

LOUISIANA PUBLIC DEFENDER BOARD

Thursday, December 3, 2009
2:00 PM

J.S. Clark Administration Building
2nd Floor Board Room, Southern University
Baton Rouge, LA

Agenda

1. Call to Order and Welcoming Remarks by Chairman
2. Roll Call
3. Review and Approval of Minutes of October 28, 2009 Board Meeting*
4. Public Comments
5. Report of the Chairman
6. CAP*
 - A. 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 investigative proceedings regarding allegations of misconduct. No final or binding action will be taken during executive session.
7. Budget Update
 - A. Budget Status Report
 - B. Report of the Budget Committee*
 - C. Overhead Resolution*
 - D. LCAC Contract Amendment*
8. Letter to Board from District Attorney in 21st Judicial District
9. Report of the State Public Defender (written)
 - A. CINC Update
 - B. Calcasieu Criminal Justice Meeting
 - C. LSBA Board of Governor's Presentation with Chair of the RTC Committee, Judge Milton Moore
 - D. OPD case overload
 - E. Capital Coordinator, Update
10. Defender Story
11. Date and Location of Next Board Meeting
12. Adjournment*

LOUISIANA PUBLIC DEFENDER BOARD

**Minutes of Meeting
December 3, 2009**

Southern University School of Law – Baton Rouge, LA

1. Call to Order and Welcoming Comments. 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, December 3, 2009, in the 2nd Floor Conference Room at Southern University School of Law in Baton Rouge, Louisiana. Mr. Neuner recognized Board Member Coon for arranging this venue for the December 3rd Board Meeting.

2. Roll Call.

The following Board Members were present:

Frank Neuner, Chairman
James E. Boren
Judge Robert Burns
Cleveland Coon
Rev. Dan Krutz

Luceia LeDoux
Lucy McGough
D. Majeeda Snead
Gina B. Womack

The following Board Members were absent:

Sam Dalton
Leo Hamilton
Christine Lipsey
Pam Metzger
Judge William Norris
Remy Voisin Starns

The following *ex officio* Board Members were absent:

Rebecca Hudsmith
Judge Robert Brinkman

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

Kristy Z. Boxberger, Juvenile Justice Compliance Officer
Marianne Buchanan, Budget Officer
John Di Giulio, Trial-Level Compliance Officer
Jean M. Faria, State Public Defender
Kim Gueho, Training Coordinator
Heather H. Hall, Special Projects Advisor
Roger Harris, General Counsel
Julie Kilborn, Deputy Public Defender – Director of Training
Lynette Roberson, JIDAN Coordinator
Erik Stilling, Technology and Management Officer
Clay Walker, Deputy Public Defender – Director of Juvenile Defender Services
Sean Williams, Data Entry Technician

3. Review and Approval of Minutes of October 28, 2009 Board Meeting. The Board reviewed the minutes of its meeting of October 28, 2009. Judge Burns noted that he was misidentified, and requested his name be corrected. Mr. Boren made the motion to accept the minutes with this amendment. The motion was seconded by Ms. Womack, and unanimously carried without opposition.

Mr. Neuner welcomed former Louisiana Supreme Court Chief Justice Calogero to the meeting, and recognized his contributions to public defense in Louisiana.

4. Public Comments. There were no public comments.

5. Report of the Chairman. Chairman Neuner briefly discussed two meetings that he attended in Lake Charles and New Orleans to encourage cross-agency efforts to remedy enduring issues affecting the delivery of public defense services in the state.

6. CAP. Mr. Neuner briefly updated the Board on the current situation at CAP, which remains under investigation. Justice Calogero and Ms. Armstrong, new Board Members at the Capital Appeals Project, made a brief presentation. They reported that Sarah Ottinger has been hired as the Executive Director of CAP and request that LPDB continue to fund the Project because of the importance of its work as well as their confidence in the transition of leadership. Ms. Ottinger thanked the board and staff for maintaining focus on continuing to provide high quality legal representation to clients. Justice Calogero requested that the Board be made aware of the new Board Members at CAP. State Public Defender Faria reported that they are: Andrea Armstrong, Pascal F. Calogero, Jr., John Holdridge, Calvin Johnson, Michele Fournet, Julian Murray, Sarah Ottinger, Steven Scheckman, and Martin Stern.

State Public Defender Faria reported that since CAP has become compliant with its financial reporting requirements, payments will resume on the CAP contract with the next monthly distribution.

7. Budget Update. Budget Officer Buchanan reported that the Louisiana Public Defender Board anticipates finishing the fiscal year with a surplus in the amount of \$27,434.00. LPDB submitted a \$40.5 million budget request for the next Fiscal Year and are scheduled to appear December 14, 2009 to appeal its budget with the Commissioner of the Division of Administration.

District 34, St. Bernard Parish, has made an emergency request for funds because they did not receive their DAF distribution in either January or August 2008 due to non-compliance with reporting requirements. The Budget Committee has recommended that \$32,500.00 be immediately paid to the 34th JDC to support the office until the regularly scheduled distribution for all districts on January 15, 2010. Upon the recommendation of the Budget Subcommittee, the motion passed without opposition.

Budget Officer Buchanan reported that the District Defender in Allen Parish, Mr. David Deshotels, gave himself a salary raise and increased his allotment for the overhead expenses that he incurs. Ms. Buchanan reported that the Budget Subcommittee finds these actions to be in violation both of Act 307 and the recent Ethics Opinion relating to overhead expenses. State Public Defender Faria reported that, as a result of the circulation of the recent Ethics Opinion, a number of defenders have called seeking permission to increase overhead disbursements or make salary increases. Mr. Neuner asked if we had an obligation to self-report this violation to the Ethics Board. General Counsel Harris gave his opinion that we were obliged to report this to the Legislative Auditor, who will conduct an investigation and decide whether or not the decision warrants reporting to the Ethics Board. Judge Burns suggested that in addition to a letter formalizing the opinion to Mr. Deshotels, Mr. Deshotels should be offered the opportunity to explain his actions before the Board. Professor McGough asked that the Board seek reimbursement as a separate issue from the issue of reporting/sanctions for the District Defender. Rev. Krutz indicated that he also would like Mr. Deshotels to have the opportunity to appear before the Board. Judge Burns made a motion to send notice and seek reimbursement for both the salary increase and the increase in overhead expenditure and defer any disciplinary action until after he has the opportunity to appear before the Louisiana Public Defender Board at its January meeting. The motion was seconded by Prof. McGough, and passed without opposition.

Upon the recommendation of Professor Snead, and with the support of staff, Mr. Neuner asked for volunteers to serve on a new committee to address ethical issues as they arrive in the field. Professors Coon and Metzger will comprise this committee, which will be staffed by State Public Defender Faria.

Dr. Stilling made a report on the adjusted District Assistance Fund (DAF) formula to ensure that the DAF is fairly distributed among districts given that the State has a fixed amount of funds to distribute, and not all districts have equal ability to generate local funds.

Ms. LeDoux, on behalf of the Budget Committee, made the motion that the DAF distribution not occur until all 42 districts have submitted their obligatory reporting (both financial information and the annual survey) due January 15, 2010, since this information is necessary to ensure a fair distribution of state funds. Further, delinquent districts will be posted on the website. The motion was seconded by Ms. Womack. The motion was opened for discussion.

Mr. Tompson, District Defender in the 24th JDC, expressed frustration with a policy that the DAF distribution be delayed for districts that comply, because of the districts who fail to comply with the reporting requirements. Mr. Golden, District Defender in the 1st JDC, reported that his financial reporting requires timely cooperation from other local agencies, often putting report deadlines beyond his control.

Mr. Boren suggested that in the case of districts who fail to report by January 15th, a portion of the DAF be distributed as scheduled on January 15th, withholding enough to make necessary adjustments upon the submission of reporting requirements from all districts, at a later date. Ms. LeDoux rejected this amendment, emphasizing that funds unexpended due to reporting delays are at risk of being recouped by Division of Administration.

Mr. McIntyre, District Defender in the 21st JDC, asked how long it will take for disbursement of funds to the districts assuming all districts submit the appropriate information. Budget Officer Buchanan said that would take 2-3 days for those offices who receive funds through Electronic Funds Transfer, and a week for those accepting written checks.

Mr. Champagne, District Defender in the 32nd JDC, asked for the Budget Committee to recommend how long to withhold funds if any district remains non-compliant.

Mr. Neuner suggested that Ms. LeDoux's motion be amended to indicate that the distribution go out on January 25th, excluding any districts that have failed to comply, as an effort to build consensus. Ms. LeDoux and Ms. Womack accepted the amendment.

Professor McGough questioned the 10-day "extension." Mr. Neuner explained that districts would be penalized for every day that their reporting is delinquent by the mandates of Act 307, and that the will of the Board and defender community supports a brief cushion.

The motion to accept the new DAF formula and to distribute the funds on January 25th, excluding any districts that failed to comply was passed without opposition.

Mr. Boren moved that the failure to comply with reporting requirements by the January 15th deadline be grounds to commence immediate proceedings to terminate a District Defender, pursuant to the disciplinary procedure laid out in Act 307. Ms. Snead seconded the motion, which passed without opposition.

Ms. LeDoux, on behalf of the Budget Committee, made a motion to adopt more stringent reporting requirements for the 501(c)3 organizations who have contractual relationships with LPDB. The motion passed without opposition.

Ms. LeDoux, on behalf of the Budget Committee, moved adoption of a resolution that codifies guidelines relating to overhead expenses and staff's obligation to communicate those guidelines to the Board. The motion passed without opposition.

Ms. LeDoux, on behalf of the Budget Committee moved adoption of an amendment to the contract of the Louisiana Capital Assistance Center, expanding the scope of services which LCAC provides to the LPDB, without seeking any additional expenditure. The motion passed without opposition.

8. Letter to the Board from the District Attorney at the 21st JDC. Mr. Neuner suggested that he respond to District Attorney Perriloux. Mr. Boren suggested that the tone of the letter indicate that the advocacy LCAC is providing to Mr. Bordelon is consistent with the highest standards and obligation of defense counsel. Mr. Neuner sought informal Board approval to work with Mr. Boren on drafting a responsive letter to Mr. Perrilloux.

9. State Public Defender Report. Mr. Neuner emphasized the positive steps taken by the meeting he and State Public Defender Faria initiated in Lake Charles on December 2nd, earning compromises in funding streams, case allotment procedures, and a discussion about health and retirement benefits, among others. State Public Defender Faria asked for any questions about the report. She reported that because the City Council in Orleans has provided no funds for the Orleans Public Defenders (OPD), OPD will likely stop taking new appointments for clients facing rape and murder charges. Ms. LeDoux asked if OPD was going to continue to staff municipal court. Ms. Faria said that she had received no indication that they were going to cease this representation. Mr. Neuner reported that the Parish Attorney in Calcasieu reported the decriminalization of many parish offenses to relieve pressure on the court system and the district defenders. State Public Defender Faria noted that decriminalization has a significant impact on locally generated funds that support the district public defender offices and must be implemented in such a fashion as to retain the \$35.00 assessment to the local judicial district indigent defender fund.

State Public Defender Faria requested that the Board approve the transition of the position of the Special Projects Advisor to part-time, and approve the vacated TO position for the Capital Case Coordinator. Rev. Krutz made the motion to approve this transition, which was seconded by Ms. LeDoux, and passed without opposition.

10. Defender Story. J. Antonio Florence, staff attorney at the Caddo Parish Office of the Public Defender (1st JDC), presented the experiences that led him to become a public defender, and discussed his experiences in the Caddo Parish criminal justice system.

Mr. Neuner recognized Jean Faria, Sam Dalton, Ken Rodenbeck and others who will be receiving awards at the Justice Albert Tate Awards Dinner in New Orleans on December 4, 2009.

11. Date and Location of Next Board Meeting. The next LPDB meeting will be held on Thursday, February 11, 2010 at 2:00 PM, at LSU School of Law.

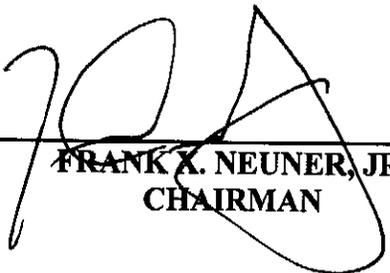
12. Adjournment. The meeting adjourned at 4:10 PM, on the motion of Professor McGough and seconded by Ms. LeDoux. The motion passed without opposition.

Guests Present:

Chris Aberle
Andrea Armstrong
Pascal F. Calogero, Jr.
Michael Courteau
Herman Castete
Tony Champagne
Bradley Dautat

J. Antonio Florence
Richard Goorley
Reggie McIntyre
Sarah Ottinger
John Simmons
Richard Tompson

I HEREBY CERTIFY that the foregoing is a full, true and correct account of the proceedings of the Louisiana Public Defender Board held on December 3, 2009, as approved by the Board on the 11th day of February, 2010.



FRANK X. NEUNER, JR.
CHAIRMAN