



## Louisiana Public Defender Board Report of the State Public Defender

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To: The Board  
Date: January 6, 2014

### **BUDGET DIVISION**

Since last board meeting, staff processed the second and final District Assistance Fund (DAF) payment to the districts on November 18, 2013. This was made in accordance with the Board-approved distribution. All districts receiving payments were notified of the amount that they would be receiving by check or EFT. Still remaining for distribution is the semi-annual Child in Need of Care (CINC) funding.

As of December 26, 2013, the Louisiana Public Defender Board has spent and encumbered 74 percent of its total annual budget. The bulk of the remainder, 17 percent, has been budgeted for Contract Programs reimbursements through June 30, 2014.

There have been no requests made by the Division of Administration's Office of Planning and Budget to reduce our budget this fiscal year. We are looking forward to achieving all of our budgeted expenditures by June 30, 2014.

The permanent Budget Officer position was posted since the last Board Meeting and applicants have been interviewed. The part-time temporary employee handling this work has left but in the interim, our staff Accountant will be handling some of the Budget duties until a Budget Officer is hired.

An RFP (Request for Proposal) was prepared, Public Notice made and bids are to be received by January 14, 2014 for the Contract Auditor position. This position is 100% funded with a Federal Byrne/JAG grant which is administered through Louisiana Commission on Law Enforcement. Ms. Corlis Green has been our contract auditor under this grant; however, her contract with us expired on December 31, 2013. The RFP is to be awarded to the lowest and most qualified bidder on January 15, 2014 for a term of one year.

The Budget Division is on target and has achieved the steps due to date on the Strategic Plan scorecard for analyzing monthly revenues and expenditures by Districts and Program Offices. Further activity will be necessary in January, 2014 through March, 2015.

## CAPITAL DIVISION

As of January 2, 2014 there are 93 open capital trial level cases: 37 are pre-indictment and 56 are post-indictment. Fifty-nine of the 93 cases are staffed according to the Louisiana Capital Defense Guidelines. There are six capital appeals, two non-capital appeals, three capital pre-trial consultation cases; three conflict capital post-conviction cases; one capital motion for new trial being handled by Capital Appeals Project. There are 41 capital post-conviction cases being handled directly by the not-for-profit Capital Post-Conviction Project of Louisiana. CPCPL contracts with outside counsel for case conflicts and work load overload and currently has 16 contracts for state capital post-conviction.

Staff discussed a needed change to the Protocol for Management of the Capital Expert Witness Fund protocol. See attached p. 5 § 6.2. Staff proposes that the language be changed from “annual maximum amount” to “monthly maximum amount”. The change would limit staff to approving expert witness requests on a monthly basis, up to the amount of the monthly disbursement of Expert Witness Fund which is normally \$50,000 a month.

The Office of Contractual Review has approved the contract redirecting the capital funds from the Capital Defense Project of Southeast Louisiana and the Capital Project of Louisiana in the amounts of \$331,000 and \$100,000, respectively to the Expert Witness Fund. As of January 2, 2013 there are \$383,789.24 in pending requests for approval for expert witness services.

In relation to the Expert Witness Fund, a subpoena duces tecum was served on the Capital Case Coordinator in the *State v. Brian Smith* case; Docket Nos. 2012-CR-303; 2012-CR-313 and 2012-CR-366 in the 40<sup>th</sup> Judicial District (St. John the Baptist Parish), requesting all documents regarding expert witness applications, requests for approvals, billing, invoicing and payments made by LPDB to the Louisiana Capital Assistance Center (LCAC) for legal services in *State v. Brian Smith* “or other capital cases between August 16, 2012 and the present date.” The subpoena is dated December 30, 2013, is signed by Judge Sterling Snowdy and is returnable January 9, 2014 at 10:00 a.m. The Division is currently seeking *pro bono* counsel to file a Motion to Quash the subpoena and to appear and argue the Motion.

The Capital Case Coordinator was advised by trial counsel in *State v. Wilbert Thibodeaux*, Docket No.: 2013-190149, 16<sup>th</sup> JDC that the Court will be issuing subpoenas to the State Public Defender and the Capital Case Coordinator in the above captioned matter for testimony on January 9, 2014.

Seventy-six capital defenders attended the LPDB Capital Defender Training held in New Orleans from October 23-25, 2013. The evaluations regarding faculty, the plenaries and the break outs were excellent. The major complaint was that the facility was too cold.

In November the Capital Certification Advisory Group reviewed 10 new applications for certification. Two applicants were denied certification. One applicant was approved as Trial Lead Counsel, five applicants were certified as Trial Associate Counsel; two were certified as Appellate Associate Counsel; and, three were certified as Post-Conviction Associate Counsel. The Application for Recertification was designed and will be sent to capital counsel previously certified this week as the Louisiana Capital Defense Guidelines require receipt of the applications for recertification by January 31. Additionally, one provisionally certified Trial Associate Counsel completed the necessary training and became fully certified in December.

Staff, working with the Capital Case Working Group, created a Capital Assessment tool to be used to evaluate the district offices' and contract programs' compliance with LPDB Capital Defense Guidelines, protocols, rules and procedures. The first program evaluation was conducted December 17-20 by John Holdridge and the Capital Case Coordinator in Shreveport to assess the Capital Project of Louisiana. Two days were spent reviewing files, file management, interviewing staff members, reviewing time sheets, office financial information and office practices. Additional information is being requested from the program and once received and evaluated, the Assessment will be sent to CAPOLA's Executive Director for comment and response.

Two versions of the Capital Performance Standards (CPS) have been sent to select members of the Capital Case Working Group for their evaluation and input. The versions are very different and input from the capital litigators on the Board is welcome. If you did not receive copies of the draft CPSs and would like to review them, please let the Capital Case Coordinator know. The Louisiana Legislative Auditors report criticized the agency for not having promulgated the CPS. This is a priority for the Capital Case Coordinator as the CPS provide an objective basis for measuring capital defenders' performance.

Considerable work has been done on the capital wing of defenderData our case management system (CMS). Working with the ITM Division several changes have been made which allow staff to better monitor the cases in the field.

## **INFORMATION TECHNOLOGY & MANAGEMENT DIVISION**

### **Information Management**

The ITM Division has been preparing for the statutorily mandated Annual Report season. ITM staff has been updating the necessary online documents and print-production templates needed for the Annual Report (district narrative, financial, and caseload templates), as well as providing assistance in answering district questions. The ITM Division has organized and reconciled the capital expert witness fund from 2009 to the present. Staff has developed a prototype of an accounting system to better track available expert witness funds for the future.

Staff continues to generate numerous ad hoc and workload reports on various topics such as caseloads and finances. Since the last board meeting, the ITM Officer participated in the Budget Committee meeting, weekly staff meetings, and the DDAC meeting.

### **Technology Management**

In an effort to assist districts in cleaning up their cases on the database, the ITM division has coordinated a batch autoclose process. Staff has encouraged all districts to update their autodormant cases, as this will provide more accurate year end case reporting. ITM staff has contacted districts regarding the criteria in which LPDB will autoclose cases. For cases which are currently in auto-dormant status and which have not been touched (last modified) in over 2 years, we will change the status to of these cases to "autoclosed" and set the date closed to last date the case was modified.

ITM Division is in the process of adding enhancements to the database: quantifiable sentencing data, arresting agencies, location of arrest incident, and an alert system to notify attorneys of transferable charges and to alert LPDB staff and district management of juvenile cases closed due to being transferred to adult/criminal jurisdiction.

ITM Division is in the final stages of development of adding the monthly Compensation Report to the database. Staff has been working with JusticeWorks to test the Compensation Report, create a district tutorial, and schedule district webinars. The report should be available for district use in February 2014.

Finally, staff has initiated the heat-maps on the state-level dashboards and moved the system to beta testing.

## **JUVENILE DIVISION**

The Juvenile Division has continued to monitor compliance with the Standards for Representation in Child in Need of Care Cases and the Standards for Representation in Delinquency Proceedings, and has continued to promote high quality representation across all fields.

Juvenile Justice Compliance Officer Tiffany Simpson has put together a new site visit compliance protocol in consultation with the entire staff, in order to ensure that site visits comprehensively measure and evaluate the effectiveness of a district or program office in providing cost-efficient and professional representation of all clients. This new protocol is more detailed than the previous protocol, requires the input and participation of a broad cross-section of staff, and measures all aspects of an office's duties to indigent clients. Among the goals of this new effort is to more systematically evaluate whether a district has opportunities to increase funding from local sources, is effectively using the DefenderData case management system, is avoiding conflicts of interests in representation, is appropriately training attorneys, is distributing caseloads fairly and equitably, has detailed plans for managing unexpected capital cases, and is promoting the elevation of juvenile and family defense practice. Re-design of this protocol was a major undertaking for Dr. Simpson and should prove beneficial to the office and to the institution of indigent defense for years to come.

On October 31, 2013, DPD-DJDS Richard M. Pittman participated in a hearing for the Louisiana Juvenile Justice Implementation Commission as a proxy for Chairman Frank X. Neuner. Presenters at this hearing included Board member Gina Womack of the Families of Friends of Louisiana's Incarcerated Youth.

On November 1, 2013, through November 3, 2013, DPD-DJDS Richard M. Pittman attended the annual Juvenile Defender Leadership Conference in Scottsdale, AZ, organized by the National Juvenile Defender Center (NJDC). Along with a Louisiana delegation that included Board member Hector Linares, Josh Perry of the Louisiana Center for Children's Rights, and Janet Brown, Tracy Davenport, and Raven Pillette of the 15<sup>th</sup> Judicial District District Defender Office, DPD-DJDS Pittman learned of national updates in juvenile law and Supreme Court decisions, networked with national allies, learned new techniques in defending those children accused of non-criminal offenses (also known as status offenses), techniques for defending children threatened with transfer to the adult system, and new developments in the field of

psychotropic medication, methods of appropriate representation of child victims of human trafficking, and appropriate ways to tailor representation when a client's court involvement is related to issues of sexual orientation or gender identity or expression. DPD-DJDS Pittman's attendance was sponsored by the NJDC, which paid for airfare and lodging.

DPD-DJDS Pittman has been named to the Advisory Committee for the Southern Juvenile Defender Center, a regional branch of the National Juvenile Defender Center. This organization hosts an annual conference and promotes quality juvenile defense practice throughout the South, and includes representatives from Louisiana, Mississippi, Alabama, Georgia Florida, South Carolina, and North Carolina.

On December 16-17, 2013, DPD-DJDS Pittman and JJCO Simpson attended the Models for Change Working Meeting in Washington D.C. The Louisiana delegation included Dr. Mary Livers of the Office of Juvenile Justice, Judge Patricia Koch of the 9<sup>th</sup> Judicial District, Dane Bolen of the Office of Juvenile Justice, Dr. Stephen Phillippi of the Institute for Public Health and Justice, along with a number of other staff members of that office, Josh Perry of the Louisiana Center for Children's Rights, and many others. Models for Change is an organization dedicated to reform of the juvenile justice system across a variety of parameters, including discouraging confinement of non-criminal offenders, promoting quality juvenile defense, improving conditions of confinement, preparing incarcerated children for release, and discouraging inappropriate transfer of children into the adult system.

In addition, the juvenile division has continued to monitor and maintain a list serve so that practitioners in this specialized field can effectively communicate with one another across the state. The list serve is open to all attorneys who practice in the area of juvenile or family defense. Topics range from esoteric discussions of law, referrals to expert witnesses, and practical discussions about interacting with other juvenile court stakeholders such as Magellan or OJJ. Since the last board meeting, the juvenile division has monitored 51 posts to the list serve, and posted several other matters directly.

The juvenile division has been actively involved in the CINC Task Force, which is a committee of child welfare stakeholders seeking to change the law to improve systems of representation for children, improve discovery, ensure timely representation of parents, and make other improvements to the child welfare system. The report of the CINC Task Force to the legislature is due in advance of the next legislative session, and then the work of the Task Force will conclude. DPS-DJDS Pittman and JJCO Simpson have drafted several proposed changes to the Children's Code and worked with representatives of CASA, DCFS, the Child Advocacy Program, Representative Schroder, the Children's Code Committee (represented by Board member Hector Linares), the Court Improvement Project, and the Louisiana District Attorney Association, in the course of his work with the Task Force.

In addition, the juvenile division has continued its work with the Domestic Violence Study Group and the Children's Justice Act committee to develop a diverse network of allies around the state.

## **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 (volume 3, issue 7 was released in December); updating the website with relevant announcements (including the appointment of Jay Dixon as State Public Defender on 12/7/13, which was also circulated to media in New Orleans, Baton Rouge, Alexandria, Shreveport, Monroe, Lake Charles and Lafayette), employment opportunities (and collecting application materials), events and information; and, participating in staff meetings and other discussions/projects as a member of the executive team.

She has devoted significant energy to the 2013 and 2014 LCLE grants, working with Corlis Green to monitor her programmatic deliverables from financial reports and the Financial Management Guide, continuing to prepare the *Trial Court Performance Standards* for publication, and completing required reports. She resumed activity improving the Community Oriented Defender Toolkit, dedicated some time to training Chase May to become the primary contact for LPDB website maintenance effective 1/1/14, drafted her assigned sections of the LPDB Annual Report and collected additional information from the SOAP Contractors. Finally, she has assisted Jay Dixon in his transition to State Public Defender by preparing talking points, providing historical information and developing the Board, Policy and DDAC agendas.

## **STATE PUBLIC DEFENDER**

During the month of November 2013, I split my time between Baton Rouge and Lake Charles in an attempt to transition between the two offices. During that time I both acclimated myself with the LPDB and prepared for my starting date as the State Public Defender

Within one hour of assuming the position, Jean Faria and I attended a scheduled meeting with the Commissioner of the Division of Administration. At that meeting I was asked how the Louisiana Public Defender Board could save the state money. I suggested a moratorium on the death penalty could save our agency and the state of Louisiana millions of dollars. There has been follow-up with the Division of Administration in this matter.

I set the search for a new Budget Officer as a priority. Today, our choice for Budget Officer, Lori Honore, accepted the position and has a starting date of January 20, 2014. We have received applications for the positions of Training Officer and General Counsel and will begin the process for hiring of those positions as soon as possible. We will begin advertizing for the position of Trial Compliance Officer some time next week.

Together with staff, we have been preparing a response to the preliminary report by the legislative auditor's office. While some might view portions of the report as critical, we look to it as an opportunity to improve the LPDB oversight of the capital services provided throughout the state. The staff has already revamped the application process for expert witness funds and developed a computer program to track and document the process. We request the Board and the Capital Working Group work to approve one of the submitted Capital Defense Guidelines so that we might satisfy this statutory requirement and eliminate one of the criticisms of the legislative auditor.

The first DDAC meeting was held last month. It is my hope that we can improve communication between the District Defenders and the Board and from that improve the services

provided in the field. The District Defenders in attendance reviewed a new data entry elements being developed for DefenderData. It is our hope to both increase the amount of data gathered and to standardize the data being entered. In preparation for this meeting, the staff has worked very hard to develop the LPDB Compliance Assessment Program and Site Visit Assessment. These are tools to assess each district office in its delivery of criminal defense services to the public. These tools were presented to the District Defenders.

Finally, we have been working very hard to stabilize the Expert Witness Fund (EWF) for capital cases. IT has developed a program that will ease the tracking of expert witness funding requests, approvals, and disbursements. Jean has implemented the new policies regarding EWF and has been working with the contract groups and district offices to ease their implementation.