



LOUISIANA PUBLIC DEFENDER BOARD

BOARD MEETING
Thursday, November 13, 2014
LSU Law Center, Tucker Room
Baton Rouge LA 70806
2:00 p.m.

MINUTES

1. Call to Order and Remarks of the Chairman. A meeting of the Louisiana Public Defender Board, pursuant to lawful notice, was duly convened and called to order by its Chairman on Thursday, November 13, 2014, at 2:20 p.m. at the LSU Law Center, Tucker Room, in Baton Rouge, Louisiana.

The following Board members were present:

Robert Burns	Herbert Larson
Hampton Carver	Hector Linares
Addison Goff	Herschel Richard
Leo Hamilton	Stephen Singer
Rebecca Hudsmith	Gina Womack
Robert Lancaster	

The following Board members were absent:

Frank Holthaus	Jacqueline Nash
Tom Lorenzi	

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

Jay Dixon	Jean Faria
Barbara Baier	Anne Gwin
William Boggs	Tiffany Simpson
Marianne Buchanan	Erik Stilling

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

Natashia Carter
Richard Pittman

Chairman Burns welcomed William Boggs who joined LPDB as the Deputy State Public Defender/Director of Training in July of 2014.

2. Call for Public Comment. No one presented for Public Comment.

3. Adoption of the Agenda.* Mr. Hamilton moved to amend the agenda. Mr. Carver seconded the motion, which passed unopposed. Mr. Hamilton moved that item number five on the agenda, Appointment of a Vice-Chairman, be made an action item and that the agenda be approved as amended. Mr. Carver seconded the motion which passed unopposed.

4. Review of the September 4, 2014 Meeting Minutes*. Mr. Hamilton moved to accept the Minutes of the September 4, 2014 meeting as presented. Ms. Womack seconded the motion which passed unopposed.

5. Appointment of a Vice-Chairman*. Chairman Burns reported that since his appointment as Chairman, the Vice-Chairmanship remains vacant. Mr. Hamilton moved to appoint Herschel Richard as Vice-Chairman. Mr. Carver seconded the motion, which passed unopposed. Mr. Richard accepted the appointment.

6. Budget and Fiscal Issues. Mr. Dixon reported that the Budget Committee met recently but because of a lack of quorum the Committee does not bring recommendations to the Board on the agenda items below.

a. Financial Report*. LPDB Budget Analyst Marianne Buchanan provided a brief summary of the agency financial status as of October 16, 2014. Ms. Buchanan reported that since the beginning of this fiscal year, the amounts expended and encumbered total \$15.5 million, or 45.5% of the total budget of \$34 million. She reported that of the remaining expected expenditures, there is \$87,424 available which could be used for reallocation. Mr. Hamilton moved to adopt the financial report as presented. Mr. Larson seconded the motion which passed unopposed.

b. DAF and CINC Disbursements*. State Public Defender Jay Dixon requested that the Board approve disbursement of the second distribution of DAF and CINC funds in amounts equal to the first distribution. Mr. Hamilton moved to approve the DAF disbursements as recommended by staff. Ms. Womack seconded the motion which passed unopposed. Mr. Hamilton moved to approve the CINC disbursements as recommended by staff which was seconded by Prof. Linares and passed unopposed.

c. FY15 Contract Amendments*. Mr. Dixon reported that the contract amendments for all of the 501c3 programs are for amounts equal to the first six-month distribution with an exception to allocations to BRCCO, CAPSELA and LCAC. Mr. Dixon requested that \$300,000, reserved from the non-funding of CAPOLA, be added to the BRCCO, CAPSELA and LCAC contracts, in equal amounts, to cover extra expenses to be incurred for handling those cases being left un-represented as a result of CAPOLA's removal as legal counsel. Mr. Hamilton moved to approve the contract amendments with an additional \$100,000 going to BRCCO, CAPSELA, and LCAC for fiscal year 2015. Mr. Richard seconded the motion which passed unopposed.

d. District Defender Salary Review Update. ITM Director Dr. Erik Stilling gave a brief synopsis on the history and current status of District Defender Salary ranges. Dr. Stilling indicated that staff continues to compile information and will develop an analysis to present at the next Board meeting.

7. **Policy Committee Reports and Recommendations.** Mr. Dixon reported that because of a lack of quorum the Policy Committee did not meet and has no recommendation on the following agenda items for Board action.

a. **CAPOLA Assessment and Recommendations*.** Board Member Rebecca Hudsmith gave a summary of the Capital Working Group's recent efforts to address and resolve serious issues with the Capital Project of Louisiana (CAPOLA) and reported that with all due considerations that it is the recommendation of the working group to not renew the contract with CAPOLA for capital representation services. After a brief discussion, Capital Case Coordinator Jean Faria was instructed to draft an Executive Summary, ultimately to double as a press release and report to the Legislative Auditor. Mr. Richard moved to accept the recommendation not to renew the contract with CAPOLA. Mr. Hamilton seconded the motion which passed unopposed.

Upon motion of Mr. Richard, seconded by Mr. Carver, the Board went into Executive Session.

Upon motion of Mr. Richard, seconded by Ms. Womack, the Board left Executive Session.

Upon return to the regular meeting, Mr. Richard moved to amend the agenda to include item number 7(i) – Amicus Brief - the Capital Appeals Project. Ms. Womack seconded the motion which passed unopposed.

Additionally, the following Resolutions were brought for discussion:

i. **Authority to Reallocate Funds – Legal Fees*.** Staff is requesting permission to reallocate CAPOLA funds to pay private counsel to take those cases from which CAPOLA is being removed as legal counsel. Mr. Richard moved to adopt the Resolution and Mr. Hamilton seconded the motion which passed unopposed.

ii. **Authority to Reallocate Funds – Expert Witness Expense*.** Staff is requesting permission to reallocate CAPOLA funds to pay core team members, mitigation experts and investigator on those cases from which CAPOLA is being removed as legal counsel and private counsel brought in. Mr. Richard moved to adopt the Resolution and Mr. Hamilton seconded the motion which passed unopposed.

iii. **Contract Attorney Approvals*.** Ms. Faria reported that staff is requesting approval to contract with private counsel to handle capital cases. Attorneys' fees will be capped, with an exception for two attorneys who will be paying core team members already in place. Mr. Hamilton moved to approve contracts for private attorneys to enroll as counsel in those capital cases being left unrepresented as a result of CAPOLA's contracts not being renewed. Ms. Womack seconded the motion. The motion passed eight in favor, two abstaining.

b. **Expert Witness Protocol Amendment*.** Mr. Dixon reported that staff is requesting an amendment to the existing expert witness protocol. Currently, all requests for expert funding are placed on a first in/first out basis and are denied permission to begin work or incurring fees until funding becomes available. Staff is requesting that mitigation experts be allowed to start work immediately in order to avoid the potential loss of dated evidence. Payment on services rendered

would still not be made until funds are available. The amended protocol would allow mitigation experts to begin work immediately, rather than potentially loose evidence because of statute of limitations. Mr. Hamilton moved to approve the protocol amendment which was seconded by Mr. Larson and passed unopposed.

c. **Board Vacancies/Appointments.** Mr. Dixon reported that membership appointments to Board are lagging or lacking. A number of appointments have either not been made, not been ratified by Governor, and/or confirmed by the Senate. After a brief discussion, Staff was instructed to submit in writing to the Governor and to the Chief Justice of the Supreme Court requests for appointments to those seats currently vacant and to request confirmation by the Governor of the recommendations of Mr. Herbert Larson (representing Tulane Law School) and Mr. Stephen Singer (representing Loyola Law School).

d. **Child Support Enforcement/Establishment of Paternity Defense – Policy*.** Mr. Dixon reported that a few districts currently regularly engage in representation of clients in child support enforcement and establishment of paternity proceedings, but that that practice is not regularly performed statewide. He further reported that R.S. 46:236.5B(2) allows for reimbursement to the public defender office the amount of \$25 per case -- at the expense of the client – but that the statute does not require the public defender office to provide the representation. Considering the anticipated funding shortfall, Mr. Dixon submitted a draft policy on this matter stating that the district offices are not required to provide legal representation in these two types of cases. Mr. Hamilton moved to adopt the policy which was seconded by Mr. Linares and passed unopposed.

e. **Curatorship - Policy*.** Mr. Dixon reported that there is currently no law requiring Public Defenders to act as curators in CINC cases and that when they are accepted substantial expense is incurred. After a brief discussion, it was determined that laws may actually exist barring an attorney from acting as curator and providing representation to the child. The issue was tabled for future discussion.

f. **CINC and TPR Representation – Policy*.** Mr. Dixon reported that Children’s Code Article 607 has been amended making the Supreme Court responsible for determining representation of children in Child in Need of Care (CINC) cases. Considering the anticipated funding shortfall, Mr. Dixon submitted a draft policy stating that the district public defender offices are not required to provide legal representation for children in CINC and in Termination of Parental Rights cases. Mr. Hamilton moved to adopt the policy which was seconded by Mr. Carver and passed unopposed.

g. **Protocol - LPDB Policy Implementation Notification*.** Mr. Dixon submitted a draft protocol to keep district and contract programs apprised of policies adopted by the Board which may affect them. Mr. Hamilton moved to adopt the protocol which was seconded by Ms. Womack and passed unopposed.

h. **Out of State Travel Exception*.** Dr. Stilling is requesting an exception to the Board’s active freeze on out of state travel. Dr. Stilling has been invited to attend the American Society of Criminologists’ annual convention to present on LPDB’s data program. The cost of the trip is not to exceed \$1,200. Mr. Hamilton moved to approve this request which was seconded by Mr. Goff and passed unopposed.

i. **CAP –Amicus.** Ms. Sarah Ottinger, Executive Director of the Capital Appeals Project (CAP) has requested that LPDB enter into an amicus. After a brief

discussion and upon motion of Mr. Hamilton, seconded by Robert Lancaster, SPD Dixon and Capital Case Coordinator Jean Faria were authorized to determine if the brief to be filed by CAP is a “true amicus” and to make the final decision whether LPDB will participate.

8. Contract Resolutions (La. R.S. 42:262). Pursuant to La.R.S. 42:262 requiring any contract for legal services to be supplemented with written Board approval, staff submitted resolutions approving contracts, as follows:

a. Stone, Pigman*. The LPDB must respond to rulings filed in *State v. Kenneth Willis*, Docket Number 304-806, Section 3, 1st Judicial District Court, Parish of Caddo and *State v. Tarika Wilson*, Docket 315-973, Section 1, 1st Judicial District Court, Parish of Caddo. The Law Firm of Stone, Pigman has agreed to perform legal services upon the terms and conditions set forth in the contract to be submitted to the Attorney General for the State of Louisiana for approval. Mr. Hamilton moved to adopt the resolution which was seconded by Mr. Richard and passed unanimously.

b. Decuir, Clark & Adams*. *Subpoenas Duces Tecum* have been filed in *State v. Robertson*, Docket No. 7-12-0625, Division VII and a *Petition for Writ of Mandamus, Declaratory Judgment and Supplemental Relief* has been filed in *Edge v. Louisiana Public Defender Board, et al*, Docket No. C624295, Division 26, both in the 19th JDC. The Law Firm of DeCuir, Clark & Adams has agreed to perform legal services upon the terms and conditions set forth in the contract to be submitted to the Attorney General for the State of Louisiana for approval. Mr. Larson Larson moved to adopt the resolution which was seconded by Mr. Hamilton and passed unanimously.

9. District Defender Pending Vacancies.

a. Authority to Appointment Interim*. Mr. Dixon reported that there are District Defender vacancies in Districts 33 (Allen Parish), 17 (Lafourche), and 16 (Iberia, St. Martin, St. Mary Parishes) and possibly in Districts 3 (Lincoln, Union) and 30 (Vernon). Mr. Dixon is requesting temporary authority (ending March 1, 2015) to select an interim District Defender in those districts where a vacancy has occurred or may occur. The appointments will be subject to approval by the Board at the next meeting. Mr. Goff moved to approved temporary Interim District Defender appointment authority to Mr. Dixon which was seconded by Ms. Womack and passed unopposed.

10. SSA Report and FY 15 Outreach Update. Mr. Dixon reported that staffs’ FY15 Outreach project has begun with meeting with legislators, judges, local clubs, and site visits being scheduled. The purpose is to inform and educate as many as possible on the pending public defense crisis.

11. Executive Session*. There were no further issues to be discussed in Executive Session.

12. SPD Report. Mr. Dixon reported that staffs’ activities since the last Board meeting are available for review in the SPD report provided in the Board’s meeting materials.

13. Other Business. There was no further business presented for discussion.

14. Meeting Schedule*. The Board set its next two meetings for Tuesday, January 13, 2015, and Tuesday, March 24, 2015. The location of the meeting will be announced.

15. **Adjournment***. Mr. Hamilton moved to adjourn which was seconded by Ms. Womack.

Guests:

Chris Aberle
Tony Champagne
Steve Thomas
Sophia Harris
Allen Harvey

Kerry P. Cuccia
Clay Carroll
John Burkhart
Sarah Ottinger
Paul Fleming

Beane Bonin
Michael A. Mitchell
Jee Park
Chuck Reid
Alan J. Robert

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 13th day of November, 2014, as approved by the Board on the 13th day of January, 2015, at Baton Rouge, Louisiana.


Robert Burns, Chairman