll call vote, the motion to refer the matter to the Budget and Policy Committees at their next meetings and return with a recommendation to the full Board passed nine in favor and one against (North). Chairman Holthaus directed both the Budget Committee and the Policy Committee at their next meeting to study this proposal and make recommendations back to the Board. He directed staff to place it on a Board agenda as an action item after a period that the Board has had time to study both Committee's recommendations.

10. Executive Session^{4*}. Executive Session was taken early on the agenda. Mr. Daniels moved to go into Executive Session. Mr. Ginart seconded the motion which passed unopposed. Mr. Daniels moved to return to Regular Session, seconded by Mr. Bowman and passed unopposed.

Upon return to Regular Session the remaining agenda items were addressed. Chairman Holthaus recognized that Mr. Daniels wanted to move to amend the

⁴ 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). The Board may discuss an LCAC personnel issue. Additionally, in accordance with La. R.S. 42:17 and La. R. S. 42:19(A)(b)(iii) the Board may discuss the following: St. v Ian Howard, 15th JDC, Dockets: 16358 and 163534.

agenda to include discussion about district funding. Mr. Daniels confirmed that is his motion and clarified he would like to discuss immediate needs in District 41 (Orleans Parish). Mr. Holthaus reported no opposition. Professor North expressed opposition. Discussion continued. Mr. Daniels reported that District 41 (Orleans Parish) after mitigation efforts and the \$137,000 provided by the Board last week is still in need of at least another \$225,000 to get through the fiscal year. The projections indicated the district in total need of approximately \$663,000 through the fiscal year. Dr. Stilling reported that after disbursement of the funds approved earlier in this meeting, a \$1.319M balance remains in the contingency fund; however, there will remain a July shortfall problem district-wide. Professor North indicated his approval with helping District 41 (Orleans Parish) but the Board must be prepared for financial crisis in July. District Defender Derwyn Bunton indicated with the \$137,000 already provided, he is asking for approximately \$223,000 (of his original \$450,000 request), which he believes will get his district through half of July. Mr. Daniels moved to provide the \$223,000 to District 41 (Orleans Parish) because they are in a situation where they need that support now and as other districts come in line needing support the Board will continue to address those requests. Mr. Ginart seconded the motion. Discussion continued. Mr. Daniels clarified that District 41 (Orleans Parish) will not make it to July 1 without this assistance. Mr. Ginart reported that Mr. Bunton has addressed the Board on a number of occasions and removed requests for need. Further, no one gets money more from their local area than Mr. Bunton. His district has this need to make payroll and he (Mr. Ginart) supports providing the additional funding at this time. Professor North inquired if the \$223,000 will be backed out of the July disbursement. Mr. Bunton clarified that the \$663,000 is compounding what the projected deficit is through July, so it would not be \$233,000 now, then \$663,000 in July, rather the \$223,000 would be subtracted from their projected need in July. Mr. Starns indicated that Mr. Bunton made this request in March, but he (Mr. Starns) did not come to the Board with a recommendation; however, he wants all districts solvent and will do what the Board wants. Mr. Daniels restated his motion that the Board give \$223,000 to District 41 (Orleans Parish) and Mr. Ginart seconded. Professor North clarified the motion includes backing the \$223,000 out of the \$663,000 July projected need. Mr. Daniels agreed. Upon vote, the motion carried unopposed.

7. LCLE Grant. Dr. Tiffany Simpson reported that staff is waiting on the survey response submitted to LCLE requesting workstations, PPE, and other necessities for district offices. She indicated that the grant application will be due in a very timely manner so a second survey will be sent out to the districts with a request to complete them with more detailed information so that all needs are included in the request.

8. Division Updates

a. Legislative Update. Dr. Simpson reported she and SPD Starns have been active at the Capitol with Legislative Committees since the last meeting. She reported having gotten a very good response from Senator White in Senate Finance and that House Bill 1 (Appropriations Bill) has

passed out of Committee but with several important amendments that provide for: 1) the requirement for an 80/20 split of the Public Defense Fund to the districts and the use of the current DAF methodology for this year only; 2) \$1.1 million dollars to the LPDB budget; and 3) and additional \$6 million dollars. She reported the amendments passed in Committee today and are expected to move to the House floor on Wednesday before going to the Senate. Mr. Daniels stated that the 80/20 split, if passed, creates a disastrous budgetary management situation and asked Dr. Simpson if the source of the recommendation is known and if there is a solution to get it removed. Both Dr. Simpson and SPD Starns indicated today in the House Appropriation's hearing was the first either had heard of the proposal. Mr. Daniels asked if perhaps the Board could partner with PDAL to mount resources to change the legislation. Chairman Holthaus directed staff to provide an opposition paper on the impact of the 80/20 split to LPDB as soon as possible. Mr. Holthaus reminded everyone that the Board is already being sued in a case that alleges that at 65-35 the delivery of adequate resources to a large segment of our clients is not being met. This recommendation will impact LPDB and possibly the litigation.

b. Juvenile Update. Deputy Public Defender – Director of Juvenile Defender Services Richard Pittman reported that the first claim under the Title 4E reimbursement funding for Parent Representation has been submitted for \$80,000 for expenditures between October and December of 2019. The second invoice that would be for January – March of 2020 is expected to be about the same amount. He is working to expand the funding moving forward.

9. Executive Positions. Mr. Holthaus indicated this was discussed to some degree in Executive Session. Mr. Chris Bowman moved that the Board have the State Public Defender interview and select three candidates for each of the positions and make recommendations for the Board to conduct interviews at the next available meeting and prior to the end of the fiscal year. Judge Foote seconded the motion. Chairman Holthaus asked to clarify if the interviews would be held regardless of Zoom or in person. Mr. Bowman indicated that was correct. Mr. Holthaus indicated that the next meeting is in seven days. Mr. Bowman agreed a week was too soon to get this done. Mr. Holthaus suggested 14 days. Mr. Bowman agreed to the extension and Judge Foote indicated he would second the motion. Upon call for a vote, the motion passed without opposition.

11. Announcements. Chairman Holthaus reported that he received notice on Sunday night that he was to appear at the Legislature to answer questions by Senator Katrina Jackson (Monroe, District 34). He stated that SPD Starns, Dr. Simpson, Ms. Carter and Dr. Stilling appeared with him and they all met with a large group of Senators who seemed satisfied with the information provided. He thanked those members of staff for appearing with him.

12. Next Meeting. Friday, June 12, 2020 at 12:00 p.m. via zoom video-conference.

13. Adjournment. Mr. Daniels moved to adjourn. Professor North seconded and the motion passed unopposed.

GUESTS: See attached Zoom participants record.

I HEREBY CERTIFY that the foregoing is a full, true, and correct account of the proceedings of the Louisiana Public Defender meeting held on the 5th day of June 2020, as approved by the Board on the 26th day of June, 2020⁵.

C. Frank Holthaus, Chairman

⁵ The meeting at which these minutes were approved was held by Zoom video-conference pursuant to Executive Proclamation 84JBE 2020 Section 2(C).
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Board Meeting - Jun 5 2020

GUESTS:

Susan Jones
eve hampson
Jee Park
Angela Claxton
Paul C Fleming Jr
Trisha Ward
Donald Kneipp
Michelle M. AndrePont
G Paul Marx
Herman Castete
Derwyn Bunton
Emily Zolynsky
Richie Tompson
Joshua Newville
Andrea Stentz
Matilde Carbia
Richard Bourke
Tony Tillman
Aaron
Harry Fontenot
Lindsay Blouin
Michael A. Mitchell
Kristin Wenstrom
Mike Courteau
david marcantel
Steven Thomas
Kyla Romanach
emily ratner
Richard Stricks
Conor Gaffney
Hannah Van De Car
CKolinchak
Rerund1950 Batch
Cecelia Kappel
Fen Swann
Elizabeth
Deirdre Fuller
Christopher Aberle
Jacqueline DeRobertis
jillpasquarella
Brett Brunson
Rhonda Covington
Frazilia Wiggins
iPhone
John Lindner

Molly Fowler
Renee Bourg
Thomas Gernhauser
Lauren James
Meredith Angelson
Chuck Reid
Bettye
Michael Miller
Reginald McIntyre
Gary Clements
Maggie LeBlanc
deirdrefuller
J.Albert Ellis
derrick carson
slee
Brian McRae
Dannielle Berger
Stephen Stanford
Kimya Holmes
rlcan
Caressa's iPhone
Annie Flanagan
37th JDC IDB
12259395134
iPhone Flozell
Meg
13183310439
Chanel Long
13182439723
andrewpark
Jarrod Easterling
Kristen Rome
15044271982
Bruce Unangst# II
emily ratner

BOARD

Frank Holthaus
flozelldaniels
W Ross Foote
dnorth
Chaz Roberts
Chris Bowman
Mike Ginart
Moses Williams (M W)
Lyn Lawrence
Zita Andrus

STAFF

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BBaier
NCarter
JFaria
RVStarns
Tiffany
AGwin
Erik Stilling