

LOUISIANA PUBLIC DEFENDER BOARD

Thursday, August 27, 2009
2:00 PM

LSU Law Center
Tucker Room Third Floor
Baton Rouge, LA 70803

Amended Agenda

1. Call to Order and Welcoming Remarks by Chairman
2. Roll Call
3. Review and Approval of Minutes of June 25, 2009 Board Meeting*
4. Public Comments
5. Report of the Chairman
 - A. New Board Members
 - B. Board and Staff Training
 - C. Meeting with Tim Barfield
 - D. Meeting with Louisiana Supreme Court Justices
6. Budget Update
 - A. Budget Projection for current fiscal year (FY 10)
 - B. District Assistance Fund distributions were made on August 12, 2009.
 - C. How much did we leave "on table" in FY 09 – final results
 - D. The BA-7s for Joint Leg. Committee on the Budget (JLCB) decisions on 8-14-09
 - E. Office of Planning & Budget's presentation for the FY 11 Agency budget preparation – Budgeting for Outcomes
 - F. Traveling Expenses*
7. Juvenile Update
 - A. JIDAN Grant and Lynette Roberson
 - B. JIDAN Meeting on August 5th

- C. LSU Summer Internship (and planning meeting 8/24)
- D. Juvenile Trainings in 4th, 14th and 41st (next 9th and 32nd)
- E. Motion Bank
- F. Delinquency Standards
- G. CINC Standards
- H. CINC Parent Representation Budget Proposal*
- I. Grant submitted for MfC for 14th and 41st
- J. Children's Code Articles on Confessions and the Presumption of Indigency
- K. September Meeting of DA's Juvenile Justice Committee
- L. Wellspring Grant Opportunity

8. Trial Compliance Report

- A. St. Bernard Parish Selection Committee Update
- B. LaSalle Parish

The Board may vote to go into executive session pursuant to 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. 42:6.1, 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. 42:6.1(A)(1). No final or binding action will be taken during executive session.

9. Litigation and Prospective Litigation

The Board may vote to go into executive session pursuant to 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. 42:6.1, including strategy sessions with respect to litigation and prospective litigation after formal demand. In accordance with La. R.S. 42:7(A)(b)(iii), the Board may discuss the following:

- A. Litigation: John Anderson, et al. v. State of Louisiana, et al., Number C545,852, Section "24", 19th Judicial District Court, Parish of East Baton Rouge
- B. Litigation: State of Louisiana v. Troy L. Harris, Number 480-306, Section "D", Parish of Orleans
- C. Prospective Litigation: American Civil Liberties Union v. 15th Judicial District Public Defender's Office, Parish of Vermilion, alleging that overwhelming workloads and absence of investigative staff constitute a violation of 42 U.S.C. §1983, etc.

No final or binding action will be taken during executive session.

10. Training Update

A. Training Schedules

- i. Database Training
- ii. Budget Training
- iii. Employment Law Training
- iv. Voir Dire Training (21st)
- v. Preliminary Hearing Project

11. Special Projects

- A. Website
- B. New Board Member Orientation Book
- C. Defender Services at OPD

12. ITM

- A. Changes to the Database

13. Report of the Public Defender

A. New Staff Members

- i. Roger Harris, General Counsel
- ii. Natasha Carter, Budget Analyst
- iii. Kim Gueho, Paralegal

B. Status of Request for New Employees

C. Staff Training

D. Capital Standards

- i. Right to Counsel Committee LSBA
- ii. District Judges Association
- iii. Louisiana District Attorneys Association

E. LDF Training at Airlie Louisiana Model (July 11, 2009)

F. ABA Eight Guidelines of Public Defense Related to Excessive Workloads

G. District Defender Contract

H. Move to the Third Floor

I. Mandatory Reporting Requirement Request for AG Opinion*

14. New Business

15. Date and Location of Next Board Meeting

16. Adjournment

LOUISIANA PUBLIC DEFENDER BOARD

Minutes of Meeting

August 27, 2009

The Tucker Room
Paul M. Hebert Law Center
Baton Rouge, LA

A meeting of the Louisiana Public Defender Board, pursuant to call of the Chairman and lawful notice, was duly convened and called to order by its Chairman at 2:10 p.m. on Thursday, August 27, 2009, in the Tucker Room, located in the Louisiana State University Paul M. Hebert Law Center.

The following Board Members were present:

Frank Neuner, Chairman	Luceia LeDoux
James E. Boren	Lucy McGough
Judge Robert Burns	Pam Metzger
Samuel S. Dalton	D. Majeeda Snead
Leo C. Hamilton	Remy Voisin Starns
Rev. Dan Krutz	Gina B. Womack

The following *ex officio* Board Members were present:

Judge Robert Brinkman	Rebecca Hudsmith
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The following Board Members were absent:

Cleveland Coon	Judge William Norris
Christine Lipsey	

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

Jean M. Faria, State Public Defender
Marianne Buchanan, Budget Officer
Natashia Carter, Accountant
John Di Giulio, Trial-Level Compliance Officer
Kim Gueho, Paralegal and Training Coordinator
Heather H. Hall, Special Projects Advisor
Roger Harris, General Counsel
Julie Kilborn, Deputy Public Defender-Director of Training
Erik Stilling, Technology and Management Officer
Clay Walker, Deputy Public Defender-Director of Juvenile Defender Services
Sean Williams, Data Entry Operator

1. **Minutes of June 25, 2009.** The Board reviewed the minutes of its meeting of June 25, 2009. Motion was made by Ms. LeDoux, seconded by Judge Burns, and unanimously carried to approve the minutes of the meeting.
2. **Report of the Chairman.** Mr. Neuner informed the Board members that there were three new Board members (Christine Lipsey, Pam Metzger and Judge Robert Brinkman (*ex officio*)) and three new members of the Board's staff (Roger Harris, Natashia Carter, and Kim Gueho). Mr. Neuner also updated the Board on recent staff training and meetings with Tim Barfield, Governor Jindal's Executive Counsel, and several members of the Louisiana Supreme Court. No further action was required or taken on this matter.
3. **Budget Update.** The Board received a report from Marianne Buchanan, Budget Officer, concerning:
 - a. **Current Budget Surplus.** The Board has approximately \$17,000 in surplus funds for the FY 2009-2010 budget at this time.
 - b. **DAF Distributions.** District Assistance Fund (DAF) distributions were made to the districts in August and the next DAF distributions are scheduled to be made in January. Ms. Buchanan provided Board members with a spreadsheet showing the distributions to each district.
 - c. **FY 2008-2009 Surplus.** The Board previously set a target to leave \$10,000 of the \$27.4 million appropriation "on the table" at the close of FY 2008-2009. Ms. Buchanan reported that the Board left \$15,998 from the Board's legislative appropriation and \$17,709.48 was left in the DNA Testing Fund (from a separate legislative appropriation).
 - d. **Budget Adjustments.** Ms. Buchanan obtained approval from the Joint Legislative Committee on the Budget to make the following budget adjustments: \$121,582 (in carry-over funds) and \$159,772 (funds awarded from the MacArthur Foundation to support JIDAN work).
 - e. **Ethics Board Opinion.** The Louisiana Ethics Board opined that District Defenders may not use public funds to pay themselves rent for use of their own buildings. Follow-up questions are being submitted to the Ethics Board to determine whether a District Defender may rent office space from a related party and whether a District Defender may use public funds to pay himself overhead expenses associated with the rent-free use of office space in a building he owns.
 - f. **Outcomes Budgeting.** "Outcomes Budgeting" will begin with the submission of the FY 2010-2011 budget and represents a change in the budgeting process. Ms. Buchanan and other Board staff will be attending training in order to learn this new format. A first draft of the FY 2010-2011 budget request is due October 5, 2009.

There was discussion regarding “Outcomes Budgeting.” Upon motion made, seconded and unanimously carried, an ‘Outcomes Budgeting Subcommittee’ was created. Members include Mr. Hamilton, Ms. Buchanan, and Ms. Hudsmith. Ms. LeDoux suggested the possibility of hiring the state ‘Outcomes Budgeting’ training consultant to provide one-on-one training for staff through this process.

No further action was required or taken on the foregoing matters.

4. **Juvenile Update.** The Board received a report from Clay Walker, Deputy Public Defender-Director of Juvenile Defender Services, concerning:
 - a. **JIDAN Grant.** A recently awarded \$117,000 JIDAN grant, which supplements the remaining amount of \$42,772 from last year’s JIDAN grant award, will be used to hire or contract with a recent law school graduate to achieve the five JIDAN priority projects. Lynette Roberson has been selected for that position. JIDAN’s Louisiana Delegation met in Baton Rouge on August 5, 2009, and addressed their JIDAN projects.
 - b. **LSU Juvenile Summer Internship Program.** The LSU Juvenile Summer Internship Program ended this week: 10 interns were placed in several offices across the state. The program, in its first year, showed positive support from both defenders and interns. Evaluations from participants (both defenders and interns) will be collected and reviewed by Board staff on September 1, 2009.
 - c. **Juvenile Training.** A weeklong juvenile training for defenders from MacArthur sites was held July 6-10 in New Orleans, LA. Staff hosted Southwest and Northeast Regional Juvenile Trainings in Lake Charles and Monroe, LA on August 13th and 14th. More than 30 public defenders and nine District Defenders attended, representing 14 districts. Future trainings will be held in Alexandria on November 13, 2009 (Central Louisiana Regional Juvenile Training) and in Houma in January 2010 (Southeast Louisiana Regional Juvenile Training).
 - d. **Juvenile Motion Bank.** The Juvenile Motion Bank is set to launch with the website and with enthusiastic response from juvenile defenders.
 - e. **Delinquency and CINC Standards.** First drafts of delinquency and CINC standards are now complete and a team of 12 (including District Defenders, juvenile section chiefs, and line defenders) is being created to review these drafts. Upon review and revision, the Juvenile Judges’ Association will provide feedback.
 - f. **MacArthur Foundation Grant.** A grant for \$250,000 was submitted (by invitation) to the MacArthur Foundation on August 17, 2009. This grant will support the development of model appellate and post-disposition protocols in the Orleans and Calcasieu Juvenile Defender Offices. Professor McGough is working on two

substantial improvements to the Louisiana Children's Code: 1) Precautions for admissibility of juvenile confessions and 2) expediting juvenile cases (presumption of indigency). The Children's Code Committee (by a vote of 12-1) approved both proposed Children's Code instruments. Mr. Walker is working to mitigate opposition to these instruments with the Juvenile Justice Committee of the Louisiana District Attorneys Association. There was some discussion concerning the role of the Board, its members, and staff in the legislative process.

- g. Wellspring.** Wellspring, a national organization of anonymous donors, is bringing \$3 million to Louisiana to promote inclusion of child LGBT issues into a range of services and agencies. Ms. Faria, Mr. Walker and Professor McGough have talked to program officers about the potential grant opportunities presented by this development.
- h. CINC Representation.** Mr. Walker gave an overview of the CINC Representation statute (shifting public defender representation from children to parents). When passed by the Louisiana Legislature, the implementation schedule included a 5-year roll-out. The process is currently between years two and three. Last year, the Board was responsible for filling approximately a \$300,000 shortfall in funding. The Board has previously voted to supplement the CINC funds with money dedicated to DAF. The Department of Social Services (DSS) has proposed forgoing the 5-year roll out and bringing the remaining districts online all at once. Their proposal does not acknowledge the additional capacity needed in order to comply with caseload statistics and avoid conflicts. Mr. Walker is collecting the data needed to draft a counter-proposal for DSS that reflects these needs.

No further action was required or taken on the foregoing matters.

5. Trial Compliance Report. Mr. Di Giulio presented the Trial Compliance Report:

- a. The 34th JDC District Defender Selection Committee.** The chairman of the 34th JDC District Defender Selection Committee will be submitting the committee's recommendations by September 8, 2009. The Board is invited to participate in these interviews. The Board's staff intends to make its recommendation by the next Board Meeting.
- b. The 28th JDC District Defender.** Mr. Boren requested that Mr. Derrick Carson (District Defender, 7th and 28th JDC) address the Board and discuss the handling of public defender cases in the 28th Judicial District. A discussion involving members of the Board, its staff, and various District Defenders in attendance at the meeting followed.

No further action was required or taken on the foregoing matters.

6. **Executive Session:** On motion of Professor McGough, seconded by Mr. Boren, and passed without opposition, the Board convened in executive session to discuss the following:
- a. **Litigation:** John Anderson, et al. v. State of Louisiana, et al., Number C545,852, Section “24”, 19th Judicial District Court, Parish of East Baton Rouge;
 - b. **Litigation:** State of Louisiana v. Troy L. Harris, Number 480-306, Section “D”, Parish of Orleans; and
 - c. **Prospective Litigation:** American Civil Liberties Union v. 15th Judicial District Public Defender’s Office, Parish of Vermillion, alleging that overwhelming workloads and absence of investigative staff constitute a violation of 42 U.S.C. §1983, etc.

Following discussion, the Board resumed in open session. No further action was required or taken on the foregoing matters.

7. **Attorney General Opinion Request.** Roger Harris, General Counsel, presented the request for an Attorney General opinion addressing the mandatory reporting requirements for social workers working for public defender offices. Upon motion of Ms. LeDoux, seconded by Professor Metzger, and passed without opposition, the Board adopted the following resolution:

BE IT RESOLVED that Roger W. Harris, General Counsel for the Louisiana Public Defender Board, is hereby directed to seek an opinion from the Honorable James D. “Buddy” Caldwell, Louisiana Attorney General, regarding the application of Louisiana’s “mandatory reporter” laws to social workers employed by and/or working with public defenders in the defense of their clients. Specifically, the Board wants to know if a social worker that is employed by and/or working with public defenders in the defense of their clients (i.e., in a non-counseling role) is protected by the attorney-client privilege and thereby excluded from mandatory reporting under Article 609(A)(1) of the Children's Code.

No further action was required or taken on this matter.

8. **Tentative Meeting Dates.** The Chairman scheduled tentative meeting dates through the end of calendar year 2009, to be held on:
- Wednesday, September 30, 2009 at 2:00 p.m. in Gonzales, LA
 - Thursday, October 22, 2009 at 2:00 p.m. in New Orleans, LA
 - Thursday, December 3, 2009 at 2:00 p.m. Location TBA (Southern University preference)
9. **Training Update.** Julie Kilborn, Deputy Public Defender-Director of Training, presented the training update:

- a. **Database Trainings.** Trainings on the ‘districtPDO.org’ database began in June. Dr. Stilling, Ms. Kilborn and other staff have conducted these trainings in approximately half of all districts and have scheduled the remaining half to be complete by November 15, 2009. The purpose of these trainings is to increase the accuracy of data entry in the districts through technical, on-site training and to encourage recommendations from the field for the improvement of the data management system.
- b. **Budget Trainings.** Ms. Kilborn reported that the Board is providing three budget trainings, one of which has been conducted, with the remaining two trainings scheduled. These trainings are to assist the District Defenders in submitting their annual budget requests and monthly financial reports.
- c. **Employment and Labor Law Trainings.** Ms. Kilborn also reported that the Board is conducting two trainings on Employment Law at the request of several District Defenders. Those trainings have been scheduled for September 2009.
- d. **Other District Training.** *Voir dire* training was conducted in the 21st JDC on August 21, 2009. A training on Professionalism was held for Orleans Public Defenders on August 26, 2009. Ms. Kilborn introduced the Preliminary Hearing Project Trainings which are set to start in early Fall. There was a discussion of potential push back from more aggressive preliminary hearing advocacy and ways to counter it. The Board was presented with a training calendar in their materials.

No further action was required or taken on this matter.

10. Special Projects Update. Heather Hall, Special Projects Advisor, reported that the website is behind schedule due to some normal, albeit unfortunate, technical issues, but it is still making progress. Board members received their Board Orientation Books, which contain comprehensive background information about the Board. Ms. Hall asked for feedback or for recommendations about other materials that Board members might find helpful as part of their orientation package. No further action was required or taken on this matter.

11. Information Technology and Management (ITM) Report. Dr. Erik Stilling, Technology and Management Officer, reported that the dormancy feature of ‘districtPDO.org’ is now online, which should assist the Board in achieving accuracy in its data reporting. After 180 days of database inactivity in a case file, the case status is automatically changed to “auto-dormant” and the database sends each defender, the defender’s supervisor and the Board Compliance Officer an email listing the defender’s files which were converted to “auto-dormant” status. The defender is instructed to change the status from auto-dormant to whatever status is more germane to the true case status. The case will not be counted as an open case unless the defender chooses to change the status back to “open.” According to Mr. Jim Looney (Director, Louisiana Appellate Project), upon implementation of the dormancy feature, approximately 50,000 cases were converted to dormant status and 622 emails were sent to defenders regarding the newly converted case status. Also, Dr. Stilling mentioned

that the ITM team will soon be creating a juvenile-specific proceedings page which will more closely reflect procedures outlined in the Children’s Code. When this is implemented, the proceedings page on the database will be replaced by two new pages which will be clearly designated “adults-proceedings” and “juvenile proceedings.” No further action was required or taken on this matter.

- 12. State Public Defender Report.** Jean Faria, State Public Defender, presented the written State Public Defender Report to Board members. There was a discussion about the ongoing work developing Capital Standards.

Ms. Faria reported that she had been invited to train at the NAACP Legal Defense Fund’s 30th Annual Capital Punishment Symposium in Airlie, Virginia. The purpose was to discuss the Louisiana Model of using editorial boards to discuss funding shortfalls and personal conversations with selected district attorneys regarding the role of defenders in capital cases.

Ms. Faria introduced the recently approved ‘ABA Eight Guidelines of Public Defense Related to Excessive Workloads,’ which she has been working on for several years. Ms. Faria encouraged Board members to review these standards and consider their adoption as a practical means of controlling workload. Ms. Faria reported that the District Defender contracts are nearing completion. The procedure for addressing excessive caseloads remains an issue to be negotiated.

No further action was required or taken on the foregoing matters.

- 13. National Legal Aid and Defender Association (NLADA) 2009 Annual Conference.**

Mr. Neuner asked if any Board members were interested in attending the NLADA Annual Conference in Denver, CO November 18-21, 2009, and, if so, encouraged them to contact Ms. Faria.

- 14. Adjournment.** Upon motion made by Ms. LeDoux, seconded by Rev Krutz, and approved without opposition, the meeting adjourned at 5:20 p.m.

I HEREBY CERTIFY that the foregoing is a full, true and correct account of the proceedings of the Louisiana Public Defender Board, save for the executive session of the Board conducted herein, held on August 27, 2009, as approved by the Board on the 30th day of September 2009.



FRANK X. NEUNER, JR.
CHAIRMAN