



LOUISIANA PUBLIC DEFENDER BOARD  
MEMO

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To: The Board  
From: Jean M. Faria  
Re: Report of the State Public Defender  
Date: February 18, 2011

**BUDGET**

Staff and the Budget Committee continue their work with the 42 judicial districts and contract programs to address the increase in caseloads and fund balance depletions. Parent Representation Funds in the amount of \$979,680 were distributed in December, 2010. If the Board accepts the Budget Committee's February 9, 2011 meeting recommendations LPDB will have \$1,229,050 on hand for emergency funding to the districts.

The Budget Division received numerous requests for additional funding. Information Technology and Management Officer Dr. Erik Stilling and Budget Officer Laurie Durnin prepared in-depth financial reviews on the districts that will potentially exhaust their funding in fiscal year (FY) 2011 and FY 2012. The only districts recommended by the Budget Committee for funding are those that either have exhausted or will exhaust, their local fund balance by June 30, 2011. The recommended amounts of additional funding will keep those offices operational through June 30, 2011. Orleans' request for emergency funding was tabled as Orleans Public Defenders Office is waiting on a determination about other funding sources. Any districts requesting emergency funding that did not follow the procedure for emergency distributions set by the board were not considered.

The Budget Division converted the fiscal year financial information provided by each district to calendar year for the preparation of the Annual Report prepared for the Board and legislators. The report was submitted to both, as required by statute, on February 1, 2011.

**CAPITAL**

The Capital Division continues the process of re-certifying all attorneys who are appointed to represent indigent defendants in capital cases. With the adoption of the new Capital Guidelines, more rigor is applied to the process of certifying counsel. Every attorney certified on May 20, 2010, the effective date of the new guidelines, is currently provisionally certified pending the new application process. To date, we have received 105 applications for certification.

Provisional certification is valid until the conclusion of the mandatory extensive training session scheduled for October of this year in New Orleans. In this initial stage of certification, we are examining the applications for completeness and to determine whether the applicants have the requisite experience. Certification is available as either lead or associate counsel in three areas: trial, appeals and post-conviction relief. Many of the applicants are seeking certification in more than one field.

John Craft, the Capital Case Coordinator, continues to meet with the heads of offices and units handling capital cases in the districts handling the bulk of capital cases. Mr. Craft has been especially concerned with identifying and regularizing the different processes by which these agencies are matched with clients. These meetings have enhanced communications between the staff and the agencies providing direct representation. Future meetings will focus on the budgeting process to determine the level of service and potential reductions in service commiserate with various potential levels of funding.

## **COMPLIANCE**

Trial Level Compliance Officer John Di Giulio attended and participated in several LPDB trainings including the New District Defender Orientation held December 17, 2010, the January 7, 2011 Juvenile Defender Training and Voir Dire Academy and the Performance Standards Trainings held January 13, 2011 and January 14, 2011, in Baton Rouge and Lafayette.

He also attended the December District Defender Advisory Committee meeting on December 20, 2010 and the Assistant District Defender Advisory Committee meeting on January 21, 2011.

Mr. Di Giulio attended numerous meetings of the Louisiana Sentencing Commission, as well as, the January 28, 2011 Code of Criminal Procedure Revision Committee Meeting, on my behalf. The Commission's work has taken an enormous amount of study, time and resources. By statute the State Public Defender is a Sentencing Commission member. Given the Commission's work agenda, and the practice level of expertise needed, Mr. Di Giulio's participation at the Commission meetings has been invaluable.

Mr. Di Giulio also attended the mandamus hearing on February 8, 2010, with Deputy State Defender/Training Director Julie Kilborn, General Counsel Roger Harris, ITM Director Erik Stilling, LPDB Chairman Frank Neuner and me.

Site visits around the state are currently being scheduled. Compliance Officer Di Giulio will be accompanied by other executive staff to address various issues.

## **ITM**

The Division of Information Technology and Management played a leading role in several vital analyses on OPD receipts and potential shortfalls from the Orleans courts which were presented at the successful Writ of Mandamus hearing in the 19th Judicial District Court. These analyses also underscored the fact that the problem is not restricted to Orleans Parish. The Division also assisted in several analyses to help most equitably distribute the CINC Parent Representation funds and spearheaded and coordinated the production and dissemination of the 900+ page LPDB 2010 Annual Report and 2010 report to the Joint Legislative Committee on the Budget.

The ITM Division issued, reviewed, rejected and reissued the Invitation to Bid for the new case management system database and subsequently selected the winning vendor, Justice Works. The database is expected to be installed in the field by late April and the nearly one million existing cases are expected to be migrated into the new system by June. Training in the districts will be scheduled between April and June.

The ITM team also produced a 22-month retrospective of caseloads, expenditures and local revenues identifying the 45% increase in reported cases, the 17% rise in expenditures and the 9% decrease in local revenues and identified the districts that would currently be insolvent and probably in litigation had this board not opted to adjust the DAF and require districts to rely on their fund balances to cover part of their expenditures.

## **JUVENILE**

Juvenile Defender Training was held in Baton Rouge on January 6 – 8, 2011. Juvenile public defenders from across the state attended the three-day meeting. Several members of the Juvenile Defender Advisory Council were also present for this statewide training.

The Director of Juvenile Defender Services gave a presentation at the Juvenile Judges' Conference on January 20, 2011. Juvenile staff attended Standards Trainings on January 13 and 14, in Baton Rouge and Lafayette, respectively. On February 4, staff took part in a meeting of the Southern Juvenile Defender Center's Advisory Board. Staff also participated in the following meetings and conference calls: Children's Law Committee, Children's Code Committee Act 805 Subcommittee, Detention Standards Task Force (including several subcommittees), School Discipline Task Force, CINC Task Force, and BRBA Public Law Committee. Juvenile staff was present at meetings of the LPDB Budget Committee, the District Defenders Advisory Council, and the Assistance Defenders Advisory Council. Juvenile Division staff hosted the Juvenile Defenders Advisory Council on February 18, 2011.

On January 20, the *Trial Court Performance Standards for Attorneys Representing Parents in Child in Need of Care and Termination of Parental Rights Cases* were published in the state register. The *Trial Court Performance Standards for Attorneys Representing Children in Delinquency Proceedings* are in the promulgation process.

On January 18, Juvenile Division staff met with representatives from the District Attorney's Association to cooperatively develop an interdisciplinary needs adjudication statute for possible consideration by the Children's Code Committee and subsequent recommendation to the Louisiana Law Institute. Staff assisted in the drafting of detention center standards. Staff also met with Goodwill Industries regarding education advocacy.

Juvenile Division staff continues to work cooperatively with the Juvenile Justice Project of Louisiana to obtain appellate court records for juveniles affected by the *Graham v. Florida* decision, to be used to advocate for modified dispositions/sentences for these juveniles. Staff administered the statewide juvenile defender listserv, wrote the District Summaries for the Annual Report to the Legislature, and distributed CINC Parent Handbooks to juvenile defenders across the state. Finally, staff wrote articles for the LPDB newsletter.

## **SPECIAL PROJECTS**

Since the last meeting of the Board of Directors for LPDB, the Special Projects Advisor has continued to work on the following projects: writing, editing and facilitating the dissemination of the bimonthly LPDB e-newsletter to 900+ subscribers; coordinating the Assistant Defender Advisory Council (ADAC, which met on January 21 and February 18); supporting the administration of the CCLI grant; updating the website with relevant announcements, events and information; providing a brief orientation to the LPDB website and strategic plan for new

members of the Board; developing a 'model initial interview form' (based on current interview forms being used by the districts) to be part of the Community Defender Toolkit; coordinating with Phyllis Subin to implement the LPDB strategic plan; preparing the recently-promulgated CINC standards for design and dissemination; and, participating in staff meetings and other discussions about LPDB projects as a member of the Executive Staff.

New projects include: creating a Site Certification Application and LPDB Summer Internship protocol for LPDB; developing externship projects for LPDB-assigned externs; writing two grant proposals (one for technical support from the Center for Holistic Defense, and a \$450,000 proposal for the Office of Juvenile Justice and Delinquency Prevention Field Initiated Research and Evaluation Program); conducting comprehensive research on wrongful conviction wrongful conviction compensation and its relationship to public defense in Louisiana; extensive media outreach and proactive media submissions related to the LPDB Petition for Writ of Mandamus and BJA recommendations for systemic improvements in Orleans Parish; preparing the LPDB-LJC Collateral Consequences Resources and Mental Health Handbook for dissemination at future trainings; preparing to conduct an 'ExtraLegal Needs Assessment' of the public defender-appointed, pre-trial, incarcerated population in Vernon Parish; restating and amending the Articles of Incorporation for the Louisiana Justice Coalition; creating materials for inclusion in the 2010 LPDB Annual Report; creating Assistant Defender profiles as part of a policy-maker education campaign to humanize salary, benefits and other resource issues; and, other miscellaneous projects.

## **TRAINING**

In December 2010 and January 2011, the Training Division hosted a series of five 3-hour presentations, provided by immigration law experts, on the immigration consequences of a conviction to non-citizens. A total of 71 defenders were trained on the basics of immigration proceedings, practical strategies for helping non-citizen clients and their families to navigate criminal and immigration custody, and tips to assess the immigration consequences of potential case outcomes in order to fulfill the United States Supreme Court's mandate in Padilla v. Kentucky.

The Voir Dire Academy, an interactive training designed to teach public defenders skills and techniques in conducting non-capital jury selection, was held January 7 and 8, 2011. Eighty-seven defenders participated and worked with trainers experienced in the "Colorado method" of voir dire.

The Juvenile Defender Training was held January 6-8, 2011 and attended by thirty-six juvenile defenders. This program was an interactive training designed to assist juvenile defenders in the handling of delinquency and FINS cases.

Eighty-nine defenders participated in the interactive one-day training focused on the LPDB Trial Court Performance Standards (promulgated April 2009) in January 2011. This program addressed the various ways that the Standards support public defenders in best serving clients and providing effective representation. A second round of this training was scheduled for February 3 & 4, 2011 but had to be cancelled because of the winter storm. New dates will be set soon.

On February 9, 2011, the Training Division provided a joint training for capital defenders, prosecutors, investigators and mitigation specialists pursuant to the Capital Case Litigation

Initiative grant received from the Bureau of Justice Assistance. Forty-seven participants attended the *Ensuring Access to Justice for Persons With Intellectual Disabilities* conference. The results of the participants' pre-training and post-training understanding of intellectual disabilities issues are reflected in the attached bar graphs.

Additional upcoming trainings being developed by the Training Division include: *Defender Leadership Training* (Feb. 25, 2011); *Mental Health Advocacy* (Feb. 28, 2011 and May 19, 2011); *Capital Defender Training* (Mar. 24-26, 2011); *Defender Management Training* (Apr. 1, 2011); *CINC Parent Representation Trainings* (Apr. 15, 2011; July 8, 2011); *Investigators Workshop* (July 18-20, 2011); *Defender Training Institute* (Sept. 11-16, 2011); *Advanced Capital Training* (Oct. 25-29, 2011); *Juvenile Defender Training* (Nov. 18, 2011); *Legislative Update* (December 16, 2011).

The Training Division has also been actively preparing for the 2011 LPDB Internship Program; participating with the LSLI Criminal Code Committee in reforming the discovery articles of the Louisiana Code of Criminal Procedure per HCR115 (2009); finalizing the LPDB materials on collateral consequences of convictions; participating in meetings of the Assistant Defender Advisory Council, District Defender Advisory Council, and Juvenile Defender Advisory Council; and developing a uniform Attorney Performance Achievement Summary.

## **STATE PUBLIC DEFENDER**

As you know, the hearing on the petition for writ of mandamus was held on February 8, 2011 and the writ issued. The trial court quashed the subpoenas for the judges' testimony. The plaintiffs' evidence was introduced through the testimony of Orleans Public Defender Derwyn Bunton and OPD Special Litigation Counsel Jee Park. Mr. Neuner and I testified in the form of a proffer. The ruling is on our website and can be accessed at:

[http://lpdb.la.gov/Serving%20The%20Public/News/txtfiles/pdf/Mandamus%20Order\\_11%20Feb%202011.pdf](http://lpdb.la.gov/Serving%20The%20Public/News/txtfiles/pdf/Mandamus%20Order_11%20Feb%202011.pdf). Many thanks to *pro bono* counsel, Phil Wittmann and Laura Godshall of Stone Pigman who did an excellent job for OPD and LPDB. We await the final judgment which has been submitted to the Court. Staff and Board are discussing how to best utilize the anticipated judgment to increase the collection of the \$35 mandatory assessment.

The Louisiana State Bar Association (LSBA) continues its leadership role in supporting LPDB's work in the criminal justice system. On January 22, 2011, the House of Delegates voted to support the attached resolution supporting the uniform application of the Thirty-Five dollar fee provided for in La. R.S. 15:168 and the development and implementation of a statewide court cost fee schedule. The House passed the resolution despite the statements of two assistant district attorneys who spoke in opposition to the resolution.

The LSBA sponsored Second Annual Criminal Justice Summit is scheduled for March 25, 2011 and will focus, in part, on the funding crisis in indigent defense, and assessment, collection and distribution of mandatory fines, fees and cost which comprise the funding for the criminal justice system in general. Staff is grateful for the leadership and support of the LSBA's Criminal Justice Committee.

The District Defender Advisory Committee met on February 17, 2011 and reviewed the first draft of the proposed annual attorney assessment tool. It will be discussed more thoroughly at the Leadership Training to be held February 25, 2011, referred to above in Training report. We

discussed the development of a uniform indigency form. Staff will make, as part of its annual work plan, a notice to the districts the annual changes in the poverty rate. The monthly financial reporting forms were discussed at the meeting. Staff is working on a glossary of terms and making changes to the current form. While many districts do a fine job of reporting, we have found major errors in some districts' reporting which skews staff's ability to provide the Board with accurate information. The District Defenders offered their support in the revision of the document. The DDAC also reviewed the draft legislation proposed by the Sentencing Commission and provided valuable constructive comments.

The single largest challenge facing staff now is the recommendation to the Board as to how to go about retracting services. Our data, based on the districts' self-reported numbers, indicates that local revenues have increased by 4% from January 2009 through December 2010, while average monthly district expenditures have risen 28% over the same time period. When coupled with a caseload increase of 23% statewide over the same time period it is apparent that the district offices cannot continue operating as they currently do.

There are several models, none of which is good, and most of which are in litigation around the country. We are currently evaluating the models to make a recommendation at the next Board meeting. Despite the LSBA support, there has been no support amongst prosecutors for reclassification of misdemeanors, which would have had an enormous impact on most of the offices, freeing up defender staff to handle felony cases.