



## LOUISIANA PUBLIC DEFENDER BOARD

Thursday, October 8, 2020

12:00 p.m.

Zoom<sup>1</sup>

### Minutes

1. Call to Order and Comments by Chairman. A meeting of the Louisiana Public Defender Board, pursuant to lawful notice, was called to order by its Vice-Chairman Professor Donald North on Thursday, October 8, 2020, via ZOOM video-conference (see footnote) at approximately 12:05 p.m. Professor North commended outgoing board member Moses Williams for his years of service to the Board and to public defense and welcomed new Board member Willie Hunter. Vice-Chair North directed the meeting to the first non-action item on the agenda, item 5b, pending quorum being met.

5b. FY21 CUFs and Financial Anomaly Reports. Dr. Stilling gave a detailed report on conviction and user fee data received for the months of June, July, and August, 2020, and on the comparisons to the same dates for FY20. Additional data was reported on for the same months for FYs 20 and 21 for district office expenditures, cash-on-hand and bank accounts.

Mr. Willie Hunter announced his presence at the meeting, roll was called, and quorum documented.

2. Adoption of the Agenda. The agenda was adopted unopposed.

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

1a. Commendation: Moses Williams. Judge Ross Foote moved that the State Public Defender issue a letter of commendation to Mr. Moses Junior Williams for his years of service in public defense and to the Public Defender Board. Mr. Chaz Roberts seconded the motion which passed unanimously.

1b. Professor North recognized new Board member Willie Hunter and asked that he introduce himself. Mr. Hunter stated that he is from Monroe, Louisiana, has practiced law for 40 years, was a State Representative and is a retired Lieutenant Colonel in the Army. He is the father of two sons - a District Court judge and an attorney licensed to practice in Louisiana and Texas. The Board welcomed Mr. Hunter.

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<sup>1</sup> This meeting is being held via a ZOOM video-conference pursuant to La. R. S. 42:17.1 (Act 302 of the 2020 Regular Session)

<sup>1</sup> Board\_Oct 8 2020\_Minutes

4. Adoption of the Minutes, July 26, 2020 Meeting. Mr. Bowman moved to adopt the Minutes of the July 26, 2020 meeting. Mr. Roberts seconded the motion which passed unopposed.
5. Budget and Fiscal Report
  - a. Financial Report (through August 31, 2020). Budget Administrator Natasha Carter reported \$42,591,048 expended or encumbered for the fiscal year; \$5,725,628 projected to be expended through the remaining fiscal year. She reported that without any changes to current spending and having already made reductions in administrative travel, food costs for meetings, and extra expenditures in areas of normal spending, the projection for the end of the fiscal year indicates a negative -\$433,404 remaining. Mr. Roberts inquired if there is a plan of action to address the deficit. Ms. Carter reported State Public Defender Starns' plan is to further reduce administrative travel by \$3,450 and reduce the LAP (Louisiana Appellate Project) FY21 contract by \$430,000. Mr. Roberts inquired about the source of the shortfall. Ms. Carter indicated that there was no budget to support the contract programs for the same amounts as last year after the change in the statute to fund the districts at 70% (from 65%). Mr. Roberts suggested the need for comprehensive planning now in terms of budget cuts. Mr. Starns agreed. Mr. Robert moved that staff address the issue and present a comprehensive plan to the Board.

Mr. Mike Ginart stated that this is of no surprise, but this is not an action item on the agenda. His recollection was that a committee of the three Board chairs and SPD Starns has already been formed to come up with an alternative to SPD Starns' original plan presented earlier this year, and he suggested they meet and allow time for all stakeholders to be present at a Board meeting for discussion. Professor North agreed that he, Judge Foote, Chairman Holthaus, and SPD Starns should pick a date to reconvene the Committee as this is not an action item at this time.

Mr. Roberts reiterated his motion that staff present the Board with a comprehensive plan regarding the budget. Mr. Ginart seconded the motion. The motion passed unopposed.

- a. Financial Report.

Budget Administrator Carter stated that included in her budget report is LPDB's FY22 budget request due on November 2, 2020. This year's budget request is for \$69.6M. Mr. Roberts moved to adopt the financial report as presented. Mr. Ginart seconded the motion which passed unopposed.
- c. HB 39 - FY21 Supplemental Funding for Public Defender Office Purchases. SPD Starns reported after Hurricane Laura, District 14 (Calcasieu Parish) lost their entire office in Calcasieu Parish. After efforts to find temporary housing for them failed, Mr. Starns was approached by Representative McFarland with a proposal to find permanent buildings for district offices. This proposal turned into supplemental funding bill HB39 by Representative Zeringue. HB39 would provide one-time FY21

funds in the amount of \$15 million for the purchase and renovation of buildings for public defender offices, statewide. The bill was amended to include JLCB which will take the lead on oversight. LPDB has been asked for a plan. Mr. Starns reported that this issue is fast-moving and Dr. Tiffany Simpson drafted a tiered approach plan which needs Board approval as Senate Finance meets on Monday morning (October 12). Judge Foote reported that the plan that has been drafted is based on need and there is nothing specific in it that cannot be adjusted later. A detailed plan cannot be submitted because building availability is unknown. He urged that the Board take action and authorize the State Public Defender to submit a plan requesting the \$15M, showing the tiered levels and the needs that the districts have and that the Board address the full language later. Mr. Bowman moved to adopt that action plan. Mr. Roberts seconded the motion. Judge Foote amended Mr. Bowman's motion to state that "the Board authorize the State Public Defender to submit to the Legislature a plan for capital expenditures to acquire buildings for public defense offices based on an as-needed and emergency basis scrolling down to what is left for availability". Mr. Bowman accepted the motion and got clarification that it is based on a tiered approach. Mr. Roberts seconded the motion and acknowledged Dr. Simpson's and Mr. Starns' work on short notice. Upon vote, the motion passed unopposed.

6. SW Louisiana Update – Hurricane Laura Aftermath. Mr. Starns gave a brief update on district office situations in the aftermath of Hurricane Laura. The Courthouses in Cameron and Calcasieu parishes remain closed.

7. Discussion: Capital Case Funding, Representation and Oversight. SPD Starns reported that since the Capital Case Coordinator's retirement in late July, the capital expert witness fund requests are being accepted as usual. He, Mr. Bob Noel and Capital Assistant Hannah Rogers meet weekly to review requests. He reported one person on the capital waitlist. Mr. Mike Ginart expressed his concern about capital funding in the past and moved to develop a committee to look at capital funding going forward. Mr. Pat Fanning agreed that there may be a more efficient way to fund capital and still have quality representation. Mr. Chaz Roberts stated there is no downside to looking into it. Professor North suggested that Chairman Holthaus either appoint a committee or assign the issue to a standing committee. SPD Starns indicated he could meet with the program directors and report to others. Professor North urged that a committee be formed, however it is composed, but that it include Chairman Holthaus.

8. District Issues.

a. Selection Committees.

SPD Starns gave a brief update on the selection of new district defenders in District 12 (Avoyelles Parish), District 13 (Evangeline Parish), and District 36 (Beauregard Parish). The selection committee in District 13 is complete and has begun the process. We are awaiting a replacement appointment to the selection committees in District 36 (Beauregard Parish) by the LSBA president and in District 12 (Avoyelles Parish) by the District 12 Chief Judge.

b. LCLE COVID PPE Grant Update. Dr. Tiffany Simpson gave a summary of the PPE disbursement. Thirty-seven of 42 districts have received PPE. There will be a second round ordered that will include batteries for the hand sanitizer stations and stands for IPADS. Dr. Simpson was thanked for her efforts.

9. Division Reports – Informational

a. SPD Report. SPD Starns reported on his and Mr. Noel's participation in the Optimal Funding Group formed in the 2020 regular session and led by Senator Barrow to consider sustainable ways to fund public defense; the renewal of the LCLE auditor position (Corlis Green) and state office closures tomorrow (Friday, October 9) due to hurricane activity.

b. Training. Director of Training Bob Noel reported 12 trainings have been conducted since August 1 with over 200 attendees, all at no cost to LPDB due to Zoom video-conferencing.

c. Capital. Mr. Starns reported capital was covered earlier in the agenda, but a written report is in the materials for review.

d. I.T. – Database. Mr. Noel reported as a result of Hurricane Laura, prisoners were relocated all over the state and it was necessary to make sure all were found. Use of the database is essential to this task and changes have been instituted to get more accurate compliance from district defenders in the usage of the database.

e. Juvenile. Mr. Pittman reported on the awarding of a \$445,000 grant from Office of Justice Programs for LPDB to partner with LCCR to provide social workers for delinquency offenders in East Baton Rouge Parish. It is the first federal grant the agency has received. Mr. Pittman will be responsible for monitoring and reporting on the grant.

f. Legislative. Dr. Simpson reported that we are in a special Legislative session that lasts until October 27. House Bill 39 has been submitted and adds \$15 million to the LPDB FY 21 budget for district PDO building purchases (this is one-time money). In criminal law, Act 99 was amended in the House.

10. Consideration for Board Policy – Public Defenders Running for Public Office\*

Mr. Pat Fanning brought to the attention of the Board the issue of no existing policy regarding our employees who qualified to run for public office. He reported that in Orleans Parish, where 7 current and former public defenders are running for public office, it has become an issue for several reasons: the District Attorney and City Attorney Offices require leaves of absence; the Orleans Public Defender was co-sponsoring a forum for all the judicial candidates and the seven Orleans Public Defenders running for office had formed a ticket called Flip the Bench. Weeks into the campaign, the Orleans Public Defenders all took leaves of absence. He then moved that the Board initiate a policy that any employee of the public defender system who qualifies or announces candidacy for any office has to immediately take an unpaid leave of absence.

Professor North inquired about the potential for exceptions for special circumstances, for instance in areas where people only do this job maybe three times a month. He suggested they could petition the State Public Defender for a special consideration. Mr. Fanning expressed concern stating if the person is

accepting new appointments, they are creating conflicts the entire time so that if they become a judge then they cannot handle a case because they accepted the appointment while they were public defenders during the campaign. However, it may not be one-size fits all and there may be exceptions for special circumstances.

Judge Foote indicated the exceptions have not been identified and inquired when the policy would be effective. He suggested that the immediate issue is resolved with the leaves of absence. He proposed a prospective policy so that it is clear for people going forward. He also indicated that the issue of sponsoring of forums should be addressed and included in the new policy.

Mr. Bowman expressed concern that the Board be sure before adoption that the Board is not violating someone's right to vote or making a constitutional violation.

Mr. Ginart stated if someone is running for judge there should be no appearance of impropriety and the campaign should be 24/7. He stated that you cannot be running for judge while being paid on a full-time basis or even a part-time basis to do that job (public defender). He seconded Mr. Fanning's motion and stated if he (Fanning) wanted a friendly amendment to add that the Board can be petitioned for special circumstances he would have no problem with that.

Mr. Fanning amended his motion to be that any employee in the public defender system must take a leave of absence or if there are special circumstances the employee can appeal to the State Public Defender for an exception to this rule. Mr. Ginart seconded the motion as amended.

Mr. Bowman asked when the policy would be effective. Mr. Fanning urged immediately but clarified that his motion is for employees and that he does not think anybody who is not an employee is affected by it. Mr. Bowman called the question.

State Public Defender Starns reported that Mr. Fanning has clarified this issue by stating in his motion this only applies to employees. Mr. Starns stated that District Defenders and the line defenders who work for District Defender offices are not employees of the public defender board. He stated that the issue needs to be addressed by contract that the Board has with the District Defenders. Mr. Ginart disagreed and restated his original position.

Mr. Daniel Engelberg, Interim District Defender in Orleans Parish addressed the Board. He stated that he agreed with making sure that it is very clear and that there is no co-mingling of someone spending campaign time and leave of absence is appropriate when someone is campaigning full-time. However, he urged that the Board look at what others in the criminal justice system have to do.

Professor North then called for the vote on Mr. Fanning's amended motion. Upon vote, the motion passed with five in favor (Bowman, Fanning, Ginart, North, Roberts) and two in opposition (Foote, Hunter).

Mr. Fanning then reported that District 41 (Orleans Parish) Chief District Defender Derwyn Bunton appointed his own interim which should have been done by the

Board. Judge Foote stated that there needs to be a comprehensive policy and this issue is not on the agenda for discussion. Mr. Bowman agreed that the appointment of the interim is a Board action. Vice Chairman North instructed SPD Starns to talk with Mr. Bunton and Mr. Engelberg.

11. Executive Session<sup>2\*</sup>. Judge Foote moved to go into Executive Session seconded by Mr. Fanning and passed unopposed. Judge Foote moved to leave Executive Session seconded by Mr. Bowman and passed unopposed.

Upon return to regular meeting, Mr. Fanning suggested that the State Public Defender prepare a brief for approval by the Board before filing.

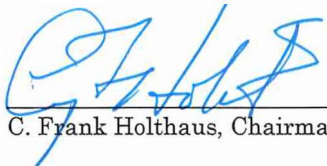
12. Announcements. There were no announcements.

13. Next Meeting. The next meeting was set for Friday, October 8, 2020, at 3:00 p.m. via video-conference (Zoom).

14. Adjournment. Mr. Bowman moved to adjourn. Mr. Fanning seconded the motion.

Guests: See Zoom Participants List.

I HEREBY CERTIFY that the foregoing is a full, true, and correct account of the proceedings of the meeting of Louisiana Public Defender Board meeting held on the 8th day of October 2020 as approved by the Board on the 14th day of December, 2020<sup>3</sup>.

  
C. Frank Holthaus, Chairman

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<sup>2</sup> The Board may vote to go into executive session pursuant to La. R.S. 42:16 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. Accordingly, the Board may discuss the following: *Susan Henry Hebert v. LPDB*, 19<sup>th</sup> JDC, Docket: 694429, Division 27; *State v. Covington*, Docket: 2020-KK-00447 (Response of Michael Mitchell to Application for Supervisory Writs); *Allen v Edwards*, Docket: 2019 CA 0125.

<sup>3</sup> The meeting at which these minutes were approved was held by Zoom video-conference pursuant to La. R. S. 42:17.1 (Act 302 of the 2020 Regular Session)



**Board Meeting**

Oct 8 2020

Kenn Barnes  
Thomas Gernhauser  
kerry cuccia  
Herman Castete  
Michael A. Mitchell  
Lindsay Blouin  
Bruce Unangst  
Cecelia Kappel  
Michelle M. AndrePont  
Brett Brunson  
don kneipp  
Mike Courteau  
Reginald McIntyre  
Deirdre Fuller  
rlcan  
Delisle George  
Paul C Fleming Jr JPPDO  
Aaron Clark-Rizzio  
Richard Tompson  
Trisha Ward  
aliseia williams  
Fen Swann  
Maggie LeBlanc  
Tilde Carbia (Matilde Carbia)  
Jee Park  
Gary Clements

J.Albert Ellis  
Anthony Champagne  
Tony Tillman  
15046168608  
Alan Robert  
Cormac Boyle  
Crystal Bush  
Brian McRae  
Richard Bourke  
Steven Thomas  
Daniel Engelberg  
Dannielle Berger  
Kyla Romanach  
Joshua Newville

Member:

Mike Ginart  
dnorth  
W Ross Foote  
Chris Bowman  
pfann  
Chaz Roberts  
Willie Hunter

Staff

Rémy Starns  
Robert Noel  
Erik Stilling  
AGwin  
Richard Pittman  
Barbara Baier  
Tiffany  
NCarter  
Chase