



LOUISIANA PUBLIC DEFENDER BOARD

Friday, April 3, 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, April 3, 2020, via ZOOM video-conference (see footnote). Mr. Holthaus acknowledged quorum.

The following Board members were present:

Zita Andrus

Pat Fanning

Frank Holthaus

Chaz Roberts

Chris Bowman

W. Ross Foote

Lyn Lawrence

Moses Williams

Flozell Daniels

Michael Ginart

Donald North

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

Remy Voisin Starns, State Public Defender

Barbara Baier, General Counsel

Natashia Carter, Budget Administrator

Jean Faria, Capital Case Coordinator

Anne Gwin, Executive Assistant

Chase May, I. T. Support Specialist

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. Mike Ginart moved to amend the agenda seconded by Lyn Lawrence and passed unopposed. Mr. Lawrence moved adopt the agenda as amended to include the Budget Committee's April 2, 2020 meeting agenda items at Board agenda Item 7 for discussion. Mr. Bowman seconded the motion which passed unopposed.

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 February 20, 2020 and March 27, 2020 meetings. Mr. Flozell Daniels seconded the motion which passed unopposed.

¹ This meeting is being held via a ZOOM video-conference pursuant to Executive Proclamation JBE 2020-30 – Additional Measures for COVID-19 Public Health Emergency Section 4.

5. FY20 Working Group Report. Mr. Starns reported this is one of two work groups formed to deal with current fiscal issues and that it was meant to be a collaboration with the program heads, staff and chiefs to try to figure out the best way to deal with the 18 district insolvencies that are projected because of courthouse closures between now and the end of the fiscal year due to COVID-19. One proposal is to freeze the expenditures to the capital and other expert witness funds and to use those “recaptured” monies to shore up the district offices. Mr. Starns indicated he is requesting a resolution from the Board to do that as of today. Specifically, he is requesting that no more money be spent out of the expert witness funds or billed to any expert witness fund through the remainder of fiscal year.

Professor North moved that the State Public Defender be given the authority to freeze all expenses from the expert witness funds as of April 3, 2020. Mr. Bowman seconded the motion.

Clarification was requested by Judge Foote whether the motion includes payment for services that have already been approved or for work already started. Mr. Starns explained that if work has been performed, then LPDB would meet that obligation. Experts would be given a period of time -- 10 or 14 days – to submit bills for work already performed through April 3, 2020. Additionally, approvals for experts for work to be done but not yet started will be rescinded and those monies recaptured.

Judge Foote summarized that what the State Public Defender is seeking has two parts: 1) to take and not transfer any more money into the expert funds between April 3 and June 30, 2020 and 2) any of the funds not currently obligated to pay, that work be stopped and those funds be made available to the state’s attorney. Mr. Starns acknowledged that that is his request of the Board. Chairman Holthaus asked Professor North if he would accept this amendment to his motion. Professor North agreed to the change but expressed the concern that although the money was committed for expert witnesses there are now no trials coming up and the contracts are unable to be consummated; thus, the Board should not be paying out of them.

Mr. Daniels stressed his concerns for separating the different funding issues out on the agenda when a vote on this issue could affect other votes on later issues and not enough information has been given on how much money is being talked about, exactly which of the expert witness funds monies are going to come out of, or where the money going to go. Chairman Holthaus proposed that the Board agree to reconsider prior votes at the end of the meeting.

For clarity, Judge Foote suggested the use of the wording “unexpended and committed” in lieu of “unencumbered” when discussing the funds. Mr. Starns disagreed as one way to view the word committed is that even though the work has not yet been performed that those monies could still be expended towards an approved expert witness. He reiterated that his position is that as of today if the work has not been performed, then that money is to be recaptured and pooled with other resources. For work has been performed as of today (April 3, 2020) and invoices submitted within a week or ten days, payment will be honored. For work not yet performed, to the extent that it means that approval is rescinded, then approval would be rescinded. He stated he was requesting a Resolution if the Board needed one, to say: for work not performed, monies outstanding on the contracts should be recaptured by the Board for use.

Mr. Lawrence added that any invoice submitted for work performed prior to April 3, 2020 for expert witnesses gets paid. Any invoice submitted for expert work performed after April 3, 2020 does not get paid. Professor North agreed to that friendly amendment.

Clarification was asked for the amount of funds being discussed. Mr. Starns stated that his recommendation is based on \$156,591 in one fund and \$93,864 in another for a total of approximately \$250,000 for expert witnesses, less any work performed up to April 3, 2020. Professor North stated that his motion is to include the amounts the SPD has outlined. Judge Foote clarified that the motion also is to include the suspension of any more monies into any of the expert witness funds through the end of the fiscal year.

Chairman Holthaus summarized the motion, as follows: no new money will be put into the expert funds, that the State Public Defender will have the authority and discretion to pay any expert witness bill that is invoiced for efforts made on or prior to April 3, 2020 and that any other monies are then at the discretion of the State Public Defender to use towards ongoing budget needs. Mr. Bowman seconded the motion which upon vote passed unopposed.

Mr. Starns then addressed the three Miller/Montgomery contracts. The Louisiana Center for Children's Rights (LCCR), Capital Appeals Program (CAP) and the Innocence Project-New Orleans (IP-NO) have balances for the remainder for FY20 for a combined total of approximately \$335,000. He reported his recommendation is comparable to the expert witness fund recapture, specifically, to rescind whatever agreements (contracts) to send money to the programs and to recapture other monies to be used to address district insolvency. Mr. Starns clarified that these are not funds for expert witnesses rather to handle Miller and Montgomery hearings which will cease until the end of the fiscal year. Additionally, he added that there is legislation this session to eliminate Montgomery.

Judge Foote expressed concern for impairing a program that provides necessary representation at this time since extra money is available for the next 45 or 60 days giving the Board time to access the fiscal situation. Mr. Daniels echoed Judge Foote's concerns and urged deferring these cuts for a few weeks to a month.

Mr. Ginart asked for clarification from LCCR Executive Director, Aaron Clark-Rizzio. Mr. Clark-Rizzio reported that: to stop the remaining three payments on the fiscal year contract would amount to a quarter of LCCR's annual budget for Miller/Montgomery; the money came to LCCR as an economies of scale strategy to assist LDPB and the districts in representing these cases statewide; the funds pay roughly a 10 person staff to handle Montgomery resentencing cases and new Miller clients; and, it is programmatic core support for lawyers and investigators who are doing work right now on these cases. Mr. Daniels reiterated his concerns for making cuts at this time.

Professor North urged support for the State Public Defender's recommendation and stated while it might be premature, the Board can revisit the plan, but a plan is essential right now. Judge Foote re-urged not shutting down a program that is representing people in on-going litigation until more information is available on what the other shortages are going to be.

Mr. Bowman stated that the 501(c)3 programs qualify for two and a half months of losses for salaries under the CARES Act and the Board has to make some tough decisions. He then moved to adopt the recommendation of the State Public Defender. Professor North seconded the motion. Mr. Starns clarified his recommendation is to freeze all payments for Miller/Montgomery cases to LCCR, IPNO and CAP and to recapture other funds where work has not been performed yet so as to have those all available funds for use to shore up the

solvency of the districts in the amounts of \$262, 122 from LCCR, \$40,378 from IPNO and \$32,500 from CAP. Mr. Bowman acknowledged the recommendation and Professor North acknowledged his second of the motion.

General Counsel Barbara Baier asked for clarification on the motion language. She indicated that if the Board wants the monies from last three months of payments to those programs the contracts will have to be cancelled. Mr. Starns clarified that in full accordance with contracts he would exercise whatever provisions there are to not pay out the last three months and make those funds available to LPDB. Budget Officer Natasha Carter reported the only way to use contract money for something else is to cancel them.

Mr. Bowman accepted language change and that the recommendation of the State Public Defender is to cancel the contracts in order to recapture those funds. Professor North acknowledged his second.

Judge Foote indicated that essentially work is being stopped and for any work done after today (April 3, 2020) the clients will no longer have access to that representation when the cost saving from reductions from others is not yet known.

Mr. Starns clarified that these contracts are specific to Miller/Montgomery hearings and that these three programs (LCCR, CAP and IP-NO) have other contracts with LPDB and those contracts are not being recommended for cuts at this time.

Mr. Daniels reiterated that this is a severe recommendation when other solutions could be presented. Chairman Holthaus asked if the issue can be deferred a week. Mr. Starns stressed that the Board will have to allocate some money by the end of this month, more money by the end of next month and the bigger amount at the end of June. And, because of the no conviction or user fees due to court closures there will be dire circumstances. These monies and others not yet expended in the LPDB budget and contracts are available to help address a very, very serious crisis affecting the entire system.

Mr. Ginart indicated he would like to know more about whether the Miller/Montgomery issue has bipartisan support in the legislature, and whether or not the lawyers in these programs were already employed in the programs and are doing additional work on Miller/Montgomery.

Professor North called the question. Chris Bowman seconded and a vote was taken to terminate the discussion which passed six in favor and five against (Daniels, Foote, Ginart, Williams, Holtaus).

Mr. Bowman's motion was then restated, as follows: to adopt the recommendation of the State Public Defender to freeze all payments by the cancellation of the remainder of the FY 20 contracts for Miller/Montgomery cases to LCCR, IPNO and CAP and to be able to recapture all funds where work has not been performed yet so as to have those funds available for use to shore up the solvency of the districts in the amounts of \$262,122 from LCCR, \$40,378 from IPNO and \$32,500 from CAP. Upon a vote, the motion carried six in favor and five in opposition (Daniels, Foote, Ginart, Williams, Holthaus).

6. Policy Committee Report/Recommendations
 - a. Decarceration Statement. Judge Foote reported that the Policy Committee is recommending adoption of Decarceration Statement as presented in the materials. Mr. Lawrence seconded the recommendation which passed unopposed.
 - b. Uniform Contingency Plan Submittal Discussion. Judge Foote reported the draft policy addresses how the districts will move forward during the COVID pandemic and includes financial, physical/operational and court/jail reporting to assist the staff and the board with decisions on the allocation of limited resources. He indicated the Policy is being recommended for adoption by the Policy Committee. Mr. Bowman seconded the recommendation with passed unopposed.

7. Budget Committee Report/Recommendations. Mr. Starns reported that the Budget Committee discussed the Solvency Projections for FY 20 and budget needs for the remainder of the year. He reported the projections indicate 18 of the 42 districts are projected to be insolvent by the end of the fiscal year. His proposal is to make 15 of those 18 districts solvent using \$600,000 of the available contingency funds (\$1,198,229) and residual funds (\$307,791). The remaining balance of \$900,000 will go to the remaining 3 districts with the addition of the recaptured Expert Witness and Miller/Montgomery monies (\$585,000) and any other found monies. Mr. Starns reported that staff is researching the Stimulus Plan and that some districts have already begun to look at expense cuts and access to the stimulus monies.

Mr. Roberts reported that the Budget Committee's recommendation is that the time to cut expenses is now and that a two-week period has been provided for districts to submit their reduction plans.

Mr. Moses Williams expressed his concern that a focus is being made on making districts whole during the pandemic when no one is whole. He strongly urged that all districts be required to submit a mitigation plan that show all efforts to cut expenses and that the Board should not distribute any funds until they have that information. Chairman Holthaus indicated that directive has already gone out with an additional request for every districts' surplus monies as of March 1, 2020. Mr. Bowman reported that the plan is 1) to locate all available funds and 2) to get the expense reduction plans and 3) to distribute money. Mr. Williams agreed with the plan, but reiterated no money is to go out without seeing the mitigation plans and surplus amounts first.

Mr. Bowman then moved to adopt the State Public Defender's recommendation addressing insolvencies moving forward, provided there is no money provided to the districts pending the submittal of their mitigation plans. Professor North seconded the motion. Discussion continue and Professor North the called the question, seconded by Chris Bowman. Upon a vote the motion to terminate the discussion on the passed 9 in favor and 2 against (Daniels, Williams).

Mr. Bowman's motion was then restated for vote that the Board adopt the recommendation of the State Public Defender addressing district insolvencies -- the weekly evaluation plan on page 57 -- provided there is no distribution of money to the districts pending the submittal of mitigation plans. Professor North acknowledged his second. Chairman Holthaus asked to add the language "and further action of this Board" and Mr. Roberts asked to add that the mitigation plans are due on April 17th. Mr. Bowman and Professor North accepted the amendments. The amended motion was restated, to read: to adopt the recommendation of the State Public Defender addressing district insolvencies pursuant to the weekly evaluation plan (page 57) moving forward provided there is no distribution of money to the districts pending the submittal

of mitigation plans due on April 17, 2020 or further action of this Board. Upon vote the motion, as amended, passed ten in favor and one against (Williams).

Mr. Starns then presented the Board with immediate district funding needs.

District 37 (Caldwell) – District Defender Louis Champagne has indicated a need for \$4,500 by next Friday (April 10) to make payroll. Mr. Bowman moved to disburse \$4,600 to District 37, seconded by Lyn Lawrence and passed unopposed.

District 13 (Evangeline) – Mr. Starns reported the district is in dire straits and will need \$33,000 by April 30, 2020, but recommended deferring until receipt of their mitigation report and his recommendation. No action was taken by the Board.

District 25 (Plaquemines) – Mr. Starns reported \$47,760 was recommended by the Budget Committee at the 3/2/20 meeting of which \$30,000 has already been disbursed leaving \$17,760 due to the district and needed for operational purposes. Mr. Ginart reported that District Defender Chanel Long has already done some mitigation and that he is in support of Mr. Starns recommendation. Ms. Long reported she could defer receipt of payment and will submit the district's mitigation plan for review. No action was taken by the Board.

Mr. Pittman summarized the COVID 19 Resolution on page 97 which is a result of the Stimulus Plan Working Group. He reported such a declaration is needed when submitting an application for stimulus monies. Professor North moved for adoption of the Resolution. Mr. Lawrence seconded the motion which passed unopposed.

8. COVID-19 Impact on Juvenile Defense. Mr. Pittman gave a brief report on the impact of COVID 19 on Child Welfare system. A written report is in the materials.

9. FY 21 Working Group. Mr. Starns reported that he is working with the districts on a funding mechanism for FY21.

10. Next Meetings. Friday, April 9, 2020, 12:00 p.m. (if agenda items are confirmed) ZOOM
Friday, April 17, 2020, 12:00 p.m. ZOOM

Mr. Holthaus urged that the deadline for the submittal of the districts' mitigation plans be changed to April 15 in order to give staff time to compile the information and run projections for the April 17 Board meeting. He directed staff to reach out to the district defenders and programs directors with the new date.

Judge Foote asked to revisit a prior discussion/vote and discussion was had on the Board's vote to cancel the Miller/Montgomery contracts. Judge Foote then moved to postpone the cancellation of the Miller /Montgomery contracts to the end of April to allow the programs the opportunity to apply for stimulus money and to make an orderly transfer of any files to the districts that will pick these cases up. Ms. Zita Andrus second the motion.

Mr. Roberts indicated support for the motion but asked for more information from the LCCR and CAP executive directors Aaron Clark Rizzio and Cecelia Kappel such as: what is their caseload,

how many attorneys are working for them, what their programs do, how many clients are currently being served, how many cases are pending, and their budgets.

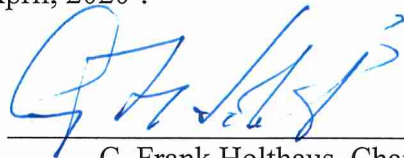
Mr. Pat Fanning inquired if the Board could revisit the issue at the next meeting rather than waiting until the end of the month allowing the expenditure of another full month's payment. Judge Foote did not accept the proposed date change for his motion, but agreed to revisit the issue. General Counsel Barbara Baier asked Judge Foote to clarify his motion to indicate if he was asking the Board to rescind the previous action of the Board (to cancel the contracts) or requesting that the cancellation of the contracts be postponed until April 30, 2020. Judge Foote clarified his motion to be to rescind the cancellation of the Miller/Montgomery contracts as of today (April 3, 2020) and to suspend acting on it as of today (April 3, 2020) until April 30, 2020 after which the mitigation reports will have been received and the Board have a better understanding of the situation. Professor North called the question. There was no opposition to terminating the discussion. Upon vote, the motion passed nine in favor and two against (Bowman, Fanning).

11. Adjournment. Mr. Ginart moved to adjourn, seconded by Judge Foote and passed unopposed. 2:46 p.m.

Guests:

Derrick Carson	Mike Courteau	Deirdre Fuller
Richie Tompson	Fontella Baker	John Albert Ellis
Herman Castete	Louis Champagne	Tony Champagne
Harry Fontenot	Steve Thomas	Bob Noel
Rhonda Covington	Paul Marx	Michelle AndrePont
Bettye Wall	Richard Stricks	Bruce Unangst
Aaron Clark Rizzio	David Marcantel	Richard Bourke
Joshua Newville	Conor Gaffney	Paul Fleming
Trisha Ward	Mike Mitchell	John Lindner
Jee Park	Matilde Carbia	Kyla Romanach
Gary Clements	Chanel Long	Renee Bourg
Angela Claxton	Alan Robert	Chris Aberle

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 3rd day of April, 2020, as approved by the Board on the 17th day of April, 2020².



C. Frank Holthaus, Chairman

² The meeting at which these minutes were approved was held by Zoom video-conference pursuant to Executive Proclamation JBE 2020-30 – Additional Measures for COVID-19 Public Health Emergency Section 4.