

LOUISIANA PUBLIC DEFENDER BOARD

Thursday, June 25, 2009
11:00 AM

Baton Rouge Area Foundation
402 N. 4th Street
Baton Rouge, LA 70802

Agenda

1. Call to Order and Welcoming Remarks by Chairman
2. Roll Call
3. Review and Approval of Minutes of May 28, 2009 Board Meeting*
4. Public Comments
5. Report of the Chairman
6. Report of the State Public Defender
 - a. Written Report
 - b. Staff Strategic Plan and Action Plan
 - c. Appointing Authority Resolution*
 - d. Supreme Court Post Conviction Committee
 - e. Update on Contract with District Defenders
7. Budget Update
 - a. Budget Status Report
 - b. Legislative Auditor Report and Follow Up
 - c. Inquiry from 11th/42nd Districts and Legislative Auditor Board Resolution to Seek Attorney General's Opinion*
 - d. Monthly Financial Reports Update
 - e. Training Grants for 09-10*
 - f. Budget Committee Report – Ms. LeDoux
 - i. Emergency Request Procedure*
 - ii. Emergency Request and End of Year Distribution Recommendation*
 - iii. Formula Presentation*
 - g. Report on Campaign to Reduce Budget Cuts
8. Training
 - a. Database Trainings
 - b. Employment & Labor Law Training for District Defenders
 - c. Budget Training
 - d. Juvenile Training
 - e. Voir Dire Training

9. Information Technology and Management
 - a. Support Position Hire – Chase May
 - b. BJA Grant update

10. Special Projects
 - a. Application for Capital Training
 - b. Plaquemines Community Defender Update
 - c. Orleans Public Defender Social Worker Division Update
 - d. Red S.T.I.C.C. Update
 - e. Media Reminder to Contact LPDB Staff
 - i. District Defenders
 - ii. Board Members
 - f. Community Oriented Defense Network meeting at New York University
 - i. Louisiana Members

11. Juvenile Defender Services
 - a. CINC Parent Representation Performance Standards
 - b. Year Two JIDAN Grant

12. Continuing Legal Education Discussion

13. Trial Level Compliance Report
 - a. 23rd Judicial District Defender Selection*
 - b. Ethics Board Hearing
 - c. 34th Judicial District (Executive Session)*
 - d. 14th Judicial District - Maureen Dimino (Executive Session)*
 - e. Site Visit Protocol and Documents List

14. Board Retreat Update

15. Scheduling Next Two Board Meetings

16. New Business

17. Adjournment*

*Requires Board Approval

LOUISIANA PUBLIC DEFENDER BOARD

Minutes of the Board Meeting
June 25, 2009
Baton Rouge, Louisiana

Members Present: Frank Neuner, James E. Boren, Judge Robert Burns, Cleveland Coon, Samuel S. Dalton, Leo Hamilton, Janet C. Hoeffel, Rev. Dan Krutz, Luceia LeDoux, Lucy McGough, D. Judge William Norris, Majeeda Snead, Remy Voisin Starns, and Gina Womack.

***Ex Officio* Members Present:** None.

Members Absent: Walt Sanchez (resigned).

***Ex Officio* Members Absent:** Alfred Boustany and Rebecca Hudsmith.

Staff Present: Marianne Buchanan, Lynda Colomb, John Di Giulio, Jean Faria, Heather Hall, Julie Kilborn, Tammy Matzke, Chase May, Erik Stilling, and Clay Walker.

Guests Present: Peter Barbee, Victor Bradley, Brett Brunson, Clay Carroll, Tony Champagne, Bradley Dauzat, Maureen Dimino, Emma Frost, Lewis Jones, Jim Looney, Reggie McIntyre, Judy Pugh, Stacy Pugh, Chuck Reid, Alan Robert, Ken Rodenbeck, John Simmons, George Steimel, and Richard Tomson.

Call to Order and Opening Remarks: Mr. Neuner, the Chair, called the meeting to order at 11:05 a.m. Mr. Walker called the roll; a quorum was present.

Approval of Minutes from the May 28, 2009 Meeting: Mr. Dalton moved to adopt the minutes from the May 28, 2009 meeting. Mr. Starns seconded the motion which passed without opposition.

Public Comments: There were no public comments at this time.

Report of the Chairman: Mr. Neuner informed the Board that, with House Concurrent Resolution 115, the legislature has requested that the Louisiana Law Institute conduct a study of the discovery articles in the Code of Criminal Procedure and Code of Evidence. George Steimel shepherded the Resolution and Mr. Boren stated that the study could provide for more complete discovery articles. HCR 115 provides for a deadline that requires the LSLI to report its finding and recommendations to the House of Representatives prior to the 2010 Regular session.

New Board Appointee: Ms. Hoeffel has been appointed to the position of Vice Dean of Tulane Law School. The duties of her new job necessitate her resignation from the Board. Ms. Pamela Metzger has been appointed to fill the position.

Future Board Meetings: Mr. Neuner indicated that the Board will meet every month this year except July and December. The next Board meeting was scheduled for August 27, 2009 at 2:00 p.m. There was a discussion about scheduling future meetings for 2:00 p.m. rather than 11:00 a.m. since Board members are volunteers and this would allow a half a day in their office before the meetings. Ms. Faria reminded the Board that the staff and Board training has been scheduled for Friday, August 28th and half of a day Saturday, August 29th following the August 27th Board meeting at 2:00 p.m. at LSU Law School.

Report of the State Public Defender: Ms. Faria stated that there is a growing concern about the erosion of traffic ticket revenue affecting funding. There was a discussion about recent legislation and municipal contracts involving traffic cameras and speed vans which will decrease local funding derived from traffic tickets. The importance of Board members talking with legislators about public defender funding and the effects of traffic ticket funding were discussed.

The Children's Bill of Rights failed in committee in the House. House Bill 574 was amended to remove the mental health courts provision and to extend the "rocket docket" homicide court provisions to all districts statewide, however, making its adoption optional rather than mandatory. The staff provided a fiscal note to the legislature regarding the impact of this bill.

Chase May was introduced as the new Information Technology and Management employee. General Counsel, Roger Harris, is scheduled to start August 3, 2009. Half of the staff will be moving to the third floor at 500 Laurel Street.

Executive staff met with the District Defender Advisory Council on June 16, 2009. The Council is assisting in the development of the contract, vetting ethics issues and capital standards as well as expressing the needs of the field on various issues. Ms. Faria stated that she expected the contract to be completed by the August meeting.

Strategic Plan Outline: The staff has been working on strategic planning and developing action steps to reflect the different priority projects.

Appointing Authority Resolution: The Public Defender Act of 2007 states that the Board is the appointing authority for staffing decisions. Ms. LeDoux made the motion for a resolution giving Ms. Faria control of all administrative and staffing duties and Mr. Hamilton seconded the motion. Mr. Boren amended the motion to add that the Board ratify all prior staffing actions taken by Ms. Faria. The motion passed, as amended, without opposition.

Supreme Court Post Conviction Committee: The Supreme Court is appointing a task force to study capital and noncapital post conviction. The Board was asked to appoint two members to the Committee. Mr. Neuner indicated that the Court is looking for the LPDB to appoint people who have technical expertise in capital post conviction. Mr. Dalton made the motion for Mr. Boren and Ms. Hudsmith to be appointed to the Committee and Mr. Starns seconded the motion. The motion passed without opposition.

Additional State Staff: Ms. Faria expressed the need for five new positions: a Capital Case Coordinator, a receptionist, and three administrative assistants. Job descriptions will need to be created and Division of Administration approval obtained. Mr. Boren made a motion to create these five new positions and Judge Norris seconded. Mr. Hamilton verified that this would provide for 21 total positions in the staff office. Ms. LeDoux clarified that these positions would be created but not filled until there were sufficient funds budgeted for the positions. The motion passed without opposition.

Traffic Ticket Funding: Mr. Dalton requested that Ms. Faria obtain a breakdown of traffic ticket funding and general state funding. Judge Burns commented that Louisiana is the only state that funds the public defender system with traffic ticket fines. Ms. Hall added that seventy percent of the members of the legislature are new and therefore not familiar with Act 307 or with the funding mechanisms for public defense. Ms. LeDoux pointed out that the distribution to the districts is based has to be worked out and data is needed on all state funding before any Board action can be taken on this issue.

Budget Update: Ms. Buchanan provided a breakdown of expenditures from the FY 2009 budget of \$28 million. Five percent was expended for administrative costs; 58% went to assisting district defenders and CINC parent representation; 36% was expended for capital cases. The budget for FY 2010 is \$27.9 million. As of May 31, 2009 there was \$96,723 in unexpended funds to be reallocated for other uses.

Legislative Auditor Report – Compliance Audit: Ms. Buchanan stated that this report is due by June 30, 2009. The Legislative Auditor’s Office reported that eleven districts had engaged in deficit spending during the 2007 calendar year. The eleven districts were directed to detail their corrective plans to bring them into compliance. Mr. Boren questioned how deficit spending occurred. Ms. Faria explained that budget training will be furnished to teach all districts about the legislative auditor requirements, budget preparation, and financial reporting. Ms. LeDoux commented that the auditor was satisfied with all of the corrective steps taken relative to the non-compliance reporting and the actions taken by Ms. Faria and Mr. Di Giulio in retrieving the funds from with the 34th JDC. Mr. Neuner commented that compliance with reporting standards set by the legislative auditor must be followed for districts to receive state funds.

Inquiry of 11th/42nd Districts: Staff coordinated a teleconference between the Legislative Auditor’s Office, District Defender from the 11th and 42nd Judicial

Districts, Steve Thomas and his accountant. It was decided that staff would request an Attorney General's Opinion regarding the split of the former 11th Judicial District comprised of Sabine and DeSoto Parishes into the 11th and 42nd and the impact on the district defender's funding. Sabine Parish is a very poor parish whereas DeSoto Parish is comparatively wealthy. Mr. Hamilton stated that the concern is that there may be an impermissible donation between the two contiguous political subdivisions if the two districts now share funds. Judge Norris moved to authorize Ms. Faria to seek an Attorney General's Opinion in this matter. Judge Burns seconded the motion which passed without opposition.

The 34th JDC: Ms. Buchanan advised the Board that, for the second time, the 34th did not submit its financial report timely. Ms. LeDoux stated that since this was the second time that this district was late in a six month period, the 34th will not get a July distribution unless it provides a satisfactory explanation and shows plans to update procedures to ensure compliance in the future. Mr. Boren expressed concern that withholding funds may punish the clients.

Ms. Faria and Mr. Di Giulio had made a site visit to the 34th and talked with judges, advising them of LPDB's concerns and suggestions. There was discussion about regionalizing the 34th with other districts but the judges and the 34th Bar Association were opposed to regionalization.

Funding for Training: Ms. Buchanan stated that there are three approved training scholarship distributions of \$5,000 each for the Southern Public Defender Training Center Class of 2009. Public defenders from the 1st, 28th, and 40th districts are receiving the SPDTC scholarships. Ms. Kilborn advised that 10 additional scholarships of \$235 each will also be provided to indigent capital defenders for the 2009 LACDL death penalty certification seminar being held in July in Marksville.

Emergency Funding Policy: Ms. LeDoux discussed the emergency requests for funds policy approved by the Budget Committee. Mr. Hamilton made a motion for the adoption of the policy and Ms. McGough seconded. The motion passed without opposition.

Juvenile Regional Services: JRS has made a request for emergency funds which meets the criteria for emergency funding. Mr. Hamilton made the motion for approval of this funding and Ms. Womack seconded this motion. The motion passed without opposition.

Remaining Fiscal Year Funds: Ms. LeDoux suggested that the remaining funds be distributed for capital certification training; expenses for staff expansion to the third floor; and assistance to the 19th and 41st Districts given that a comparison of current district staffing shows the biggest gaps between need and available funds in the 19th and 41st districts. Mr. Hamilton made the motion for authorizing the remaining budget distribution to be made in accordance with Ms. LeDoux's plan. Mr. Coon seconded the motion. It passed without opposition.

DAF Formula Budget Presentation: Dr. Stilling presented the District Assistance Fund formula as approved by the Budget Committee. Mr. Boren asked about creating a category of “serious felonies” to further refine the formula. Ms. LeDoux advised that the data is not broken out in this fashion in the formula. Mr. Looney noted that the funds for capital cases in the formula presentation should double based on the requirement of two attorneys for each capital case. Ms. McGough commented that the formula was not accounting for any emergency funds. Ms. LeDoux agreed that this was not in the formula. Mr. Boren asked if the Board would set a percentage for district assistance. Ms. LeDoux stated that the next fiscal year may not be same with additional administrative staff and the operation of the office for a complete year. Ms. LeDoux stated that the formula is the best currently available information but should not be reduced to a set certain percentage. Judge Norris made a motion to adopt the distribution formula and Mr. Hamilton seconded the motion. It passed with one vote, made by Mr. Starns, in opposition.

Mr. Tompson questioned the role of reserve funds in the new formula. Ms. LeDoux stated that the reserve policy will be applied to the July distribution. Ms. Womack asked about timekeeping and Ms. Faria advised that the staff is in the process of developing a time-keeping system. Ms. Faria noted that the financial reports and the annual survey will require timekeeping reported in hours rather than as a percentage of work completed by each attorney.

Training: Ms. Kilborn advised that several trainings have been scheduled for the upcoming months, including database training, budget training, employment and labor law training for District Defenders, juvenile training and voir dire training.

Special Projects: Dr. Stilling reported receipt of the \$50,000 Louisiana Commission on Law Enforcement grant funds for a case management system study. The grant provides for research regarding various case management systems. In conjunction with the grant he and Ms. Kilborn have begun data base training throughout the state which includes seeking district input regarding software needs and suggested additions or changes to the current software system. The grant funds also provide for hiring a temporary support staff person to assist with the grant requirements.

Ms. Hall reported on the status of the Plaquemines Community Defender program.

Juvenile Update: Mr. Walker advised that the CINC draft of performance standards is complete and the plan is to now work with the state staff and the Child Protection task force for input. Additionally, before promulgation, juvenile judges will be asked to review. Mr. Walker also gave an update on JIDAN. JIDAN is in grant year two with a focus on four areas: a presumption of indigence for juveniles, the early appointment of an attorney for juveniles, appeal protocols and post-dispositional protocols. MacArthur Models for Change is an additional funding source with a potential \$250,000 grant over two years. This program is meant to mirror post-dispositional protocols focusing on two juvenile defense offices – Juvenile Regional Services of

Orleans Parish and Calcasieu Parish. Plans are for developing post-disposition and appellate protocols.

Ms. Faria advised that juvenile judge Nancy Konrad from Jefferson Parish has asked the staff to partner with the Louisiana District Attorneys' Association in a grant application to the MacArthur Foundation for the purpose of hiring a statewide coordinator to identify all local programs which provide for alternatives to state custody for juveniles.

Continuing Legal Education: Ms. Faria explained that the Louisiana Public Defender Association (LaPDA) has agreed not to oppose the LPDB's seeking approval for CLE credits from the Louisiana State Bar Association for skills based trainings. The Louisiana Association of Criminal Defense Lawyers (LACDL) also has no opposition. There was discussion about whether a statutory change is needed before the Board may seek CLE approval; it was reasoned that LPDB may host a CLE training and offer LSBA credit for CLE hours as long there is no charge for the training. Mr. Dalton made a motion that the staff apply for authority to offer CLE credits for LPDB-hosted trainings. Judge Norris seconded this motion and it passed without opposition.

Trial Level Compliance Report: Mr. Di Giulio reported that the selection process for the new District Defender for the 23rd JDC was completed and Mr. Alan Robert had been chosen by the selection committee. Mr. Boren made the motion to approve Mr. Robert as the new District Defender for the 23rd JDC. Ms. Hoeffel seconded the motion. The motion passed with no opposition.

Mr. Di Giulio advised that he is gathering information from all districts about local practices regarding preliminary hearings and the clients' ability to make bond. The project, named the Preliminary Hearing Project, is intended to study the practices statewide.

A Site Visit Protocol and Documents List have been created by staff for use in preparing for and conducting uniform site visits. An issue has surfaced following some recent site visits as to whether District Defenders who own the buildings being used as the district public defender office can be paid rent with public funds for the use of the office. Ms. Faria informed the Board that staff had been advised by its counsel, Mr. Mark Falcon, to seek an opinion from the Ethics Board as to the propriety of this practice. **Executive Session:** Ms. Hoeffel made a motion for the Board to go into Executive Session and Mr. Boren seconded the motion which passed without opposition.

34th Judicial District: Mr. Dalton moved to begin action to remove the District Defender of the 34th. Judge Burns seconded the motion. Mr. Starns moved that Mr. Dalton's motion be tabled until the August meeting and the motion to table passed. Ms. LeDoux made a motion that no funds be distributed to the 34th in July and that the 34th District Defender be given 60 days to come into full compliance, and further than the 34th remain in compliance for a full 6-month

period before receiving any additional funds. Ms. Snead seconded the motion and it passed without opposition.

Mr. Dalton presented a motion that no state funds be used for private membership dues including LaPDA and LSBA. The motion was seconded by Mr. Starns. Reverend Krutz made a motion to table Mr. Dalton's motion until the next meeting. Mr. Dalton agreed to Rev. Krutz's motion.

Mr. Dalton made a motion that no \$40 application fee be collected from any client without a full hearing to determine the client's indigence and ability to pay, at which hearing the client is provided due process of law and is represented by other counsel. Judge Norris requested that this motion be tabled until the next Board meeting. Mr. Dalton agreed to table this motion until the August meeting.

Judge Norris made a motion to adjourn the meeting and Mr. Starns seconded. The motion passed without opposition and the meeting was adjourned.

S:/Board/Minutes/6.25.09