



LOUISIANA PUBLIC DEFENDER BOARD

Thursday, November 30, 2017
Bluebonnet Regional Library
9200 Bluebonnet Boulevard, Room 2
1:30 p.m.

AGENDA

1. Call to Order and Comments by Chairman, Frank Holthaus
2. Adoption of the Agenda* pgs. 343-345
3. Call for Public Comment Sign in Sheet
4. Adoption the Minutes, August 23, 2017 Meeting* **Tab 1**, pgs. 346-351
5. Executive Session¹
Mr. Remy Starnes will address the Board in Executive Session.
6. Policy Committee Report and Recommendations* **Tab 2**
 - a. LPDB Table of Organization – Staffing Restructure* pgs. 352-353
Staff was instructed to look at the possibility of moving the Capital Case Coordinator into the Deputy Public Defender, Director of Training position and staffing the Board created position of Capital Case Coordinator with a less expensive person and/or spreading the duties of that position to other existing LPDB positions.
 - b. Juvenile Delinquency Standards* pgs. 354-391
The Policy Committee is recommending approval of the revised standards to the full Board for consideration.
 - c. Non-Capital Expert Witness Fund* pgs. 392-393
 - *The Committee is recommending the creation of “a vehicle” for the use of dedicated capital Expert Witness Funds for non-capital cases upon conversion to non-capital, upon justification and approval, pursuant to rules and regulations to be developed.*
 - *Mr. Dixon will provide the pros and cons of two different proposals for expert witness fund creation.*
 - *Judge Foote has indicated that he would attempt to select a working group.*
 - d. CINC Fund Distribution-Policy* pg. 394
The Committee agreed to propose to the full Board that they adopt a policy to distribute CINC funds based on the districts’ twelve month caseloads to be subject to review on an annual basis. Staff drafted the proposed policy in the materials.

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 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: *Joseph Allen et al v. John Bel Edwards*, et al, Docket: C655079, Section 27, 19th JDC, Parish of East Baton Rouge. Additionally, pro bono attorney Casey Secor in capital case, *State v. Landon Broussard*, Docket No: 140699, 15th JDC, has asked to address the Board regarding expert witness funding request issues.

- e. **Mayor’s Court Magistrate Issue*** pgs. 395-400
Initially the Committee agreed to defer to the full board the issue of whether a Mayor’s Court Magistrate handling misdemeanor traffic cases in one city may also handle felony cases in another city when those cities are in the same Judicial District and Parish; however, after discussions and input from the districts, the committee’s recommendation to the Board is to request an ethics opinion pending a decision.
- f. **501(c)3 Contract Restructure Proposal*** pgs.401- 423
The Committee agreed to accept the draft contract as written for next year and to request that the Board request agreement from the programs, in writing, to voluntarily comply with the contract for six months.
- g. **Ethically Compelled District Case Refusal - Draft Resolution*** pg. 424
Policy Chairman Foote expressed his desire to recommend that the Board issue a proclamation affirmatively providing the District Defenders the full backing of the Board for declining cases for ethical concerns. Staff drafted the resolution in the materials for Board consideration.
7. **Budget Report**
- a. **Financial Report*** **Tab 3**, pgs. 425-429
- b. **FY 2019 Budget Request (\$66,822,565)-Submittal Ratification*** pgs. 430-431
Staff submitted the FY19 budget request on October 16, 2017, as instructed by OPB.
- c. **Potential FY18 Budget Cuts – Status**
To date, staff has not received notification of any pending cuts to LPDB’s budget.
8. **Juvenile Life Without Parole (LWOP)*** **Tab 4**, pgs. 432-436
After the filing deadline of October 30, there are 84 confirmed Montgomery-style Juvenile Life Without Parole cases pending in the districts. This will be a significant and unfunded burden on the public defender system
9. **District Issues** **Tab 5**
- a. **District Defender Selection, District 5**
The District Defender position was advertised in the Rayville Beacon News on Nov. 2 and 9, on the LPDB website, in various Listservs statewide and announced to all district and contract offices. The deadline to apply was Nov 13th. As of November 20th there were 7 applicants. Interviews were held on Nov. 21 and the Committee submitted their list of candidates to staff on Nov 28th. Interviews are currently being scheduled. Board members will be kept apprised of the dates and times and are encouraged to attend.
- b. **District Defender Selection, District 16** pgs. 437-438
District Defender Beannie Bonin has announced her resignation Effective February 28, 2018. The selection process has begun.
- c. **Local Agency Compensated Enforcement (LACE)** pg. 439
On November 8, 2017, the Louisiana State Police announced the suspension of the LACE program statewide pending its investigation of payroll fraud in St. Charles Parish. This action affects several public defender offices which receive LACE funding.
10. **District Assistance Fund (DAF) Formula**
- a. **DAF Formula FY19 Status.**
The Working Group will report on the status of a new formula for the future disbursement of district funds
- b. **Grant Status – P&N.**
Ms. Faria will report on the progress of the Postlethwaite and Netterville grant for district assistant funding disbursement.

11. LPDB Division Reports **Tab 6**, pgs. 440-445
The Capital and Juvenile Division reports.

12. Other Business **Tab 7**
 - a. Mandatory Trainings pgs. 446-451
Information on Board member mandatory trainings to be completed before December 31st, annually.

13. Next Meeting(s)
Thursday, January 11, 2018
Wednesday, March 7, 2018

14. Adjournment



LOUISIANA PUBLIC DEFENDER BOARD

Thursday, November 30, 2017
Bluebonnet Regional Library
9200 Bluebonnet Boulevard, Room 2
1:30 p.m.

MINUTES

1. 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, November 30, 2017, at Bluebonnet Regional Library, Baton Rouge, at 1:35 p.m.

The following Board members were present for roll call:

Zita Andrus	W. Ross Foote	Katherine Gilmer
Mike Ginart	Ami E. Stearns	
Moses Williams		

The following Board members were absent for roll call:

Chris Bowman	Frank Holthaus ¹	Patrick Fanning
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The following members of the Board's staff were present:

Jay Dixon, State Public Defender
Barbara Baier, General Counsel
Natashia Carter, Budget Officer
Jean Faria, Capital Case Coordinator
Anne Gwin, Executive Assistant
Richard Pittman, Deputy Public Defender, Dir. of Juvenile Defender Services
Tiffany Simpson, Juvenile Compliance Officer, Legislative Affairs Director
Erik Stilling, Information and Technology Director

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. Mr. Michael A. Mitchell, District Defender, District 19 (East Baton Rouge Parish) addressed the Board stating that his district's local revenues continue to

¹ Board Chairman Frank Holthaus indicated he had a conflict and would be late for the meeting. He arrived at approx. 2:15 p.m. as may be reflected in recorded votes.

decline because of a decline in tickets and he is facing more restrictive services in the near future.

4. Adoption the Minutes, August 23, 2017 Meeting*. Judge Foote moved to adopt the minutes of the August 23, 2017 meeting as presented. Ms. Gilmer seconded the motion which passed unopposed.

5. Executive Session. Mr. Moses Williams moved to go into execution session and Judge Foote seconded the motion. All executive staff except General Counsel were excused from the room. Mr. Remy Starnes addressed the Board in Executive Session. Judge Foote moved to leave executive session and Ms. Gilmer seconded the motion.

6. Policy Committee Report and Recommendations.

a. LPDB Table of Organization – Staffing Restructure. ~~Staff was instructed to look~~ Discussions at the October 12 Policy Committee meeting were had about the possibility of moving the Capital Case Coordinator into the Deputy Public Defender, Director of Training position and staffing the Board created position of Capital Case Coordinator with a less expensive person and/or spreading the duties of that position to other existing LPDB positions.

Mr. Dixon reported that the Division of Administration has advised freezing one position, and that the Board wants a Training Director, which is statutorily mandated. He further reported that ~~the~~ discussions were had at the Policy Committee at their October meeting ~~recommended~~ about the possibility of Jean Faria ~~to~~-taking the Training Director position, shifting some capital duties to Deputy Public Defender Richard Pittman. Mr. Williams clarified that the Policy Committee agreed to not make a recommendation to reorganize but rather to bring the discussion to the full board and stated that although he may agree with Ms. Faria's qualifications, a discussion about how the Board and its staff should operate is vital. Mr. Williams then moved to table the discussion pending the Board's opportunity to take a closer look at staff with Mr. Dixon assigning training and other duties in the interim.

Mr. Ginart asked whether Mr. Dixon could move Ms. Faria into the position pending discussions and the Board adopt the change temporarily. Mr. Williams moved that Mr. Dixon assign people to perform temporary duties pending the Board's discussions and decision.

Judge Foote inquired if the issue is tabled, whether funds would be freed up. Mr. Dixon clarified that the money is still in place.

Professor North seconded Mr. Williams' motion reiterating that reorganization be tabled and that the Board accept on a temporary basis the reassignment of duties until the Board can receive training staffing and duties. Upon vote, the motion passed five in favor and two against.

b. Juvenile Delinquency Standards. Deputy Public Defender Richard Pittman reported that due to the number of changes to delinquency law the standards have become out of date. A working group of juvenile defenders have revised the standards which were sent out to district defenders and juvenile defenders statewide. Judge Foote reported the Policy Committee is recommending adoption of the revised standards as presented on pages 354-391 of the materials. Ms. Gilmer seconded the recommendation.

District Defender Richard Tompson (District 24/Jefferson Parish) expressed his concern over the language presented on page 354, section 1303(C), specifically the use of the word, shall - "If appropriate, the attorney *shall* file a motion to have a foreign language or sign language interpreter appointed by the court and present at the initial interview and at all stages of the proceedings." After a brief discussion, it was determined that the clarifying language, "If appropriate" provides the public defender with the authority to determine whether an interpreter is needed or not.

c. Non-Capital Expert Witness Fund. Judge Foote reported that after discussions at the recent Policy Committee meeting, the issue comes down to a question of distribution and he would like to see a working group formed. Mr. Dixon stated that in the past the Board has allowed funds to follow a capital case that is reduced to non-capital when an expert has already been approved and is working on the case. Judge Foote made the motion that if a case is transferred from capital to non-capital status, the person in charge of Expert Witness Fund has the authority to allot the remaining previously approved funds in the capital case to the same expert in the now non-capital case. Ms. Gilmer seconded the motion. Ms. Faria inquired about the extending the pre-approved expert in the event the original funds allocated to that expert are expended or almost expended and the expert is needed.

Mr. Richard Bourke clarified that the Board should be addressing two separate issues: 1) what to do about cases that are capital and then go non-capital; and, 2) all other expert witness needs. He indicated that he has previously presented a paper to the Board addressing these issues. Further, he stated the Board needs a structure for funding non-capital experts for the thousands of other defendants in the system, in part in order to document the demand for expert witness funds.

Professor North inquired where the funding for non-capital experts comes from now. Several district defenders responded that their limited DAF funds do not cover investigation, DNA, and mental health experts. Judge Foote stated that he does not know if the funding for non-capital expert should or should not come from the 65% allocation to the districts.

Mr. Holthaus stated that a vote is needed on the motion and that Judge Foote is to organize a working group to address where the funds should come from. Upon a vote, Judge Foote's motion made previously, that if a case is transferred from capital to non-capital status, the person in charge of Expert Witness Fund has the authority to allot the remaining previously approved funds in the capital case to the same expert in the now non-capital case seconded by Ms. Gilmer, passed unanimously.

d. CINC Fund Distribution-Policy. The Policy Committee agreed to propose to the full Board that they adopt a policy to distribute all CINC funds at one time based on the districts' twelve-month caseloads to be subject to review on an annual basis. Staff drafted the proposed policy in the materials. However, the Chairman of the Budget Committee asked that his committee be given the opportunity to study the issue before a decision is

made. The Board deferred the issue to the Budget Committee for a final recommendation.

e. Mayor's Court Magistrate Issue. Mr. Dixon reported that the Policy Committee agreed to defer to the full board the issue of whether a Mayor's Court Magistrate handling misdemeanor traffic cases in one city may also handle felony cases in another city when those cities are in the same Judicial District and Parish; however, after discussions and input from the districts, the Committee's recommendation to the Board is to request an ethics opinion pending a decision. Mr. Williams clarified that a request should also be sent for prosecuting in these courts. Staff was instructed to move forward with the formal ethic opinion requests.

f. 501(c)3 Contract Restructure Proposal. Judge Foote reported that the Policy Committee agreed to accept the draft contract as written for next year and to request that the Board request agreement from the programs, in writing, to voluntarily comply with the proposed contract for six months. Ms. Faria reports that the programs met as a group to work out modifications to all contracts based on the number of hours to be worked, in the form of the current contract in place with the Louisiana Capital Assistance Center (LCAC). The draft contract includes monitoring and performance indicators in the modifications. Judge Foote reported that the programs agreed with the substance of the draft contracts, to the voluntary period in FY18, and to the new language in the contracts in FY19. On behalf of the Policy Committee, Judge Foote moved to accept the language of the draft contract for all capital programs for next year with voluntary compliance this year. Ms. Faria clarified that the programs would be obligated to stay on the cases. Professor North seconded the motion. Mr. James Looney (Executive Director, Louisiana Appellate Program "LAP") expressed his concern with LPDB's new practice of submitting payment vouchers to OFSS at the end of each month (rather than at the first) could result in an audit problem for his program. Mr. Dixon and Budget Administrator Natasha Carter assured Mr. Looney that the state would distribute twelve full payments within the correct fiscal year. This new practice was started as a result of the Board's concern that the programs were being paid in advance of services being rendered. Upon vote, the motion passed unanimously.

g. Ethically Compelled District Case Refusal - Draft Resolution. Policy Chairman Foote expressed his desire to recommend that the Board issue a proclamation affirmatively providing the District Defenders the full backing of the Board for having to decline cases for ethical concerns. Staff drafted the resolution in the materials for Board consideration. Mr. Holthaus expressed concern that the resolution does not require any reporting requirements from the District Defenders. Mr. Alan Robert (District Defender, District 23 – Ascension, Assumption, St. James Parishes) reminded everyone that the Restriction of Services Policy and Protocol requires full notification and reporting from the districts immediately upon service restriction. Mr. Mike Ginart agreed that the resolution is well meaning, but is not going to change any decision regarding ROS by the districts. Mr. Holthaus stated that the resolution, if adopted as a show of support to the districts, should be amended to read that each district has to show justification to the Board their ethical refusal. Judge Foote moved adoption of the Resolution amended to include the addition that District Defender must demonstrate "to the Board" their inability to represent an indigent defendant and document the need to refuse cases. Ms. Gilmer

seconded the motion. Upon a vote of five in favor, two against, and one abstaining, motion passed.

7. Budget Report

a. Financial Report. Ms. Carter gave a brief summary of LPDB's fiscal status, specifically reporting \$24,673,989 expended in FY18, \$6,559,995 encumbered and zero funds for reallocation. Professor North moved to adopt the report as presented. Mr. Ginart seconded the motion which passed unopposed.

b. FY 2019 Budget Request (\$66,822,565) - Submittal Ratification. Mr. Dixon reported that staff submitted LPDB's FY19 budget request in the amount of \$66,822,565 which, if received, would result in approximately \$40,000,000 in District Assistance Funds. He clarified this is merely the request. Professor North moved ratification of the budget request. Mr. Ginart seconded the motion which passed unopposed.

c. Potential FY18 Budget Cuts – Status. Mr. Dixon reported that to date, staff has not received notification of any pending cuts to LPDB's FY18 budget. Mr. Bob Noel, Interim District Defender, District 5, reported that he has been assured by the Governor's Office that no cuts will be made to LPDB.

8. Juvenile Life Without Parole (LWOP). Mr. Dixon reported that staff has been working with the Louisiana Center for Children's Rights (LCCR) tracking *Miller/Montgomery* cases and are beginning work on statewide strategies to handle these cases. Mr. Pittman reported that initially there were approximately 300 of these cases. However, prosecutors, having been given a 90-day deadline from August 1, 2017 to file notice of intent to seek life-without-parole, filed motions in 84 cases. He further reported that the majority of these 84 cases are in three districts, but that the cases are spread around the state asymmetrically, with some small districts having multiple cases.

Professor North inquired whether funding these cases was included in the FY19 budget request. Ms. Carter indicated staff requested \$1.3M for *Miller* representation; however no funding was specifically requested for *Montgomery* cases.

Ms. Jill Pasquarella with LCCR addressed the Board. She reported that these cases require preparation much like a capital case and the districts are bearing the brunt of the costs. Pending *Miller* cases are coming in each day with 40 in Orleans Parish alone. A single case can break an office.

Mr. Harry Fontenot, 14th JDC District Defender (Calcasieu Parish) reported seven *Montgomery* cases in his district and only two LWOP attorneys. In his district, an average of \$58,000 per case represents almost two-fifths of his DAF. He further reports that as early as January, 2018, he is facing ROS and he will have to refuse these cases

Mr. Mike Mitchell, District 19 (EBR Parish) reiterated his budgetary issues and Ms. Lindsay Blouin, 19th JDC LWOP defender gave a brief summary of *Miller-Montgomery* issues in the 19th Judicial District. Ms. Blouin was closely involved in the *Montgomery* case. She addressed the board, reported the need for the resources to represent these clients, and if not provided, then a mandate / backing from this Board that she does not have to take the cases.

Mr. Tony Tillman, District Defender, District 30 (Vernon Parish) explained the difficulty finding experts for all these cases.

Professor North indicated a working group is needed to address this issue, specifically, the ethics involved in a public defender's need to cease and desist in these cases because of the lack of funding and the Board's support of that determination but not the making of that determination.

Mr. Holthaus instructed staff to have a draft plan for handling *Miller - Montgomery* cases for the January 11, 2018 Board meeting, assuming allocation of the funds requested for FY19.

9. District Issues

a. District Defender Selection, District 5. Mr. Dixon reported that the District Defender position was advertised locally, on the LPDB website, in various Listservs statewide and announced to all district and contract offices. He further reported that the selection committee submitted three candidates to be interviewed by staff: Mr. Albert Ellis, Mr. Dion Young and Mr. John Hogue. Interviews have been scheduled for December 6, 2017 at the LPDB offices and all board members are encouraged to attend.

b. District Defender Selection, District 16. Mr. Dixon announced the resignation of District Defender Cecelia (Beanie) Bonin effective February 28, 2018 and that the selection process in that District has begun.

c. Local Agency Compensated Enforcement (LACE). Mr. Dixon reported that on November 8, 2017, the Louisiana State Police terminated the LACE program statewide affecting public defender offices by approximately \$980,000 annually.

10. District Assistance Fund (DAF) Formula.

a. DAF Formula FY19 Status. Mr. Dixon reported that staff used the same numbers on each of District Assistant Fund formula proposal presented in the materials and would like to meet with as many district defenders as possible to go over the results of each plan.

Professor North reported that Mr. G. Paul Marx (15th JDC) has been working hard and that he has a working product that he has submitted that has gotten a lot of criticism.

Mr. Robert Noel, Interim District Defender, District 5, reported that the Public Defender Association of Louisiana (PDAL) has put together a "a menu of options" from which to choose.

Mr. Marx briefly outlined his population-based plan. He stated his plan uses population as a foundation, tracks other variables, then requires an adjustment of two million to districts to be solvent.

Mr. Mitchell (19th JCD) reported that the PDAL made up of 26 District Defender and 200 line defenders formed a committee by consensus and worked hard. They used data from the annual reports and are dedicated to a process done right. The options which have been presented are population based, population/caseload combination, small district and large district.

Mr. Richard Stricks, District Defender, 40th JDC, briefly discussed his objective formula which is a DAF based on statutory requirements: to provide for a uniform system for securing and compensating qualified counsel for indigents and employ or contract with a district public defender to provide for the delivery and management of public defender services in each judicial district.

Mr. Holthaus instructed anyone with a proposal to provide it to Professor North and to attend the next meeting. He announced that the next Budget Committee meeting is December 12, 2017 at 1:00 p.m.

b. Grant Status – P&N. Ms. Faria announced that Postlethwaite and Netterville have sent out a survey to the district and asked that everyone respond.

11. LPDB Division Report. Mr. Dixon reported that the Capital and Juvenile Division reports are available for review in the materials.

12. Other Business

a. Mandatory Trainings. Ms. Anne Gwin reminded all Board members that they are required to take the Ethics and Preventing Sexual Harassment courses annually and provide certification for submittal to the Division of Administration for compliance.

Mr. Moses Williams requested that the Board meeting for a “retreat” or “training” in order to address current staffing and the statutory requirements of the positions that are currently filled.

Mr. Holthaus instructed staff to schedule this immediately following adjournment of the January 11, 2018 Board meeting.

Prof. North inquired about minority representation in District Defender positions.

13. Next Meeting(s)

Thursday, January 11, 2018

Wednesday, March 7, 2018

14. Adjournment. Ms. Gilmer moved to adjourn. Ms. Zita Andrus seconded the motion which passed unopposed.

Guests:

Ella Kliebert

Renee Bourg

Mike Courteau

Derrick Carson

Harry Fontenot

Derwyn Bunton

G. Paul Marx

Olivier Carrier

Lisa M. Parker

John Lindner

Paul C. Fleming

Michael Caffery

Bob Noel

Judy Pugh

Deridre Fuller

Tony Tillman

Bruce Unangst

Tony Champagne

Kerry Cuccia

Mark Plaisance

Richard Tompson

Alan Robert

Richard Bourke

Margaret Lagatutta

Steve Thomas

Rhonda Covington

Don Kneipp

Richard B. Stricks

Jill Pasquarella


Beannie Bonin

Herman Castete
Gary Clement
Lindsay Blouin
Remy Starnes

Michael Mitchell
Kenn Barnes
Jim Looney
John Burkhardt

Emily Maw
Brian McRae
Tom Gernhauser

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 30th day of November, 2017, as approved by the Board on the 11th day of January, 2018, at Baton Rouge, Louisiana.



C. Frank Holthaus, Chairman