



Louisiana Public Defender Board Report of the State Public Defender

To: The Board
Date: January 14, 2013

BUDGET DIVISION

To date, LPDB has disbursed 93.1% of DAF funds(\$14,682,237) and 99.8% CINC funds (\$971,430). Final FY2013 DAF disbursements of \$6,570,578 and CINC disbursements of \$479,927 were processed on November 9, 2012. The remaining funds are allocated for the 41st PDO which continues to receive monthly disbursements.

On December 20, 2012, the Joint Legislative Committee on the Budget approved our request to increase our FY2013 budgetary authority by \$70,361 to cover LCLE grant funded expenditures from January 1, 2013 through June 30, 2013.

Upon receiving seed capital from Commissioner Paul W. Rainwater to fund counsel for legal representation in Sex Offender Assessment Panels (S.O.A.P), we entered into contracts with the following law firms, effective November 1, 2012 through June 30, 2013: CBE Law, LLC- \$84,000, The Blaize Law Firm, LLC - \$72,000 and Joseph W. Grassi- \$24,000. These contracts are currently under review and waiting approval by the Office of Contractual Review (OCR).

CAPITAL DIVISION

Oversight of provisionally certified counsel has been implemented by Capital Case Coordinator Juliet Yackel. Protocols are being developed to ensure appropriate oversight of provisionally certified counsel and individually tailored oversight plans are in development to ensure the recommended measures are taken to supervise and support each provisionally certified practitioner in their representation of capital defendants. In the interim, Ms. Yackel has conducted in-person meetings with provisionally certified counsel to assess caseloads, explain the oversight process, and begin the process of monitoring performance. Resource counsel and approved mitigation specialists have been assigned to those counsel for whom such measures were recommended by the review committee.

Protocols are being developed to provide practitioners with clear instructions regarding application for expert witness funds in capital cases. This process requires counsel to oversee the delivery of services by expert witnesses, sets forth the manner in which invoices shall be submitted for payment, and specifies the method for disbursement of payments.

Solicited site visits were conducted by Ms. Yackel at CAPOLA in Shreveport and the 16th Judicial District to assist in selecting appropriate mitigation specialists and assessing complex mental health issues. Ongoing support to the field has been provided to the programs and practitioners regarding the standard of practice pursuant to the Capital Defense Guidelines.

A statewide group of mitigation specialists has been formed by Ms. Yackel to foster the professional development, identify the needs, and provide ongoing support to this essential segment of the capital defense community. The first meeting was attended by over 25 specialists from across the state.

Throughout December 2012 and early January 2013, Ms. Yackel collaborated with CAPOLA to assist in addressing urgent issues.

A working group has been developed to address issues relating to capital defendants awaiting the assignment of counsel throughout the state, with CAPSELA Director Kerry Cuccia taking the lead.

Meetings were held with District Defender Michael A. Mitchell in the 19th Judicial District to address issues relating to capital defendants awaiting the assignment of counsel. On Wednesday, January 9th District Defender Michael A. Mitchell and LPDB Staff appeared at the Criminal Judges Meeting in Baton Rouge to provide the judiciary with information regarding funding and assignment of counsel issues in capital cases.

COMPLIANCE DIVISION

Compliance continued participation in Sentencing Commission meetings and Committee work, including Front End Committee and Release Mechanism Committee. Compliance Officer Di Giulio also attended and participated in Committee and full meetings of the Louisiana Law Institute in November and December 2012 and January, 2013. He also represented the Board on the Supreme Court Rules Committee and participated in meetings of the Criminal Justice Committee of the Louisiana State Bar Association.

Mr. Di Giulio met with representatives of the Louisiana District Attorneys Association, along with board members and other staff, as well as individual meetings with District Attorney Hillar Moore of the 19th Judicial District. Compliance also continued to assist in the capital area, attending meetings and conferences with judges with cases needing representation. He also maintained communication with various District Defenders, including OPD, in order to monitor progress in service restriction cases.

INFORMATION TECHNOLOGY & MANAGEMENT DIVISION

Information Management

As the statutorily mandated Annual Report season is here, the ITM Division has coordinated the data collection process of the LPDB 2012 Annual Report. Staff has provided instructions and technical support to districts in completing their reporting forms online (District Narratives, District Staff Directories, Technology Surveys and Personnel Expenditure Reports). Using the online technology has enabled districts to view their narrative responses from last year, such that if nothing has changed, District Defenders need not re-enter the same data on the new form, thus

saving districts' much time and effort. The ITM Division has also created a website for districts to view and approve their 'district caseload and outcome' reports. ITM staff is in the process of formatting and compiling all the submitted district documents to make the Annual Report print-ready by the February 1, 2013 deadline. Staff in the ITM Division has generated numerous ad hoc caseload and workload reports on various topics such as caseloads and finances.

Technology Management

ITM staff continues to monitor the online district Monthly Financial Report as well as the online district Monthly Compensation Report. Technical assistance has been provided to the districts on an as-needed basis. ITM staff has worked with Justice Works on finalizing the improvements to the Monthly Financial Report. Staff has participated in conference call discussions, as well as research and testing of the website, to ensure accuracy of the changes requested.

The ITM officer participated in numerous meetings since the last Board meeting including LCLE, Research and Technology Committee of the Sentencing Commission, LPDB Strategic Planning and numerous staff meetings on various topics.

JUVENILE DIVISION

FASPD Julie Kilborn continues to participate with other stakeholders in the Louisiana Court Improvement Program-Children and Families Division to launch a comprehensive, team-based CINC advocacy pilot program in Orleans (based on proven models in other states). CINC representation is handled by the Orleans Public Defenders' Office and FASPD Kilborn is working to implement that pilot project with an eye towards future expansion.

Special Projects Advisor Heather Hall contributes to the Juvenile Division's work by participating in the preliminary strategic planning session on November 7, 2012; doing a thorough scrub of the 'ljuveniledefenders' list-serv to ensure that its membership is complete and accurate and to that end, FASPD Kilborn has invited all District Defenders to join the listserv. Special Project Advisor has also been participating in the monthly meetings of the Southern Juvenile Defender Center Advisory Committee, monitoring LPDB's stated deliverables per its posted 5-year Strategic Plan, and developing funding concepts/requests for future applications.

Assistant Director of Training Irene Joe successfully delivered the Juvenile Train-the-Trainers program on December 3, 2012. Four juvenile defenders attended the training (which was by invitation only) and are currently preparing their in-district trainings and preparing to be faculty at the upcoming Juvenile Defender Training (January 16- 18, 2013). Both faculty and participant evaluations were exceptionally positive and staff is excited about the increased juvenile leadership capacity created by this program.

Many members of the Executive Staff have supported the improvements of the Case Management System's functionality for juvenile defenders and the ITM Division has made these changes. Roll-out is anticipated after the completion of the Annual Report. Finally, through work on the District Assessment Protocol, efforts are being made to formalize the role of the Juvenile Justice Compliance Officer within the Compliance Division and create a work plan that is ready to implement upon the hiring of new staff.

LPDB continues to support the efforts of Juvenile Regional Services (JRS) in providing direct services in Orleans as well as in expanding its capacity for additional services throughout the region/state. Post-disposition advocacy remains a priority, toward which JRS continues to make progress and communicate with LPDB.

On January 4, 2013, the U.S. Fifth Circuit Court of Appeals ruled that *Miller v. Alabama* (132 S. Ct. 2455 (2012)) is not retroactive (therefore no recourse for Louisiana's population of juvenile offenders serving LWOP sentences). Finally, on Monday, January 7, 2013, we welcomed Michele Burbank to LPDB as the Paralegal for the Capital/Juvenile Divisions.

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 LPDB e-newsletter to 900+ subscribers; updating the website with relevant announcements, employment opportunities, events and information; drafting and disseminating press statements as appropriate (none since last Board meeting); managing the media archive and social media outlets (FaceBook and Twitter); contributing as a member of the Southern Juvenile Defender Center Advisory Committee; and, participating in staff meetings and other discussions/projects as a member of the executive team.

In addition, since the last meeting, the Special Projects Advisor has provided comprehensive revisions to the draft LPDB District Assessment Protocol; created an External Communication Proposal for Executive Staff review; worked with OPD to develop and implement their recent OSI grant to address systemic funding issues; intensified efforts to identify foundations and projects for financial support; submitted all programmatic reports to close out the 2012 LCLE grant; supported progress implementing the 2013 LCLE grant; completed all assignments relative to the Annual Report; contributed, with Assistant Training Director Irene Joe, to the development of the agenda and training to be delivered at the Defender Leadership Training in March, 2013; continued to communicate with the three districts that have provided notice of service restriction; coordinated the design for printing of the Capital Defense Guidelines; improved the subscription list for the juvenile defenders list-serv (with assistance from the ITM division); attended staff-wide CMS training; assisted with the compilation of the work product generated by the staff Strategic Planning Sessions 1 and 2, as well as a preliminary strategic planning session held with Patti Puritz related to juvenile projects; and, provided substantive edits to the draft LPDB Appellate Guidelines and Trial Court Performance Standards, Community Defender Toolkit, draft protocols relating to capital expert witness applications, expert witness funding, and provisional certification.

TRAINING DIVISION

On December 3, 2012, the Training Division held a one day, intensive Train-the-Trainers program for four juvenile defenders throughout the state who have demonstrated a clear commitment and impressive skills in delinquency practice. These four defenders will be a member of the faculty at the 2013 Juvenile Defender Training in January 2013 and conduct an individual training in their own district in the second quarter of calendar year 2013.

The 2012 Legislative Update was held on December 14, 2012. Greg Riley, Senior Attorney for the Louisiana House of Representatives and member of the Administration of Criminal Justice

Committee, provided twenty-one defenders with an update of all bills passed in 2012 that affect criminal law and procedure.

Assistant Training Director Irene Joe continues to work with Heather Hall, Special Projects Advisor, to reevaluate and implement the juvenile strategic plan set forth by the Board in 2010. Upcoming trainings for the first quarter of calendar year 2013 include: Juvenile Defender Training (January 16-18, 2013) for attorneys that represent children in delinquency proceedings and parents in child abuse and neglect cases and the Defender Leadership Training (March 7-8, 2013) for district defenders, program directors and office supervisors.

FIRST ASSISTANT STATE PUBLIC DEFENDER

Since the last Board meeting, First Assistant State Public Defender Kilborn has continued to provide support and oversight for all districts in or near service restriction (including review of district's submitted financial and caseload information); work to identify staff for the 2013 LCLE Auditor grant; monitor staff work plans and timesheets; coordinate with General Counsel on responses to subpoenas and litigation affecting LPDB; provide support and guidance to the Training Division to implement its Train-the-Trainers program and the upcoming Juvenile Defender and Defender Leadership Trainings; work with the LPDB Budget Division to manage the expenditures of the agency and make new fiscal year projections; work with the Budget Committee of the Board to plan for committee work during 2013; communicate with the Office of Planning and Budget and the Division of Administration to increase our agency's requested T.O. positions; manage the Juvenile Division, including convening meetings of the Juvenile Working Group; remain the point person for communications with the Board; review and edit the LPDB newsletter for dissemination; deploy and review audits conducted by David Greer, and supervising follow-up as appropriate.

Since the last board meeting, FASPD Kilborn has also been actively involved in creating new mechanisms to more vigilantly monitor the itemized revenues reported to our office, and taking corrective action when revenue is not itemized; revising the posted five-year LPDB Strategic Plan based on Executive Staff feedback; coordinating the development of appropriate policies and protocols relating to capital defense services, district assessments and employee policies; working with the Orleans Public Defenders Office on the implementation of their recent grant from the Open Society Institute Criminal Justice Fund; and completing the requirements of the LPDB 2012 Annual Report.

FASPD Kilborn presented a session on the "state of the state" at November's seminar by the Louisiana Association of Criminal Defense Lawyers, addressing the agency's and various districts' current financial situation as well as recent rumors about capital spending. Ms. Kilborn also provided a session about the agency's work generally as well as specifically in juvenile defense at the recent Juvenile Train-the-Trainers program.

STATE PUBLIC DEFENDER

We are pleased to welcome Michele Burbank, our new Administrative Coordinator, who will be working with the Capital and Juvenile Divisions and me. We are very fortunate to have someone with her experience and skills join our staff.

In November, 2012 I drafted non-capital appellate guidelines and standards which were given to staff during December. The documents now will be vetted outside of the agency in January.

After receiving external comments, the documents will be presented to the Board for review and additional comment. The vetted guidelines and standards should be ready for publication this spring.

The Community Oriented Defender Toolkit regarding the use of investigators and social workers was completed in December and is awaiting staff comment prior to sharing it with the District Defender Advisory Council for input. Currently I am working on a model intake form, which also will be vetted to the District Defender Advisory Council before coming to the Board with the Toolkit as the two are interrelated.

In December 2012, Juliet Yackel and I answered a subpoena in the 16th Judicial District (St. Landry, St. Mary and Iberia Parishes) and met with Judge Lori Landry regarding the Capital Guidelines and provisional certification.

In an unrelated capital case in Shreveport, I have been appointed as counsel of record to represent Ms. Beverly Arthur, along with District Defender Alan Golden. General Counsel is preparing a motion to traverse the appointment based on the statutory law prohibiting LPDB staff from providing direct services. The state has filed a rule to show cause directed at the two attorneys who withdrew their applications for certification as to why they should not ask for provisional certification in the case and to the LPDB why such certification should not be granted. This matter is set for hearing January 23, 2013.

Several executive staff members attended a status conference in another pending capital case, Mr. Devon Livous, in the 19th Judicial District (East Baton Rouge Parish) to discuss the appointment of counsel for the limited purpose of protecting the client's rights, pursuant to the Capital Guidelines. District Defender Michael Mitchell has been asked to brief the issue for the Court.

On January 9, 2013, we were invited to the Criminal District Court Judges' meeting in East Baton Rouge Parish. In attendance on behalf of LPBD were Capital Case Coordinator Juliet Yackel, FASPD Julie Kilborn, Compliance Officer John Di Giulio, and myself. Mr. Mitchell and I talked with the Judges and the District Attorney about the funding issue surrounding capital cases. We both made brief presentations and answered questions from the Judges hopefully dispelling some of the rumors about the certification process.