



LOUISIANA PUBLIC DEFENDER BOARD

Bluebonnet Regional Library
9200 Bluebonnet Boulevard
July 17, 2018
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 Donald North on Tuesday, July 17, 2018, at Bluebonnet Regional Library, Baton Rouge, at 1:40 p.m.

The following Board members were present¹:

Chris Bowman	Flozell Daniels	Patrick Fanning
W. Ross Foote	Katherine Gilmer	Donald North
Ami Stearns	Moses Williams	

The following Board members were absent:

Zita Andrus	Michael Ginart	Frank Holthaus
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The following members of the Board's staff were present:

Jay Dixon, State Public Defender
Barbara Baier, General Counsel
Jean Faria, Capital Case Coordinator
Anne Gwin, Executive Assistant
Erik Stilling, Information and Technology Director

2. Adoption of the Agenda. Mr. Flozell Daniels moved to adopt the agenda as presented which was seconded by Ms. Katherine Gilmer and passed unopposed.

3. Call for Public Comment. Mr. Paul Marx (District 15) announced a two-day Voir Dire retreat in District 15 on August 12. No one else presented for public comment.

4. Adoption the Minutes, May 22, 2018 Meeting. Mr. Daniels moved for adoption of the Minutes of the May 22, 2018 meeting as presented and Judge Foote seconded the motion which passed unopposed.

¹ Board members Bowman and Williams arrived shortly after roll call.

5. Fiscal and Budget

a. Financial Report as of June 30, 2018. State Public Defender Jay Dixon gave a brief summary of the FY18 year-end financial report as of June 30, 2018 reporting \$33,758,702 expended or encumbered and \$592,117 available for reallocation. Of those funds only \$155,267 is available for reallocation to the districts as \$436,850 is encumbered in personal services. Mr. Moses Williams moved to adopt the financial report as presented. Mr. Daniels seconded the motion which passed unopposed.

b. Final FY18 DAF Disbursal. Mr. Dixon reported that the final FY18 DAF in the amount of \$208,802.77 has been disbursed pursuant to Board directive and clarified that there were no changes from the amounts approved by the Board at the May 2018 meeting.

c. Final Year End Disbursal, FY18. Mr. Dixon reported a FY18 year-end remaining balance in the LPDB administrative budget of \$155,267 to be disbursed to the districts and submitted three options for the Board's consideration, clarifying that the third option (Option C) as presented on page 440 of the materials is no longer a viable option as pertinent information concerning local funding to Orleans Parish became available after the compilation of the materials. Mr. Dixon reported that Option A is straight pro rata disbursal to all districts and Option B is disbursal only to non-accruing districts. Mr. Moses Williams asked for staffs' recommendation. Mr. Dixon indicated he would "mildly" recommend Option B. Professor Ami Stearns asked for an explanation for the decreased funding in Districts 11 and 42. Mr. Dixon reported that local funds have plummeted in those districts and the District Defender for those districts, Steve Thomas, added that volatile political issues are also involved. Mr. Dixon added that in the past both proposed options have been utilized depending on the circumstances statewide but that this year the amount of money for disbursal is not significantly affecting any district. Mr. Pat Fanning then moved to disburse the FY18 year end funds pursuant to Option B. Mr. Moses Williams seconded the motion which passed unopposed.

d. FY19 - Budget Recommendation. As an informational item, Mr. Dixon reported on the LPDB allocation for FY19 as provided by the Office of Planning and Budget. He further reported that \$34,812,617 has been allocated to the Public Defender Fund from which the District Assistant Fund is derived and which amount includes additional allocations for Miller-Montgomery and capital representation all of which is subject to the 65% disbursement law.

Discussion followed on whether the additional capital allocation of \$209,087 is actually statutorily dedicated and subject to the 65% law or not. That discussion included board members debating whether a legal opinion is required, whether to shift funds from other resources or fully fund capital as outlined in House Bill 1 (in the amount of \$209,087), and what the repercussions on the current capital wait list would be if those funds are not disbursed as intended. Judge Foote stated that "optically" it is in everyone's best interest to expend the funds as the Legislature intently expressed them to be. Mr. Flozell Daniels then moved to disburse the funds to capital, in full. Judge Foote seconded that motion. (No action was taken on this motion.)

After continued discussion and requests for staff recommendations, Mr. Dixon recommended reducing the next DAF disbursal by 65% of the \$209,087 that would be used for capital to be supplemented by 35% funding from the administrative budget. Then, at a later date (September Board meeting), the final DAF could be decided. After a brief discussion, Mr. Daniels moved that the Board accept staffs' recommendation to reduce the DAF by 65% of the \$209,087 and that staff find the remainder of those resources for disbursal pursuant to the recommendation. Judge Foote seconded the motion. Upon a vote the motion passed with four in favor, three against and one abstention.

e. FY19 – First Quarter DAF Disbursal / Remaining DAF Disbursal. Mr. Dixon reported that pursuant to the Board’s action on the previous item (5d) the remaining 75% DAF of \$15,202,005 is to be reduced by 65% of \$209,087 and that it is his recommendation to disburse the remaining 75% DAF pro rata. Attention was called that this agenda item should to be amended to include the Board’s previous action. Mr. Dixon recommended also including the \$209,087 contract amendments for the capital programs in the amendment. Motion was made to amend agenda item 5e and upon vote the motion passed five in favor and three against and the agenda was amended as recommended. Mr. Moses Williams then moved to accept the recommendation of staff to approve the reduction of remaining 75% DAF (\$15,502,005.75) by 65% of \$209,087 (\$135,906.55) for disbursal. Upon vote, the motion passed unopposed.

f. FY 19 CINC Disbursal. Mr. Dixon reported that the CINC funds have been submitted to OFSS for disbursal pursuant to Board directive at the May meeting and that no amounts have changed since that meeting.

6. Miller-Montgomery. Mr. Dixon introduced Mr. Aaron Clark-Rizzio, Executive Director of the Louisiana Center for Children’s Rights (LCCR). Mr. Clark-Rizzio reported that LCCR has engaged in conversation with most districts regarding Miller and Montgomery cases and with the exception of one district found that there is a desire for those cases to be handled by one entity. He reported in the best interest of the districts, a centralized plan that pools the districts’ Miller/Montgomery funds would allow LCCR to fully support the districts in representing Montgomery clients statewide with two attorneys, mitigation experts and investigators. Additionally, it would also allow for a “partnering” with the districts in Miller cases, mostly pre-trial, that would allow for the training of district public defenders in Miller cases so that in the event of a change in the case by a District Attorney, the public defender would already be versed in the case. He clarified that while the use of LCCR, or any one central entity, is not mandatory, if more districts than not should choose to handle their own cases and would take their pro-rata share of the total allocation, it would change the economy of scale dynamic and the ability of LCCR to handle representation statewide.

Judge Foote expressed concern with the proposed plan which states (at page 10 of the proposed plan – pg. 469 of the materials) “for LPDB to take full responsibility for Montgomery cases and partial responsibility for Miller cases.” Mr. Clark-Rizzio countered that by the Board taking a stand and “taking the heat” rather than the districts, with a central structure in place, puts the Board in a stronger position to advocate that the funds remain in the budget in subsequent years. Judge Foote indicated he understood the policy committee’s recommendation was to use the allocation for collaborative training in the districts in the event future funding becomes an issue the districts would be more prepared to handle these cases.

Mr. Dixon reiterated that the LCCR plan is not mandatory and any district that wants to handle these cases individually would get their pro-rata share of the allocation. He clarified, after inquiry by Board members Williams and Bowman, that the proportionate share would be determined based on the current number of outstanding cases and that the Board could potentially provide options to districts already handling cases such as application for refunds for experts, to be determined later. Given that information, Mr. Bowman indicated that the fairest method of distribution would be to the districts based upon their number of outstanding cases at the time the appropriation is made.

Several District Defenders also expressed concern and provided input. Mr. Alan Robert (District 23) indicated the LCCR plan doesn’t provide a mechanism for districts to recoup money already spent on these cases. Mr. Paul Marx (District 15) indicated the Board should also consider options for districts

that want to handle their own cases. Mr. Richard Tompson stated his district, which currently has as many as 10 Miller/Montgomery cases would benefit from joining a regional concept as did Mr. Vic Bradley (District 29) whose district has only one currently. Mr. Harry Fontenot (Districts 14/38) stressed the value of having an experienced central/region service for these cases, similar to what LCAC provides for capital cases.

Professor North suggest approving the plan pending a poll to the districts to find out how many want to participate. Mr. Clark-Rizzio reported currently being aware of only one district wanting to handle its own cases (District 15) and that pro-rata loss not being a huge impact to the economy of scale. Judge Foote expressed concern with approving the plan without knowing the number of participants and funding ability.

Mr. Bowman urged that the districts be polled before any action. Mr. Dixon indicated that would be the next step. Mr. Bowman then moved to defer the issue to the next meeting and that staff be directed to contact all districts with Miller/Montgomery to make a determination which ones want to keep their cases. Mr. Pat Fanning seconded the motion.

Mr. Clark-Rizzio strongly urged the Board to consider amending the motion to allow the contract to go in place with districts being allowed to pull out their pro-rata share. This would take current pressures off of the districts to move these cases. Mr. Bowman declined to amend his motion citing not enough participant information at this time.

Discussion continued. Mr. Bowman was asked again if he would consider amending his motion to approve the LCCR plan in theory pending identification of what districts want to opt out and a better understanding of what money is available or not available. Mr. Bowman agreed to amend.

Judge Foote again expressed concern regarding the Board's responsibilities for the cases and moved to adopt a plan where the district defenders agree to a coordination of the funds as opposed to the Board taking full responsibility. Mr. Bowman clarified stated that if funding is lost or not, it is still the Board's responsibility to figure out some way to represent these cases.

Working with Judge Foote, Professor North suggested amending the motion to read: To approve the plan in theory subject to the identification of the districts that want to opt out and subject to funding resources being provided. Mr. Bowman accepted the amendment to his motion. Upon vote the motion passed unopposed.

7. Restriction of Services. Mr. Dixon reported that the draft guidance to aid districts in exiting ROS (on page 490 of the materials) is the result of Policy Committee, Board and DDAC discussions. It is specifically for districts that have been in ROS for over three years. After a brief discussion, Mr. Williams moved to adopt the ROS exit guide as presented. Professor Stearns seconded the motion which passed unopposed.

Mr. Moses Williams moved to amend the agenda to switch items 8 and 9 for the Board to go into executive session first. Ms. Gilmer seconded the motion which passed unopposed.

8. Executive Session. Mr. Moses Williams moved to go into executive session and Ms. Gilmer seconded the motion. Ms. Gilmer moved to exit executive session and Mr. Chris Bowman seconded the motion. Upon entering regular session, roll call was again taken. All original board members were present except Mr. Flozell Daniel. Quorum was met.

9. District Defender Selection – 16th Judicial District (Iberia, St. Martin, St. Mary). Judge Foote moved to hire Margaret Simon LeBlanc in the permanent district defender position in District 16. Professor Stearns seconded the motion. The vote was unanimous in favor with two abstentions.

10. Division Updates

a. Capital

i. Non-Capital Expert Witness Fund. Judge Foote moved to amend the agenda to make this an action item. The motion was seconded and the agenda was amended. Judge Foote reported that there is no mechanism for funding non-capital experts; however, the gathering of the data is imperative to show the specific need. He presented the protocols that create standards, informs decision making, sets forth the structure, provides guidance that creates a uniformity and allows LPDB to collect the data to take to funders in the future. He then moved to approve the non-capital expert fund protocol for promulgation in the Administrative Code and for staff to begin to collect data. Ms. Gilmer seconded the motion which passed unopposed.

b. Juvenile. Mr. Dixon reported the juvenile strategic plan update is available in the materials.

c. Legislative. Mr. Dixon gave a brief summary of Act 716 of the 2018 Regular Legislative Session-Louisiana, the School and Student Safety Act, which leaves questions as to whether public defenders will be responsible parties in the future under this Act. He reported he would be sending out a position memo to all district defenders on the issue.

11. Other Business.

Mr. Dixon reported that Mr. Rick Candler (District Defender, District 3) and Mr. Donald Kneipp (District Defender, District 2) have both submitted requests for salary increases and that staff will be implementing the increase protocol and making site visits prior to the next meeting.

Mr. Dixon further reported that communication has been sent out by a Board member proposing a Board training. Dr. Stearns indicated a need to focus on the Board's mission and on how better to strategize as a full Board and not just a budget committee disbursing funds. Judge Foote proposed moving more around the state and potentially scheduling a multi-day retreat/training in New Orleans in the future. Judge Foote also requested that the State Public Defender begin to send out monthly report to the Board about issues on the horizon. Professor North requested that the issue of accumulating fund balances go on the next board agenda and that a Budget Committee meeting be set the last week of August or first week of September. Mr. Williams requested that discussions of the quality of public defense and how to make the system better also go on the next agenda.

12. Next Meeting: The next meeting of the LPDB is September 27, 2018, Bluebonnet Regional Library, 1:30 pm.

13. Adjournment. Mr. Bowman moved to adjourn. Mr. Fanning seconded the motion which passed unopposed and the meeting adjourned at approximately 5:40 p.m.

Guests:

Harry Fontenot

Lindsay Blouin

Aaron Clark-Rizzio

Michael M. Mitchell

Steve Thomas

Vic Bradley

Kerry Cuccia

Remy Starns


Mike Courteau

Paul Fleming
Richie Tompson
Kenn Barnes
Deirdre Fuller
Norm Lefstein
Michael Caffery
Erica Rose
Kyla Romanach
Chris Aberle
Paul C. Fleming

Don Kneipp
Richard Stricks
Reggie McIntyre
Mark Plaisance
Steve Hanlon
Margaret LeBlanc
Mercedes Montagne
Lisa Parker
John W. Lindner
Margaret Lagatutta

John Lindner
Paul Marx
Brad Dausat
Tony Champagne
John Albert Ellis
Alan Robert
Richard Bourke
Richard B. Stricks
Letha Ratliff

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 17th day of July, 2018, as approved by the Board on the 27th day of September, 2018, at Baton Rouge, Louisiana.



C. Frank Holthaus, Chairman

Donald W. North, Vice Chairman