

LOUISIANA PUBLIC DEFENDER BOARD

Thursday, March 26, 2009
2:00 PM

Baptist Community Ministries
400 Poydras Street
29th Floor
New Orleans, LA 70130

Agenda

1. Call to Order and Welcoming Remarks by Chairman
2. Roll Call
3. Review and Approval of Minutes of February 26, 2009 Board Meeting*
4. Public Comments
5. Report of the Chairman
 - A. Meeting Agenda
 - B. Board Reappointments
 - C. Legislative Update
6. Budget Update
 - A. Report on Joint Legislative Committee on the Budget FY 2010
 - B. Financial Forms
 1. Reporting
 2. Budget
 - C. LPDB Budget Update
 - D. Reserve Policy*
 - E. Per Diem and Mileage for Board Members
7. Deputy Public Defender – Training*
8. Executive Sessions
 - A. 23rd Judicial District
 - B. 7th Judicial District

- C. 14th Judicial District
- 9. Trial-Level Compliance Report
 - A. Report on Caddo
 - B. Site Visit to 5th JDC
 - C. Site visit to 6th JDC
- 10. Contracts
 - A. Baton Rouge Capital Conflict Office (BRCCO)*
 - B. Capital Post-Conviction Project of Louisiana (2) (CPCPL)*
 - C. Capital Assistance Project of Louisiana, Inc. (CAPOLA)*
 - D. Capital Defense Project of Southeast Louisiana (CAPSELA)*
 - E. Louisiana Appellate Project (2) (LAP)*
 - F. Capital Assistance Center (LCAC)*
 - G. Capital Appeals Project (CAP)*
 - H. Innocence Project New Orleans (IPNO)*
- 11. Juvenile
 - A. Bill of Rights for Louisiana Children
 - B. LSBA Children's Law Committee
- 12. Information Technology and Management
 - A. Training in 23rd Judicial District
 - B. Outreach to 7th Judicial District
 - C. Telecommunications Update
- 13. Client Complaint Policy*
- 14. Caseload Overload Protocol
- 15. Report of the State Public Defender
 - A. District Defender Advisory Council Meeting Minutes – Draft

- B. Contract Issues
- C. Capital Surveys
- D. New District Defender Orientation Book Meeting Scheduled for April 1, 2009
- E. Editorial Board Meetings
 - 1. Shreveport Times
 - 2. Calcasieu Opinion
 - 3. Alexandria
 - 4. Lafayette
- F. Site Visits
 - 1. LaSalle 28th
 - 2. Concordia/Catahoula 7th
 - 3. Calcasieu 14th
- G. Model Contract Discussion
- H. Update on Contract Regarding the 15th JDC
- I. Location of Next Board Meeting
- J. Report on Issues in 6th JDC
- 16. Other Business
 - A. District Attorneys' Salary Guidelines
- 17. Adjournment

* Requires Board approval

LOUISIANA PUBLIC DEFENDER BOARD

Minutes of the Board Meeting
March 26, 2009
Baptist Community Ministeries
New Orleans, Louisiana

Members Present: James Boren, Judge Robert Burns, Sam Dalton, Leo Hamilton, Janet C. Hoeffel, Rev. Dan Krutz, Luceia LeDoux, Frank Neuner, Majeada Snead, and Rémy Starns.

Members Absent: Judge William Norris, Alfred Boustany, Rebecca Hudsmith, Gina Womack.

Staff Present: Lesia Batiste, Marianne Buchanan, John Di Giulio, Jean Faria, Heather Hall, Tammy Matzke, Erik Stilling, and Clay Walker.

Guests Present: Julie Kilborn, Vic Bradley, Tony Champagne, Reggie McIntyre, John Simmons, Ken Rodenbeck, Lewis Jones, David Price, Mike Mitchell, Richard Tompson, Jelpi Picou, Derwyn Bunton, Kerry Cuccia, Greg Duhy, Peter Barbee, Emily Maw, and Mitch Bergeron.

Call to Order and Opening Remarks: The meeting was called to order at 2:20 p.m. Mr. Walker called the roll; a quorum was present. Mr. Neuner, Chair, called the meeting to order. Tammy Matzke was introduced as a new member of the state staff. Mr. Neuner announced that Board members Ms. Snead and Mr. Coon had been reappointed to the Board.

Approval of Minutes from the February 26, 2009 Meeting: Mr. Hamilton moved that the minutes from meeting held February 26, 2009 be adopted. Mr. Starns seconded the motion which passed without opposition.

Public Comments: Mr. Dalton and Mr. Starns commented that a Judge from the First Parish Court of Jefferson had held that the collection of certain fees by the judicial system constituted unconstitutional taxation.

Legislative Update:

Mr. Neuner pointed out that the Legislative Session was approaching. He asked if there were any Bills that anyone was aware of that would be of concern to public defenders. There were none reported.

Budget Update:

Ms. Faria reported that on March 13, 2009 the state staff was informed that the budget for 2009-10 would be \$27,900,000, down 1.6 Million. The state staff will be present for the Budget Hearing for the House Appropriations Committee on April 1, 2009 to address the Committee. Ms. Faria also reported that the state staff met with the District Defenders Advisory Council (DDAC) and developed financial forms which can be used to communicate financial information between the state staff and districts. The districts which are using QuickBooks will be able to

submit financial information through that program. Those not using QuickBooks will use the forms developed with the DDAC. Ms. LeDoux moved that the Board adopt the use of the financial forms developed with the DDAC. Mr. Hamilton seconded the motion which passed without opposition.

Ms. Buchanan explained that the Board reports to the legislature using a fiscal year, but that the districts report to the Board using a calendar year. She reported that a change on the part of the districts to the use of a fiscal year would simplify the budget process. Mr. Boren queried whether the Board was required by statute to report on a fiscal year. Ms. Faria explained that the LPDB is required to submit budget information based on a fiscal year. Mr. McIntyre explained that this question had been raised previously. He explained that the districts would require transition support. Mr. Tompson inquired as to when the districts would be required to submit budget requests on a fiscal year. Mr. Neuner explained that as the Board must submit its budget in November, the districts would have to submit their budgets to the Board in October. Mr. Picou explained that the calendar year was based on the request of the Legislative Auditor. Mr. Hamilton explained that the Legislative Auditor no longer requires the calendar year. Mr. Boren queried whether the districts had any objections to the change. Mr. Champagne explained that the DDAC had met and had no objection to the change to a fiscal year and asked that the Board assist the districts with the transition.

Mr. Hamilton moved that the state staff request budget information from the districts using a fiscal year and that the state staff assist the districts in the transition from calendar year to fiscal year. Ms. LeDoux seconded the motion which passed without opposition.

Ms. Buchanan explained that due to the Budget cuts, \$700,000 was moved in February from the state staff's budget (money that was not used for state staff due to the delay in hiring) to meet expenditures for this year.

Reserve Policy:

Ms. Buchanan reviewed the reserve policy and informed the Board that two additional policies were being recommended by the state staff.

Policy Statement #6: No Policy statement adopted by the board shall preclude it from requiring that a district use its balance of funds for operations in situations of final exigency.

Policy Statement #7 : The cash and investment balance threshold amount shall be reduced from 70% to 50% effective December 31, 2009.

Mr. Starns asked whether the 11th JDC included the 42nd with regard to the policy. Ms. Buchanan explained that the 42nd JDC was included in the 11th for purposes of the policy. Ms. LeDoux moved that Policies 6 and 7 be added to the Board's reserve policy. Mr. Hamilton seconded the motion which passed without objection. Mr. Jones asked whether the change from calendar year to fiscal year will impact the reserve and/or reserve policy. Ms. LeDoux explained

that the final distribution after the change may be reduced because of reserve. A copy of the District Cash and Investment Balance Policy as approved is attached to these minutes.

Calcasieu:

Mr. Neuner explained that due to Hurricane Ike, the local revenues in Calcasieu were below budgeted amounts in 2008. Mr. Neuner explained that Calcasieu would again need additional state funding due to low local revenues. The Budget Committee recommended that Calcasieu did not have sufficient local revenues and needed to receive an additional \$320,000 to stay on budget. Ms. LeDoux explained that the shortfall was due in part to poor data collection and poor communication and that the Budget Committee will establish a protocol to see that no such problems will occur in the future. Mr. Boren asked that the state staff draft a policy regarding the distribution of state funding which will require two staff members to sign-off on any distribution and that all distributions receive either Board approval where possible or Board ratification (at the following Board meeting) if necessary.

April Allocations:

Ms. Buchanan presented the spread sheet showing the recommended distributions for district assistance. Mr. Neuner explained that the recommendations reflected the inclusion of the additional money for Calcasieu. Ms. LeDoux reported that the Budget Committee recommended these distribution amounts, but noted that all following distributions will follow a new formula for distribution which the Budget Committee will be establishing soon. Ms. LeDoux explained that she had already met with state staff and would distribute information about the new formula as soon as feasible. Mr. Bunton offered to assist the Board and state staff in developing the new distribution formula. Mr. Starns moved that the April distributions be made according to the recommendations of the Budget Committee. Ms. Snead seconded the motion which passed without objection.

Per Diem & Mileage for Board Members:

Ms. Batiste explained that with the exception of *ex officio* members, all Board members should according to the statute receive both mileage reimbursement and per diem reimbursement for expenses related to Board meetings.

State Staff:

Ms. Faria introduced Ms. Julie Kilborn. Ms. Faria explained that after several interviews for the position of Deputy Public Defender, Director of Training, the staff was recommending Ms. Kilborn for the position. Mr. Starns moved that the Board hire Julie Kilborn as the Deputy Public Defender, Director of Training. Mr. Dalton seconded the motion which passed without objection.

Executive Session:

Mr. Starns moved that the Board go into executive session. Mr. Hamilton seconded the motion which passed without objection.

Following Executive Session -

Indigency Determination:

Judge Burns moved that the Board establish a policy for District offices. To wit:

After the court makes the preliminary determination of indigency, no intake or detailed indigency determination interviews as provided for in La.R.S. 15:175 A.(1)(d) or (e) shall be conducted by entities other than the District Defender, his/her employees or subcontractors, including but not limited to, any employee of the Court or Clerk of Court, nor shall any indigent defender funds be paid to any such outside entity.

23rd JDC:

Mr. Boren moved that the state staff, in particular the trial compliance and juvenile compliance officers, make inquiries in the 23rd JDC as to whether the defender office there is providing constitutionally competent representation for its indigent clients. Ms. LeDoux seconded the motion which passed without objection.

Contracts:

Ms. Faria presented proposed contracts for nine (9) contract programs. Ms. Faria explained that the contracts include reference to performance standards, but do not include cost of living increases due to budget cuts. She explained that all contracts had been reviewed with the Directors of the programs. Mr. Boren asked whether caseload standards were addressed in the contracts. Ms. Faria explained that the contracts addressed caseload limits. In particular, capital cases were limited to five per year with an allowance for some variance depending on complexity. Any variance on caseload limits has to be mutually agreed upon. Mr. Starns moved that all nine contracts be accepted. Mr. Hamilton seconded the motion which passed without objection.

Ms. Hoeffel moved that the agenda for the meeting be altered. Mr. Boren seconded the motion which passed without objection.

Client Complaint Policy:

Ms. Hall reported that the latest draft of the client complaint policy is in the Board Book. The last draft was presented to the defenders association in February. Mr. Picou stated that there are still some problems in the policy which need to be worked out. He reported that the draft is a good start, but must work out tensions between reporting and confidentiality as well as personnel issues. Mr. Picou stated the subcommittee will present substantive suggestions as soon as they can work out the problems. Mr. Starns moved that the client complaint policy be tabled. Mr. Dalton seconded the motion. Mr. Boren presented a friendly amendment that the issue be tabled until the next meeting so that it can be resolved in a timely manner. Mr. Starns accepted the amendment and the motion approved without objection.

Caseload Overload Policy:

Ms. Faria reported that a case from the San Francisco defenders office held that the public defender was subject to discipline for failing to reduce caseloads for line defenders. Ms. Faria reported that the Board and staff will be drafting a protocol for defenders to respond to excessive

caseloads. Mr. Starns reported that the subcommittee on caseloads would work with the state staff on the protocol. Ms. Faria stated that she would staff the subcommittee and draft the protocol.

Juvenile Update:

Mr. Walker reported that the Office of Juvenile Justice is drafting a Bill of Rights for youth in its custody. The Juvenile Justice Project of Louisiana and OJJ had contacted Mr. Walker to draft the Bill of Rights. The latest draft is included in the Board Book. Follow up phone conferences to continue to draft the Bill of Rights are already set. The goal is to present legislation at the upcoming session. Mr. Walker reported that the current legislation included the establishment of an Ombudsman within the LPDB. Though a quorum was no longer present, the remaining Board members supported the idea of an Ombudsman within the state staff.

Mr. Walker reported that the Louisiana State Bar Association convened a committee on Children's Law and the he is representing the LPDB on that committee.

Information and Technology Update:

Dr. Stilling reported that he conducted a training session in the 23rd JDC using the new mobile training lab. The training was a success. Dr. Stilling reported that an analysis of jury pools and racial disparities will be conducted in the 7th JDC. Dr. Stilling reported that he is testing desktop collaboration software for future conference calls for state staff, the Board and District offices. Dr. Stilling also reported that he had completed successfully all tests on the new district email addresses.

State Public Defender Updates:

New District Defender Orientation

As an informational item, Ms. Faria reported that there will be an orientation meeting at the state office for all newly hired District Defenders on Wednesday, April 1st.

Editorial Boards

As an informational item, Ms. Faria explained that members of the staff, along with Mr. Neuner, were continuing to meet with editorial boards statewide to discuss indigent defense and the proposed budget cuts. Meetings have been held in Shreveport, Alexandria, Lafayette, and Lake Charles. Meetings are to be scheduled for Baton Rouge and New Orleans.

Model Contracts

As an informational item, Ms. Faria reported that the model contracts for district offices are being developed and will be shared with district defenders. Mr. Boren asked that the state staff make certain that the process was inclusive of all district defenders who seek to have input. Mr. Champagne reported that the defenders intend to have a small group examine the drafts before presenting them to all defenders. Mr. Champagne reported that the defenders are committed to establishing model contracts.

15th JDC

As an informational item, Ms. Faria explained that due to the correspondence from the ACLU, and therefore in anticipation of litigation, a contract for a site study had been signed with NLADA. The contract is currently in the Office of Contract Review.

District Attorney Salary Guidelines

Ms. Faria presented guidelines regarding salaries for District Attorneys. She explained that the state staff was examining the possibility of a concurrent resolution in the Legislature to study the budgets and salaries of all staff in the judicial system to consider parity for public defenders. Mr. Boren reported that there was a similar resolution in the 2007 session. Ms. Faria stated that the staff would research that resolution. Ms. LeDoux explained that an analysis of caseload and budget for the public defenders would be necessary for any such study. Mr. Dalton suggested that time and effort sheets would also be an important factor in such a study.

Next Meeting Date:

The next Board meeting is Thursday, April 23, 2009 at 11:00 a.m. The location will be circulated.

Adjournment: There being no additional business brought to the attention of the board, Ms. LeDoux moved that the meeting be adjourned. Mr. Starns seconded the motion which passed without objection.

District Cash and Investment Balance Policy

Policy Statement #1: If a district's cash reserve and investment balances exceed 70% of the total annual expenditures of the prior calendar or fiscal year at the start of a new calendar or fiscal year, the district may be required to use its balances in excess of 70% to fund its general operating budget. Application of this policy statement shall not include the value of buildings or other real property owned by a district.

Policy Statement #2: If a district incurs expenditure needs that exceed its local revenues and state board funds during a calendar or fiscal year, it may request assistance from the board even if it has cash reserve and investments balances. The board will address these issues on a case-by-case basis by comparing the resources of the board and those of the district.

Policy Statement #3: Failure of a district to report any funds received or to not disclose cash reserves or investments is a violation of the Public Defender Act (Act) which requires financial reporting. Per the Act, financial information is sent to the Legislature and Legislative Auditor. If it is determined that false information has been provided or that information has been intentionally omitted, that information shall be reported to the board and to appropriate agencies and shall be addressed in accordance with the provisions of the Act.

Policy Statement #4: After the date of board approval of a cash reserve and investment policy, a district without a cash or investment balance or with balances less than 70% of total annual expenditures may still carry forward funds. Any cash and investment balances carried forward by these districts must be due to increased efficiencies of the district or local revenues that exceed the expenditure needs of the district.

Policy Statement #5: A district that carries forward cash reserve and investment balances and foresees revenue shortfalls or expenditure overruns must plan for liquidation of investments as needed regardless of penalties. If the board provides assistance to a district because funds could not be liquidated from investments in a timely manner, any future board assistance to the district may be reduced accordingly.

Policy Statement #6: No policy statement adopted by the board shall preclude it from requiring that a district use its balance of funds for operations in situations of financial exigency.

Policy Statement #7: The cash and investment balance threshold amount shall be reduced from 70% to 50% effective December 31, 2009.