



LOUISIANA PUBLIC DEFENDER BOARD

Thursday, September 12, 2019
Scotlandville Branch Library
7373 Scenic Highway, Baton Rouge, LA
1:00 p.m.

Minutes

1. A meeting of the Louisiana Public Defender Board, pursuant to lawful notice, was called to order by its Chairman Frank Holthaus on Thursday, September 12, 2019, at the Scotlandville Branch Library in Baton Rouge, Louisiana, at approximately 1:10 p.m.

The following Board members were present¹:

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

The following Board members was absent:

Katherine Gilmer

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

Richard Pittman, Interim State Public Defender
Barbara Baier, General Counsel
Natashia Carter, Budget Administrator
Jean Faria, Capital Case Coordinator
Anne Gwin, Executive Assistant
Erik Stilling, Information and Technology Director

Chairman Holthaus commended District Defenders Victor Bradley District 29 (St. Charles Parish) and Pamela Smart District 1 (Caddo Parish) for their dedication to indigent defense. Mr. Bradley passed away in mid-August and Ms. Smart is retiring from the Caddo Parish District Defender position effective October 1, 2019.

2. Adoption of the Agenda. Professor North moved to adopt the agenda as presented. Mr. Flozell Daniels seconded the motion which passed unopposed.

¹ Mr. Ginart arrived after roll call; however, voting quorum was not affected by the late arrival.
1_Board_Minutes_Sep 12 2019

3. Call for Public Comment. Mr. Will Harrell addressed the Board and presented materials on new voting eligibility laws for parolees in Louisiana as a result of Act 636 of the 2018 Regular Legislative Session.
4. Adoption the Minutes, August 8, 2019 Meeting. The minutes of the August 8, 2019 meeting were adopted without opposition.
5. Budget and Financial
 - a. Financial Report through July 31, 2019. Budget Administrator Natasha Carter reported as of July 31, 2019 \$34,001,620 encumbered or expended, \$6,203,470 projected to be encumbered or expended through June of 2020 and zero funds available for reallocation. She also reported a change on the financial report for tracking the District Assistance Fund which will show the initial distribution, the Residual Fund and 5% Exigency Fund balances throughout FY20. Mr. Daniels moved to adopt the financial report which was seconded by Professor North and passed without opposition.
 - b. Districts of Concern. Interim State Public Defender Richard Pittman reported that staff is closely monitoring several districts (District 13 (Evangeline Parish) and District 34 (St. Bernard Parish)) at risk of insolvency. He further reported that no district is in immediate danger and staff will keep the Board apprised.
 - c. District DAF Requests. Mr. Pittman gave a summary of two districts requesting DAF funding. These districts both saw a drop in local revenue after the projections were done for the FY20 DAF distribution resulting in both districts receiving less DAF than originally projected.
 - i. District 14. Mr. Pittman reported that the Budget Committee is recommending \$250,000 to District 14. Judge Ross Foote seconded the recommendation which passed unopposed.
 - ii. District 40. Mr. Pittman reported that the Budget Committee is recommending the full amount of \$178,322 as requested but to be divided by one-third (\$59,440) with the balance (\$118,882) to be encumbered until the district's financial status can be revisited in three months. Judge Foote seconded the recommendation with passed unopposed.
 - d. DAF FY21. Mr. Pittman reported that he and staff are meeting with Board members about approaches to the FY21 DAF distribution. He indicated the FY20 DAF is being explained including some of the policies, guiding principles and assumptions behind it. He reported a meeting is scheduled with the DDAC on September 17th to being the discussion with the field. The Board indicated that they would like for staff to have met with all Board member within 30 calendar days.
6. ROS status. Mr. Pittman reported that Dr. Tiffany Simpson completed the updates on districts in ROS and four of five districts will remaining in ROS at this time. He indicated that District 28 (LaSalle Parish) has requested to exit ROS and although the district's financials look shaky, they have met the exit criteria set forth by Staff in the ROS plan and it is his recommendation that the 28th exit ROS at this time with Staff continuing to monitor.
7. Executive Session², ³*. Executive Session was moved to later in the agenda.

² 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.

8. District Defender Issues*

- a. Ratification of Appointment and Salary of Interim Richard Tompson, District 29 (St. Charles Parish). ISPD Richard Pittman reported his recommendation for District Defender Richard Tompson (District 24 (Jefferson Parish) to serve as Interim in District 29 (St. Charles Parish) at a salary of \$2,000 per month pending the appointment of a permanent District Defender and the Budget Committee's recommendation to ratify the salary. Mr. Moses Williams seconded the recommendation for the appointment and salary. Upon a vote the recommendations passed unopposed.
- b. Ratification of Appointment and Salary for Interim Steve Thomas, District 1 (Caddo Parish) effective October 1, 2019. ISPD Richard Pittman reported his recommendation for District Defender Steve Thomas (Districts 11(Sabine Parish) and 42 (Desoto Parish) to serve as Interim in District 1 (Caddo Parish) at a salary of \$3,000 per month pending the appointment of a permanent District Defender and the Budget Committee's recommendation to ratify the salary. Mr. Pat Fanning seconded the recommendations which passed unopposed.
- c. Ratification of Salary of District Defender, District 25 (Plaquemines Parish) Chanel Long. Mr. Pittman reported the Budget Committee's recommendation to pay Ms. Chanel Long an annual salary of \$80,000. Judge Foote seconded the recommendation which passed unopposed.

A brief discussion followed regarding how district defender salaries are set and staff was asked to bring this issue back to the Board to revisit how salary calculations are derived. Additionally, the Board agreed to revisit Ms. Long's salary at a later date.

Mr. Pittman then provided a summary on three active District Defender Selection Committees: District 1 (Caddo Parish), District 6 (E. Carroll, Madison and Tensas Parishes) and District 29 (St. Charles Parish). The Committees in the 1st and 6th are constituted and the 6th will have their recommendation to Staff by October 1st. The Caddo committee will have their recommendations in by November 4th and Mr. Pittman will make the final appointment to the 29th Selection Committee made on September 13, 2019. By statute, that recommendation is due to staff no later than November 12, 2019.

Judge Foote asked that the Board members be kept apprised of staff interviews as they are scheduled for Board participation.

Mr. Williams inquired if it is the Board's future recommendation that any District Defender be required to be full time with no private practice? Mr. Pittman indicated that if a viable candidate for the position should indicate they do not want to be full time, he (Mr. Pittman) would bring that to the attention of the Board. Mr. Williams stated that salaries should reflect this status.

³ 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). No final or binding action will be taken during executive session. The board may discuss the interim appointments in Districts 1 and 29. The Board may discuss personnel issues in the Capital Defense Project of Southeast Louisiana (CDPSLA), Kerry Cuccia-Executive Director. The Board may discuss the interim state public defender/position, personnel and the open Trial Level Compliance Officer and Director of Training positions.

9. Personnel

a. SPD Search. Professor North reported that the State Public Defender position announcement was extended to applicants to September 20, 2019 because at the time of that decision there were only three applicants. Since that time and as of today there are six applicants. He urged anyone interested to move forward with submitting his/her application. The Board agreed to no further application extensions.

Mr. Holthaus reported that the National Association of Public Defenders has offered to assist in a nationwide search for a fee of \$30,000 and unless someone on the Board wants to go in that direction his recommendation is to take no action. No action was taken.

i. Reappointment of ISPD. Mr. Pat Fanning moved to extend Mr. Pittman's Interim State Public Defender position past the initial 60-day appointment at the same approved salary. Discussion followed as to how long the extension should be. Professor North indicated that a timeline and schedule would be created and those any scheduled dates would determine how much longer Mr. Pittman would remain in the position. Mr. Holthaus suggested a 90-day extension. Mr. Fanning amended his motion to extend Mr. Pittman's interim position for 90 days. Mr. Chris Bowman suggested an extension until such time as the full-time position is filled avoiding any future extensions. Mr. Fanning accepted Mr. Bowman's suggestion as a friendly amendment. Judge Foote clarified that the action should be that the position would be extended up to 90 days but if the SPD position is filled before that time, the interim position would terminate. Clarification was made that Mr. Pittman's pay would remain at the same level.

Mr. Chaz Roberts asked for an outline of the review process. Professor North indicated that all Board members will be invited to attend interviews, a timeline would be set, and the committee will come back after the initial interviews and make recommendations to the full Board.

Mr. Pat Fanning urged that the timeline be set at this meeting. Mr. Holthaus indicated his *goal* is to have all applicants interviewed and recommendations made by November 1, 2019.

Mr. Daniels asked that staff identify space, available dates and provide video access to the interviews. Mr. Roberts indicated that he would like to see every interview and who all participated and asked if the Committee would take questions from other Board members, even if not present. Mr. Holthaus indicated any board member can provide a list of questions. General Counsel is to research video access to the interviews.

After the question was called, Professor North seconded Mr. Fanning's motion as amended to extend Mr. Pittman's interim position for up to 90 days or until such time as the SPD position is filled. There was no further discussion and upon vote the motion carried with no opposition.

b. Other Open Positions - Updates. ISPD Pittman reported that advertising has begun for the Trial Level Compliance Officer and Director of Training positions. The original application deadline of November 1 was changed to October 1 on recommendation of several Board members and all prior applicants have been advised by email and US mail of the new application period.

Mr. Williams stated his concern that the SPD needs to be in place before filling these positions. Mr. Roberts agreed and Mr. Bowman clarified that the consensus at the previous meeting was that interviews would not be scheduled until after the Chief is selected. Mr. Williams again expressed concern over placing potential applicants in the position of applying for a job not knowing who their boss may be and that the deadline should be after the SPD is hired. He then moved to extend the deadline until December 1 or such time to give the Board time to hire the SPD position. Professor North seconded the motion which passed unopposed.

10. LPDB Division Reports. Chairman Holthaus reported that the following reports are in the materials: Interim SPD and Capital.

11. Announcements.

Robert Noel announced a two-day 12.5 CLE seminar sponsored by the 4th and 5th Public Defender's Offices, free for all public defenders in Louisiana at ULM, Strauss Hall, Room 148, on Thursday, September 19, 2019 and Friday, September 20, 2019. The seminar will also provide Professionalism and Ethics. Mr. Noel and District 5 (Franklin, Richland and W. Carroll Parishes) District Defender John Albert Ellis are leading the seminar.

Defender Leadership Training, Sep 17-18. Mr. Pittman announced the Defender Leadership Training will discuss the new Parent Representation federal monies and what to do with it.

Mr. Daniels asked to discuss the recent 5th Circuit judgment that was provided as a handout. Mr. Holthaus indicated it would be discussed in Executive Session as it may impact ongoing litigation.

Professor North moved to amend the agenda to discuss an issue brought to the attention of the Budget Committee by District 9 (Rapides Parish) District Defender Deirdre Fuller. Mr. Daniels seconded the motion and the agenda was amended. Ms. Fuller addressed the Board stating that she has been sued along with the DA and Sheriff of Rapides Parish regarding a confiscation of \$101,900 from an individual in a bond forfeiture of which 25% was given to the PDO⁴. Ms. Fuller reported having contacted LPDB General Counsel Barbara Baier after service of the petition and that Ms. Baier contacted the Office of Risk Management and the AG's office for direction and possible representation of Ms. Fuller, which was subsequently denied. Ms. Baier then contacted the attorney for the Plaintiff and obtained an indefinite extension of time. Ms. Fuller indicated she has not spoken with a recommended attorney to represent her pending bringing the issue to the Board's attention. Mr. Pittman clarified that Ms. Fuller, a passive recipient to the funds is not being accused of any wrongdoing, rather the allegation is that it was an improper civil forfeiture and plaintiff is seeking return of the funds. Professor North moved that the board hire counsel to represent the District Defender. Discussion followed after which Ms. Fuller agreed that she would contact her malpractice and general insurers for potential coverage/limits, get an hourly rate from the recommended attorney should she need representation and report the status of both to the Board at the

⁴ Ms. Fuller reported having spent the funds on computer upgrades for the office.

next meeting. Staff was instructed to put the issue on the next agenda. Professor North withdrew his motion.

12. Next Meeting(s). The Board set the next meeting for November 21, 2019. Professor North indicated that he and Mr. Pittman would be working on the DAF and that a Budget Committee meeting could possibly be set either at a date prior to the next Board meeting or the day of.

Mr. Bowman asked to discuss the Capital Report and requested clarification on the waitlist numbers which was provided by Capital Case Coordinator Jean Faria. He asked that in the future she include a list of cases that have been closed from the previously provided report(s). Ms. Faria acknowledged that would be done.

7. Executive Session. Mr. Daniels moved to go into Executive Session. Ms. Andrus seconded the motion which passed unopposed. A motion was made to leave Executive Session which was seconded and passed unopposed.

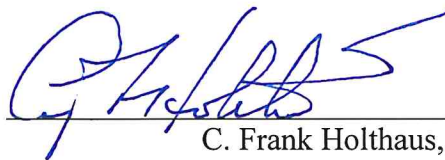
Upon return to regular session, the Board changed their next meeting to November 1, 2019 at 1:00 p.m.

13. Adjournment. Mr. Bowman moved to adjourn. Mr. Fanning seconded the motion which passed unopposed.

Guests:

Rene Bourg	Richie Tompson	Kerry Cuccia
Will Harrell	Herman A. Castete	Brian McRae
Rémy Starns	Don Kneipp	Cecelia Kappel
Andrea Stentz	Damon Stentz	Deirdre Fuller
Paul Fleming	Alan Robert	Dennielle Berger
Mike Courteau	Michael A. Mitchell	Lindsay Blouin
Joshua Newville (sp)	Chanel Long	Steven Thomas
Angela Claxton	Thomas Gernhauser	Gary Clements
David E. Marcantel	Jee Park	Mitch Bergeron
Harry Fontenot	Richard Stricks	Bob Noel

I HERBY CERTIFY that the foregoing is a full, true, and correct account of the proceedings of the Louisiana Public Defender Board's meeting held on the 12th day of September, 2019, as approved by the Board on the 21st day of November, 2019, at Baton Rouge, Louisiana.



C. Frank Holthaus, Chairman