



LOUISIANA PUBLIC DEFENDER BOARD

BOARD MEETING

Tuesday, December 1, 2015
LSU Law Center, Tyson Room
Baton Rouge, LA 70806
2:00 p.m.

AGENDA

1. Call to Order and Remarks of the Chairman
2. Call for Public Comment
3. Adoption of the Agenda* pgs. 281-282
4. Review of the Minutes, September 15, 2015 **Tab 1**, pgs. 283-286
5. Executive Session¹, ^{2*}
6. Policy Committee Report and Recommendations **Tab 2**
 - a. Resolution: Costs of Prosecution/Investigation* pgs. 287-310
 - b. Full Time vs. Part Time Status for District Defenders District 3 and 5* pg. 311
 - c. Resolution: Districts in ROS–Capital Case Assignment* pg. 312

**Requires Board Action*

¹ 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 issues pertinent to the selection of district defenders in districts 1, 2, 3, 5, 9, 26, and 33. Additionally, discussion may be had regarding employee and District Defender issues in District 9 (Rapides).

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: State v. Barthelemy, 11th JDC, Dockets: 13-CR-072667, 668 and 669; State v. Kenneth Willis, Docket No.: 304,806, Division 3, Caddo Parish; LPDB v. Honorable Katherine Dorroh, et al, Petition for Injunctive Relief, 19th JDC;

7. District Issues
 - a. District 9*
 - b. District Defender Selection Status and Recommendations* **pg. 311**
 - i. District Defender Interim Appointments/Salary Ratifications*
for Districts 1, 2, 3, 5, and 33
 - ii. District Defender Appointments and Salary Recommendations*
for Districts 1, 2, 3, 5, and 33
 - iii. District Defender Appointment Status – Districts 3, 9, and 26
8. Budget and Fiscal Issues **Tab 3**
 - a. Financial Report* **pgs. 312-317**
 - b. Laura and John Arnold Foundation Grant - Update
9. Restriction of Services
 - a. ROS Updates: District 5, 7, 15, 16, 22, 23, 25, 33, 34, 37, 41
10. Legislative Session, 2016
11. Capital Update
12. Juvenile Strategic Planning Update
13. SPD Report **Tab 4**
14. Other Business **pgs. 318-325**
15. Next Meeting(s)- Proposed Dates, 2016:
January **5** or 12; February **2** or 16; April **5** or 12; May **3** or 10
16. Adjournment*

**Requires Board Action*



LOUISIANA PUBLIC DEFENDER BOARD

BOARD MEETING

Tuesday, December 1, 2015
LSU Law Center, Tyson Room
Baton Rouge, LA 70806
2:00 p.m.

MINUTES (Amended)

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 Tuesday, December 1, 2015, at 2:05 p.m. at the LSU Law Center, Tyson Room, in Baton Rouge, Louisiana.

The following Board members were present:

Robert Burns
Leo Hamilton
Tom Lorenzi
Gina Womack

Franz Borghardt
Robert Lancaster
Herschel Richard

Hampton Carver
Hector Linares
Steven Singer

The following Board members were absent:

Flozell Daniels, Jr.
Herbert Larson¹

Frank Holthaus
Jacqueline Nash-Grant

Rebecca Hudsmith

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

Jay Dixon, State Public Defender
Barbara Baier, General Counsel
Natashia Carter, Acting Budget Officer
Jean Faria, Capital Case Coordinator
Anne Gwin, Executive Assistant
Richard Pittman, Dep. State Public Defender, Dir. Juvenile Defender Services
Tiffany Simpson, Juv. Justice Compliance Officer/Director of Legis. Affairs
Erik Stilling, ITM Director

Chairman Burns reminded everyone that the deadline to complete the annual mandatory ethics course is December 31, 2015.

2. **Call for Public Comment.** No one presented for public comment.

¹ Herbert Larson was inadvertently omitted from the Minutes as presented to the Board for adoption on February 16, 2016. These amended minutes reflect his absence.

3. Adoption of the Agenda*. Mr. Hamilton moved to amend the agenda. Ms. Womack seconded the motion. Mr. Hamilton moved that items 5 and 6, Executive Session and Policy Committee Report and Recommendations, respectively, be switched in order on the agenda for discussion and that the agenda be approved as amended. Ms. Womack seconded the motion which passed unopposed.

4. Review of the Minutes, September 15, 2015*. Mr. Richard moved that the minutes of the September 15, 2015 meeting be adopted as presented. Mr. Hamilton seconded the motion which passed unopposed.

5. Policy Committee Report and Recommendations. Policy Committee Chairman Leo Hamilton reported that the Policy Committee did not meet due to lack of quorum and moved that the following issues be brought to the full Board for discussion and action without Committee recommendations. Mr. Borghardt seconded the motion which passed unopposed.

a. **Resolution: Costs of Prosecution/Investigation.** State Public Defender Jay Dixon reported that a recent Supreme Court case allows for the costs of prosecution and investigation to be imposed on convicted criminal defendants which could result in the assessment of fees without any determination of a defendant's ability to pay and without any regard for the hardship that would result from the additional fees. Further, there are concerns that an agreement to pay costs of prosecution and investigation could be required by the state in return for a plea offer to an indigent defendant. LPDB staff is proposing, by Resolution, that all District Defenders are to be vigilant toward court assessment of such fees against their clients, diligent in opposing the practice of requiring the acquiescence of clients to pay such fees in return for a plea offer, vigilant in requiring the state and the court to determine a client's ability to pay such fees in cases wherein the client has been deemed indigent and is provided the services of the public defender and directs all District Defenders to inform line defenders whose clients may be impacted by this practice of its effect on clients and instruct them consistent with this Resolution. Mr. Hamilton moved for adoption of the proposed Resolution as presented, which was seconded by Mr. Borghardt and passed unopposed.

b. **Full Time vs. Part Time Status for District Defenders - District 3 and 5.** SPD Dixon reported that, in the search for a District Defender in Districts 3 (Lincoln/Union) and 5 (Franklin, Richland, W. Carroll), the interims who have been put in place have indicated they will not accept the position full-time, which would require relinquishing their private practices. After a brief discussion, Mr. Hamilton moved that, prospectively, the Board hire district defenders strictly on a full time basis. Mr. Richard seconded the motion. Prof. Singer proposed a friendly amendment to include a waiver based on exceptional circumstances which would require approval by the Board. Mr. Hamilton accepted the amendment and the motion passed unopposed, as amended. Also discussed was that the policy would permit a new hire to keep an existing private practice provided no new case are accepted, and the private practice would be worked down to closure.

c. **Resolution: Districts in ROS—Capital Case Assignment.** Capital Case Coordinator Jean Faria presented a Resolution which would prohibit a District Defender Office in Restriction of Services (ROS) from accepting new capital cases, ceasing capital expenditures beyond those already required by existing cases and repurposing any money or attorney time budgeted for capital representation that is not being used on existing cases for non-capital representation. After a brief discussion, Mr. Hamilton moved

adoption of the Resolution as presented which was seconded by Mr. Borghardt and passed unopposed.

6. **Executive Session***. Mr. Borghardt moved to go into Executive Session which was seconded by Professor Singer and passed unanimously. Prof. Singer moved to leave executive session which was seconded by Franz Borghardt and passed unanimously.

7. **District Issues.**

a. District 9. SPD Dixon reported that District Defender Glenn Cortello (Rapides) has resigned his position effective November 30, 2015, and that the chief judge and State Bar President have been contacted to begin the formation of a selection committee in that district. Pending selection of a new District Defender, SPD Dixon requested the Board's ratification of the appointment of Tony Tillman as interim at a salary of \$3000 a month. Mr. Richard moved for appointment and salary ratification which was seconded by Mr. Lorenzi and passed unopposed.

b. **District Defender Selection Status and Recommendations***

i. District Defender Interim Appointments/Salary Ratifications for Districts 1 (Caddo), 2 (Claiborne/Bienville/Jackson), 3(Lincoln/Union), 5 (Franklin/Richland/W Carroll), and 26 (Bossier/Webster). SPD Dixon requested ratification of the following interim appointments and salaries:

District 1 – Ms. Pamela Smart/\$8,333 per month. Mr. Hamilton moved for ratification which was seconded by Mr. Richard and passed unopposed.

District 2 – Donald Kneipp/\$6250 per month. Mr. Richard moved for ratification which was seconded by Mr. Hamilton and passed unopposed.

District 3 – Rick Candler/\$6,666 per month. Mr. Hamilton moved for ratification which was seconded by Mr. Richard and passed unopposed.

District 5 – Dawn Mims/\$6,666 per month. Mr. Richard moved for ratification which was seconded by Mr. Hamilton and passed unopposed.

District 26 – Pamela Smart/\$3,000 per month. Mr. Hamilton moved for ratification which was seconded by Mr. Richard and passed unopposed.

ii. District Defender Appointments and Salary Recommendations, for Districts 1, 2, 3, 5, and 33 (Allen). SPD Dixon requested that the Board appoint the following as permanent District Defenders and approve salaries as presented:

District 1 –Pamela Smart, Full-Time, \$100,000 annually. Mr. Hamilton moved for approval which was seconded by Mr. Richard and passed unopposed.

District 2 – Donald Kneipp, Full-Time, \$75,000. Mr. Hamilton moved for approval which was seconded by Ms. Womack and passed unopposed.

District 3 – Rick Candler, Part-Time, \$80,000. The appointment of Mr. Candler failed without a motion being raised.

District 5 – Dawn Mims, Part Time, \$80,000. The appointment of Ms. Mims failed without a motion being raised.

District 33 – Greg Guidry, Full-Time, \$90,000. Mr. Lorenzi moved for approval which was seconded by Mr. Hamilton and passed unopposed.

iii. District Defender Appointment Status – Districts 3, 9, and 26. SPD Dixon reported that the selection process would re-open in Districts 3 and 5. The LSBA President and chief judge have been contacted to begin the process in District 9, and a selection committee has been formed in District 26.

Mr. Hamilton moved to amend the agenda which was seconded by Mr. Borghart and passed unopposed. Mr. Hamilton moved to add an out-of-state travel policy waiver to the agenda as item 8c, for discussion. Mr. Borghardt seconded the motion which passed unopposed.

8. Budget and Fiscal Issues.

a. **Financial Report***. Acting Budget Officer Natasha Carter reported that \$21,993,841 has currently been expended, \$938,7461 encumbered, \$2,202,906 projected to be expended or encumbered through Jun 30, 2016, leaving \$146,474 available for reallocation. Of the reallocation funds, \$85,441 for personal services may not be reallocated, leaving \$61,034 currently available for reallocation to the districts. Mr. Hamilton moved to adopt the financial report as presented which was seconded by Herschel Richard and passed unopposed.

b. **Laura and John Arnold Foundation Grant – Update**. Ms. Faria reported that the LPDB has an opportunity to receive \$119,000 in grant funds for the on-going caseload study; however, LPDB will need to cover the cost of the econometric portion of the study to be provided by the Baton Rouge based CPA firm Postlewaithe and Netterville. Prof. Singer moved to allocate \$30,000 to cover these costs in order to receive the full grant funding of \$119,000. Budget Officer Carter clarified that the \$30,000 would come from the remaining \$61,034 previously reported as available for reallocation to the districts. Mr. Hamilton seconded the motion which passed unopposed.

c. **Travel Waiver**. Ms. Faria reported that she has been invited to participate as faculty at two out-of-state conferences, which she has accepted. Ms. Faria is requesting a waiver of the Board's policy freezing out-of-state travel and approval of reimbursement her travel expenses. Prof. Singer moved to waive the current out-of-state travel policy and approval of the submittal of Ms. Faria's expenses for possible reimbursement. Mr. Hamilton seconded the motion which passed unopposed.

9. Restriction of Services

a. **ROS Updates: District 5, 7, 15, 16, 22, 23, 25, 33, 34, 37, 41**. Dr. Tiffany Simpson provided a brief update on the districts currently in or anticipating restriction of services. Dr. Simpson reported there are nine districts currently in ROS. As of January, 1, 2016, there will be two additional districts. Dr. Simpson further reported that one district (5 – Franklin/Richland/WCarroll) has recently exited ROS.

10. Legislative Session, 2016. Dr. Simpson reported that there will be a special legislative session called in early February; however, the focus is not known at this time. Dr. Simpson reminded the Board that the \$10 court cost increase will expire in 2016 and urged all Board members and District Defenders to talk to their legislators regarding the increase renewal in 2016. Mr. Lorenzi requested that staff provide the Board with the districts' local filing data. Dr. Stilling indicated staff could and would provide the data derived from the supreme court filings.

11. Capital Update. Capital Case Coordinator Jean Faria reported that all activities of the capital division can be reviewed in the SPD report.

12. Juvenile Strategic Planning Update. Deputy Public Defender/Director of Juvenile Defender Services Richard Pittman reported that statewide informational meetings have concluded and that additional meetings will be held to form work groups to advance the juvenile strategic plan.

13. **SPD Report.** Mr. Dixon reported that staffs' activities since the September Board meeting are outlined in the SPD report located in the Board materials.

14. **Other Business.** Mr. Hampton Carver reported that he recently attended a Koch Foundation meeting in New Orleans and reported a consensus between the attending liberals and conservatives on the necessity of criminal sentencing reform.

Current LSBA President, Mark Cunningham, gave thanks to everyone for dedicating time and effort to the indigent defense issues. Judge Burns thanked Mr. Cunningham for his leadership.

15. **Next Meeting(s)- Proposed Dates, 2016.** The Board set its next meetings for 2:00 p.m. on the following dates: January 12, 2016; February 16, 2016; April 6, 2016 and May 10, 2016. The location is to be announced.

16. **Adjournment***

Guests:

Reggie McIntyre
John Burkhart
Alan Robert
Paul Fleming
Andrew Hairston
Matt Robnett

Richie Tompson
Kerry Cuccia
Vic Bradley
Tony Champagne
G. Paul Marx
Mark Cunningham

Jim Looney
Cecelia Bonin
John Lindner
Pamela Smart
Derwyn Bunton
Don Kneipp

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 1st day of December, 2015, as approved by the Board on the 16th day of February, 2016, at Baton Rouge, Louisiana.



Judge Robert J. Burns (Ret.), Chairman