



DISTRICT ASSISTANCE FUND ROS Prevention Funding

In 2010, the Budget Committee of the Louisiana Public Defender Board recommended to the Board, and the Board adopted, the use of an adjustment formula applicable to the original District Assistance Fund formula in an effort to cover district office financial shortfalls and delay inevitable restriction of services.

In September of 2014, the Board adopted the policy that the Board would decide, when necessary, on the applicability of an adjustment formula after due consideration of all pertinent information. The Board suspended the application of the adjustment formula for FY2016.

Whereas, in light of the state's budgetary crisis and the resultant restriction of public defense services in many districts, the Budget Committee recommended to the Board that staff be given the authority to disburse available funding to those districts which are in compliance with restriction of services policy and protocols in order to alleviate or prevent service restriction.

BE IT RESOLVED that staff is hereby given the authority disburse available funds in order to alleviate or prevent service restriction in those districts which are in compliance with the agency's Restriction of Services Policy and protocols.

Effective this 13th day of January, 2015 in perpetuity, until rescinded by action of the Board.

A handwritten signature in blue ink, appearing to read "Robert Burns", is written over a horizontal line.

Robert Burns, Chairman



EXPERT WITNESS FUND ENHANCEMENT

RESOLUTION

BE IT RESOLVED that the current Expert Witness Fund is to be enhanced by \$200,000 at the soonest opportunity within the fiscal year 2015. Staff shall take all steps necessary to effectuate this change, including but not limited to amendment of any contract for the administration of the Expert Witness Fund and securing state administrative approval of the contract amendment. This Resolution does not intend and does not imply that the Louisiana Public Defender Board is committing to future enhancements of the Expert Witness Fund beyond this enhancement for fiscal year 2015.

Signed, this 13th day of January, 2015, at Baton Rouge, Louisiana.

A handwritten signature in blue ink, appearing to read "Robert Burns", is written over a horizontal line.

Robert Burns, Chairman



RESOLUTION

On the 24th day of March, 2015, at a meeting of the Louisiana Public Defender Board, held in Baton Rouge, Louisiana, with a quorum of members present, the following business was conducted:

It was duly moved and seconded, that the following resolution be adopted:

WHEREAS, it is the Policy of this Board and the law of the State, that District Defenders under contract with the Board are expected to follow the promulgated Service Restriction Protocol (LAC22:XV.Chapter 17).

WHEREAS, many District Defenders are experiencing either fiscal crisis and/or excessive workload and cannot ethically represent their clients as required by the Louisiana Rules of Professional Conduct, all trial performance standards, and the terms of their contracts with the Board.

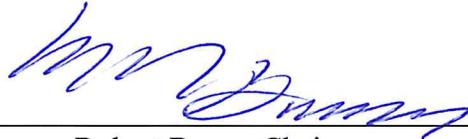
WHEREAS, line defenders, supervisors, and district defenders have been threatened with sanction for following the Service Restriction Protocol;

BE IT RESOLVED that the Board acknowledges the need to restrict services in the event that a district faces excessive caseloads or financial crisis.

BE IT ALSO RESOLVED that the Board is dedicated to supporting those districts whose financial condition or caseloads necessitate restricting services in order to ensure clients are ethically represented pursuant to the Louisiana Rules of Professional Conduct, that all trial performance standards are met, and that District Defenders are able to comply with the terms of their contracts.

BE IT ALSO RESOLVED that the Board discourages and condemns any action that sanctions a line defender, supervisor, district defender, or member of staff for any action taken by the District or any employee of the District as part of an approved Restriction of Services plan.

I CERTIFY THAT the above and foregoing constitutes a true and correct copy of the resolution resulting from a meeting of the Louisiana Public Defender Board held on the 24th day of March, 2015.



Robert Burns, Chairman



JUVENILE SERVICE RESTRICTION POLICY

PURPOSE OF POLICY

“Juvenile service restriction” is a restriction of public defense services that involves or results in the denial or unusual delay of public defense services to an otherwise-eligible person who is subject to prosecution as a juvenile under Title VII or VIII of the Louisiana Children’s Code or who is subject to prosecution as an adult under La. Ch. C. art. 305 or 857. “Juvenile service restriction” includes, but is not limited to, placing youth on a “waitlist.”

In the event that public defenders must implement a service restriction plan, this policy is to ensure that youth in Louisiana’s juvenile justice system are protected, in accordance with their uniquely vulnerable status.

ADHERING TO CASELOAD LIMITS WITH JUVENILE AND TRANSFER CASES

1. District defenders, in implementing service restriction plans, should not increase caseloads for attorneys beyond the levels that were maintained prior to restriction of services, while adjusting for changes in pay and available resources for attorneys.

PRIORITIZING JUVENILE AND TRANSFER CASES

2. District defenders, in implementing service restriction plans, must not withdraw from representing, or otherwise cease providing public defense services, to any existing clients in any existing juvenile or transfer cases.
3. District defenders, in implementing juvenile service restriction plans, must prioritize services in keeping with the following rules of thumb. Priority should be granted to the following types of cases, in order of priority:
 - a. Transfer cases that carry the possibility of life imprisonment
 - b. Transfer cases that carry the possibility of sex offender registration
 - c. All other transfer cases
 - d. In all non-transfer cases, District Defenders should prioritize appointments in new cases based on the following guidelines:
 - i. Where the accused is in custody, any juvenile charged with a felony should be prioritized over any non-juvenile in custody who is also charged

with a felony, unless the non-juvenile is involved with a case that implicates the possibility of sex offender registration or life imprisonment.

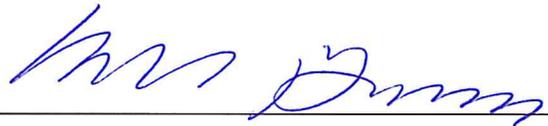
- ii. Where the accused is not in custody, any juvenile charged with a felony should be prioritized over any non-juvenile not in custody who is also charged with a felony, unless the non-juvenile is involved with a case that implicates the possibility of sex offender registration or life imprisonment.
- iii. Where the accused is in custody, any juvenile charged with a misdemeanor should be prioritized over any non-juvenile in custody who is also charged with a misdemeanor, unless the non-juvenile is involved with a case that implicates the possibility of sex offender registration.
- iv. Where the accused is not in custody, any juvenile charged with a misdemeanor should be prioritized over any non-juvenile not in custody who is also charged with a misdemeanor, unless the non-juvenile is involved with a case that implicates the possibility of sex offender registration.

REPORTING

4. If a district defender implements a service restriction plan that involves juvenile service restriction, the district defender must report, by the tenth of each month, the following information concerning the previous month to the Juvenile Justice Compliance Officer of Louisiana Public Defender Board:
 - a. The total number of juvenile cases in which the district provided public defense services, disaggregated by new cases received during the month and active-status cases carried into the month;
 - b. The total number of transfer cases in which the district provided public defense services, disaggregated by new cases received during the month and active-status cases carried into the month;
 - c. The beginning and ending caseload – measured on the first and last day of the relevant month – of each attorney providing public defense services in one or more juvenile and/or transfer cases, disaggregated by type of case;
 - d. The number of new juvenile cases, including revocation cases, placed on the district's waitlist during the month, or in which the district otherwise was unable to provide services as a result of a service restriction, disaggregated by custody status of the youth in those cases and by whether the case was pre- or post-disposition;
 - e. The number of new transfer cases placed on the district's waitlist during the month, or in which the district otherwise was unable to provide services as a result of a service restriction, disaggregated by custody status of the youth in those cases;

- f. The sum total of juvenile cases on the district's waitlist; and,
 - g. The sum total of transfer cases on the district's waitlist.
5. The Juvenile Justice Compliance Officer of Louisiana Public Defender Board shall provide districts subject to restriction of services with an appropriate electronic or paper form for use in reporting under this policy, or shall ensure that the DefenderData Case Management System provides for capturing all of the data points required under this Policy.
 6. As long as any district is under juvenile service restriction, Board staff shall report on the effects of the restriction of services on juveniles, at each meeting of the full Board. The report shall include a list of all districts under service restriction and a list of all districts whose service restriction include juvenile service restriction, with a description of those juvenile service restrictions.

I CERTIFY THAT the above and foregoing constitutes a true and correct copy of the resolution resulting from a meeting of the Louisiana Public Defender Board held on the 24th day of March, 2015.



Robert Burns, Chairman



RESOLUTION

WHEREAS juvenile delinquency and juvenile status offense defense are essential elements of the Louisiana public defense system;

WHEREAS many districts around the state are in restriction of services or are expected to go into restriction of services in the foreseeable future;

WHEREAS restriction of services is expected to impact juvenile delinquency and juvenile status offense defense;

WHEREAS public defense in the State of Louisiana is chronically underfunded;

WHEREAS the income streams upon which the districts rely is unreliable and out of the direct control of the districts;

WHEREAS children in the juvenile justice system are particularly vulnerable;

WHEREAS incarceration is especially damaging to children and their families;

WHEREAS prompt commencement representation of clients is vital to effective defense of children; and

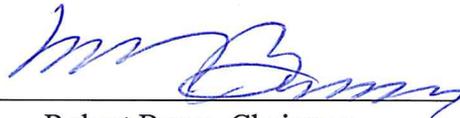
WHEREAS fully funded high quality representation of juveniles will have a long term beneficial impact on children, families, communities, and the adult criminal justice system;

The Board hereby resolves that staff is to engage stakeholders from around the juvenile defense and public defense community to engage in strategic planning for the future of juvenile defense.

The strategic planning process should produce an attractive and inspiring strategic document that serves as an external communication tool to engage and motivate stakeholders. This plan should craft specific and achievable action steps for responsible parties for three years preceding the development of the plan and describe a vision for juvenile defense for a number of years beyond that period. Staff shall provide the Board with regular updates on the progress of strategic

planning and on progress made towards fulfilling the adopted strategic plan. Staff shall report on progress on developing, implementing and advancing the goals of the strategic plan at each Board meeting.

Adopted this 24th day of March, 2015, at Baton Rouge, Louisiana



Robert Burns, Chairman



RESOLUTION

On the 24th day of March, 2015, at a meeting of the Louisiana Public Defender Board (LPDB), held in Baton Rouge, Louisiana, with a quorum of members present, the following business was conducted:

It was duly moved and seconded, that the following resolution be adopted:

WHEREAS, there are districts that will be adversely affected by the present system of disbursing District Assistance Fund (DAF) and Child In Need Of Care (CINC) monies in two stages; and,

WHEREAS, some districts need the entire DAF and CINC monies at the beginning of the fiscal year in order to minimize the effects of their respective Restriction of Services Plan; and,

WHEREAS, in the past the LPDB has disbursed these funds in two payments, one at the beginning of the fiscal year and one prior to the end of the calendar year, and for the 2016 fiscal year it would be prudent to disburse funds in one payment at the beginning of the fiscal year.

BE IT RESOLVED that the District Assistance Fund distribution and the CINC District Assistance Fund Distribution ("the funds") shall be calculated and determined according to previous practices and that the Board and its Staff shall distribute the funds in one disbursement as close to the beginning of the 2016 fiscal year as is reasonably practical.

This resolution shall become effective July 1, 2015.

Signed this 24th day of March, 2015, at Baton Rouge, Louisiana.

A handwritten signature in blue ink, appearing to read "Robert Burns", is written over a horizontal line.

Robert Burns, Chairman



POLICY

WHEREAS La. R.S. 15:161(E)(1) gives district public defenders the responsibility to manage and supervise public defender services within his or her judicial district;

WHEREAS La. R.S. 15:161(E)(6) gives district public defenders the responsibility to supervise the work of district personnel;

WHEREAS La. R.S. 15:161(E)(7) and (8) give the district public defender the responsibility to employ appropriate personnel or contract with appropriate personnel;

WHEREAS La. R.S. 15:161(13) gives the district public defender the responsibility to terminate district personnel, manage and supervise district level work, and establish district personnel salaries;

WHEREAS maintaining the district public defender's responsibilities is not possible unless the district public defender maintains control of personnel and expenditures;

IT IS THE POLICY OF THIS BOARD that voluntary local funds provided by stakeholders or interested parties for the support of indigent defense should not be paid directly to public defenders, and shall instead be provided to the Judicial District Indigent Defender Fund to be managed by the district defender. Nothing in this Policy shall prevent the district public defender from entering into agreements or understandings with stakeholders or interested parties providing funding regarding the purpose of funding or access to non-confidential records or accounting, or to discourage the district public defender from entering into appropriate joint endeavors with funders.

Adopted and passed the the 12th day of May, 2015, at Baton Rouge, Louisiana.

Signed the 16th day of June, at Baton Rouge, Louisiana.


Robert Burns, Chairman



POLICY

WHEREAS La. R.S. 15:161(E)(1) gives district public defenders the responsibility to manage and supervise public defender services within his or her judicial district;

WHEREAS La. R.S. 15:161(E)(6) gives district public defenders the responsibility to supervise the work of district personnel;

WHEREAS La. R.S. 15:161(E)(7) and (8) give the district public defender the responsibility to employ appropriate personnel or contract with appropriate personnel;

WHEREAS La. R.S. 15:161(13) gives the district public defender the responsibility to terminate district personnel, manage and supervise district level work, and establish district personnel salaries;

WHEREAS maintaining the district public defender's responsibilities is not possible unless the district public defender maintains control of personnel and expenditures;

IT IS THE POLICY OF THIS BOARD that voluntary local funds provided by stakeholders or interested parties for the support of indigent defense should not be paid directly to public defenders, and shall instead be provided to the Judicial District Indigent Defender Fund to be managed by the district defender. ~~or to another fund under the control of the district defender.~~ Nothing in this Policy shall prevent the district public defender from entering into agreements or understandings with stakeholders or interested parties providing funding regarding the purpose of funding or access to non-confidential records or accounting, or to discourage the district public defender from entering into appropriate joint endeavors with funders.

Adopted and passed the the 12th day of May, 2015, at Baton Rouge, Louisiana.

Robert Burns, Chairman



THE LOUISIANA PUBLIC DEFENDER BOARD

RESOLUTION

The following Resolution was offered by Franz Borghardt who moved for its adoption, was seconded by Herbert Larson, and passed unanimously at the July 30, 2015, meeting of the Louisiana Public Defender Board (the Board):

WHEREAS, the Capital Assistance Project of Louisiana (CAPOLA) provided indigent defense representation to the defendant in *State v. Robert J. Barthelemy*, Docket Numbers 2013-CR-072667, 72668 and 72669, in the 11th Judicial District Court, Parish of Sabine; and

WHEREAS, the case is scheduled for trial on September 28, 2015;

WHEREAS, on July 23, 2015, second-chair attorney Mr. Jay Florence asked the court to be released from the case;

WHEREAS, lead trial counsel Mr. Richard Goorley requested that the Court appoint Mr. Daryl Gold as second chair and to Order the LPDB to provide funding for lead counsel, second chair counsel, and core team members consisting of a mitigation specialist, an investigator and a paralegal as well as an office administrator.

WHEREAS, the court appointed Mr. Daryl Gold as second chair and Ordered the LPDB to return to Court on August 26, 2015, with a recommendation for contracting with Mr. Goorley and Mr. Gold and for the funding that has been requested.

WHEREAS, by law, all capital defendants are required to be represented by two qualified attorneys; and

WHEREAS, LPDB is cognizant of the need for continuity of counsel in capital cases;

WHEREAS, the LPDB cannot acquiesce in, and does not agree to, the appointment of Mr. Daryl Gold as counsel for Robert J. Barthelemy in *State v. Barthelemy*, Docket Nos: 2013-CR-072667, 072668, and 27669, in the 11th Judicial District Court; that such an appointment is contrary to law, this being Louisiana Supreme Court Rule XXXI and La. R.S. 15:169; and, moreover, the LPDB will not fund or pay for any work performed by Mr. Gold as capital counsel due to lack of certification, having been decertified previously by the Board;

WHEREAS, should the Court appoint properly certified counsel as second chair in *State v. Barthelemy*, the LPDB will fund second chair after entering into separate contract for services with certified counsel.

WHEREAS, any funding of Robert J. Barthelemy's defense is pursuant to the Court's express Order and that as a consequence is not to be construed as a waiver of any rights of the LPDB in its litigation with Richard Goorley or CAPOLA or both and that all such rights are expressly reserved;

WHEREAS, the funding of the capital defense of Robert J. Barthelemy will be done in accordance with the standards of this Board and state law;

WHEREAS, payment will be made in accordance with those same standards and regulations, upon receipt of contractually required documentation;

WHEREAS, payments will be made in accordance with established LPDB capital procedures and the State of Louisiana Division of Administration;

WHEREAS, the Board responds to the ruling and resolves that in the best interest of the defendant Robert J. Barthelemy it desires counsel Richard Goorley to continue to represent Mr. Barthelemy in connection with the above referenced capital case, pursuant to LPDB and Division of Administration rules, policies, and protocols; and,

WHEREAS, this resolution shall take effect immediately.

THEREFORE BE IT RESOLVED that the Louisiana Public Defender Board, pursuant to La. R.S. 42:262, does hereby retain Richard Goorley; and

BE IT FURTHER RESOLVED that should the Court appoint properly certified Associate Trial Counsel to sit as second chair, the Louisiana Public Defender Board shall fund Associate Trial Counsel in accordance with the standards of this Board and state law; and

BE IT FURTHER RESOLVED that the appropriate Resolution and proposed contract described herein be submitted to the Attorney General for the State of Louisiana for approval.

The resolution having been submitted to a vote, the vote thereon was as follows:

YEAS: 9

NAYS: 0

ABSENT: 5

NOT VOTING: 1

Whereupon the Resolution was declared adopted by the Louisiana Public Defender Board on the 30TH day of July, 2015.

I, Robert J. Burns, Chairman of the Louisiana Public Defender Board, hereby certify the above and foregoing to be a true and exact copy of a resolution adopted by the said Board at its meeting held July 30, 2015, at which a quorum was present, and the same has not been revoked, rescinded or altered in any manner, and is in full force and effect.

Witness my hand this 11 day of August, 2015.



Judge Robert J. Burns (Retired), Chairman



RESOLUTION

On the 15th day of September, 2015, at a meeting of the Louisiana Public Defender Board, held in Baton Rouge, Louisiana, with a quorum of members present, the following business was conducted:

It was duly moved and seconded, that the following resolution be adopted:

WHEREAS, the Louisiana Public Defender Act, R.S. 15:141, *et seq.* was enacted to, inter alia, provide the Board with the staff it needs to advance the quality of the practice of public defense in the state of Louisiana; and

WHEREAS, the Trial Level Compliance Officer is one such position created to develop evaluation protocols to assess trial-level district compliance with board-adopted standards and guidelines, monitor the quality of representation in the districts and the contract programs based on those standards and guidelines throughout the state, oversee regular assessments and ongoing monitoring, and report to the Board regularly on the compliance of the districts throughout the state; and

WHEREAS, the Deputy Public Defender – Director of Training is one such position created to coordinate training of public defenders throughout the state, establish and supervise a training and performance evaluation program for attorneys, non-attorneys and contractors throughout the state, establish training and educational programs for all public defender attorneys, and assist in the development and dissemination of standards and guidelines, procedures, and policies for public defender services throughout the state; and

WHEREAS, the staff of the LPDB is dedicated to improving the quality of public defense services for all indigent clients throughout the state and these two statutorily required positions are essential for the Board to carry out its statutory responsibilities of assuring the courts, legislature and the public that practice standards are being met and that the Board is meeting its oversight, supervisory and fiduciary obligations and protecting the public fisc; and

WHEREAS, the LPDB Budget Committee received a report on March 9, 2015, advising the Board that the administrative budget was reduced by \$517,376 for FY16; and

WHEREAS, due to these budget cuts, the Board has been unable to fill two key executive staff positions, namely, the Trial Level Compliance Officer and Deputy Public Defender – Director of Training, which has restricted the Board's ability to fully provide the responsibilities and duties of each of these positions; and

WHEREAS, in the absence of the Trial Level Compliance Officer and the Deputy Public Defender – Director of Training positions, other members of staff endeavor to provide the services attributed to these positions while fulfilling their own statutory duties;

BE IT RESOLVED that the Board recognizes the inability to fill the statutorily required positions due to financial constraints impairs staff's capacity to meet LPDB's statutory obligations and contradicts the letter and spirit of the Louisiana Public Defender Act, R.S. 15:141 *et seq*; and

BE IT ALSO RESOLVED that the Board wants all criminal justice stakeholders to recognize that the LPDB must be fully funded to ensure the mission of the Louisiana Public Defender Board is carried out, which includes all statutorily mandated position be properly filled.

I CERTIFY THAT the above and foregoing constitutes a true and correct copy of the resolution resulting from a meeting of the Louisiana Public Defender Board held on the 15th day of September, 2015.



Judge Robert Burns (Retired), Chairman



RESOLUTION

On the 1st day of December, 2015, at a meeting of the Louisiana Public Defender Board, held in Baton Rouge, Louisiana, with a quorum of members present, the following business was conducted:

It was duly moved and seconded, that the following resolution be adopted:

WHEREAS, the Louisiana Supreme Court issued an opinion in State v. Jessie M. Griffin, II, No. 2014-KP-1214; No. 2014, wherein the Court determined the district attorney and the local sheriff may impose costs of prosecution and costs of investigation, respectively, on convicted criminal defendants under La. C.Cr.P. Art. 887(A) and La. C.Cr.P. art. 895.1;

WHEREAS, this amounts to a new fee to be imposed upon the indigent defendant in criminal cases in the State of Louisiana;

WHEREAS, the Louisiana criminal justice system already has an excess of user fees imposed upon indigent defendants in criminal cases;

WHEREAS, the Board is concerned indigent clients will be assessed with these fees without any determination of their ability to pay and without regard for the hardship that would result from this additional fee; and

WHEREAS, the Board is concerned an agreement to pay costs of prosecution and investigation could be required by the state in return for a plea offer to an indigent defendant.

BE IT RESOLVED that the imposition of costs of prosecution and costs of investigation fees are condemned by the Board in any case involving indigent clients;

BE IT ALSO RESOLVED that the Board directs all District Defenders to be vigilant toward court assessment of such fees against their clients;

BE IT ALSO RESOLVED that District Defenders be diligent in opposing the practice of requiring the acquiescence of clients to the payment of such fees in return for a plea offer;

BE IT ALSO RESOLVED that the Board urges all District Defenders to be vigilant in requiring the state and the court to determine a client's ability to pay such fees in cases wherein the client has been deemed indigent and is provided the services of the public defender.

BE IT ALSO RESOLVED that the Board directs all District Defenders to inform line defenders whose clients may be impacted by this practice of its effect on clients and instruct them consistent with this Resolution.

I CERTIFY THAT the above and foregoing constitutes a true and correct copy of the resolution resulting from a meeting of the Louisiana Public Defender Board held on the 1st day of December, 2015.



Robert Burns, Chairman



ASSIGNMENT OF CAPITAL CASES DURING RESTRICTION OF SERVICES

RESOLUTION

On the 1st day of December, 2015, at a meeting of the Louisiana Public Defender Board, held in Baton Rouge, Louisiana, with a quorum of members present, the following business was conducted:

It was duly moved and seconded that the following resolution be adopted:

BE IT RESOLVED that when a District Defender Office is in Restriction of Services (ROS) the District Defender is prohibited from accepting new capital cases. District Defenders in Restriction of Services are to immediately notify the Capital Case Coordinator of first degree murder arrests in their respective districts, supplying the name of the client, date of arrest and location if known. Representation of clients charged with capital offenses shall be provided pursuant to the Louisiana Public Defender Board Capital Defense Guidelines. (LAC 22:XV.Chapter 9).

As required by LAC 22:XV.911(H), where the district defender is unable to assign counsel, the state public defender shall be notified immediately. Where the state public defender is also unable to assign counsel, the state public defender shall immediately cause to be filed with the relevant court a notice that counsel cannot be assigned at this time. In such cases, the state public defender shall assign capitally certified counsel for the limited purpose of protecting the capital defendant's rights, including pursuing a halt of the prosecution. Notwithstanding the assignment of counsel for this limited purpose, the state public defender and district public defender shall have an ongoing responsibility to identify counsel suitable for assignment to the case.

Where the District Attorney advises that the death penalty will not be sought, the district defender shall immediately notify the state public defender. In such a case, if certified counsel has been assigned for the limited purpose of protecting the defendant's rights pursuant to LAC 22:XV.911(H)(2), the district defender shall assign appropriate counsel to represent the defendant and to substitute for counsel assigned for the limited purpose of protecting the defendant's rights.

A district in ROS should cease capital expenditure beyond that already required by existing cases and any money or attorney time budgeted for capital representation that is not being used on those existing cases should be re-purposed for non-capital representation.

The above resolution was passed by a majority of those Board members present and voting at the meeting.

I CERTIFY THAT the above and foregoing constitutes a true and correct copy of the resolution resulting from a meeting of the Louisiana Public Defender Board held on the 1st day of December, 2015.



**ROBERT BURNS,
CHAIRMAN**



LOUISIANA PUBLIC DEFENDER BOARD

EMERGENCY BOARD MEETING

Thursday, July 30, 2015
LSU Law Center, 2nd Floor, Tucker Room, 2:00 pm
Baton Rouge LA 70806

Minutes

1. Call to Order. A meeting of the Louisiana Public Defender Board, pursuant to lawful notice, was duly convened and called to order by its Chairman on Thursday, July 30, 2015 at 2:15 p.m. at the LSU Law Center, Tucker Room, in Baton Rouge, Louisiana.

The following Board members were present:

| | | |
|------------------------|------------------|----------------------|
| Robert Burns, Chairman | Franz Borghardt | Flozell Daniels, Jr. |
| Frank Holthaus | Rebecca Hudsmith | Robert Lancaster |
| Herb Larson | Hector Linares | Tom Lorenzi |
| Herschel Richard | | |

The following Board members were absent:

| | | |
|----------------|-----------------------|--------------|
| Hampton Carver | Jacqueline Nash Grant | Leo Hamilton |
| Steven Singer | Gina Womack | |

The following members of the Board's staff were present:

Jay Dixon, State Public Defender
Barbara Baier, General Counsel
Natashia Carter, Acting Budget Officer
Jean Faria, Capital Case Coordinator
Anne Gwin, Executive Assistant
Richard Pittman, Dep. Public Defender, Dir. Juvenile Defender Services
Tiffany Simpson, Juv. Justice Compliance Officer/Director of Legis. Affairs

Chairman Burns thanked the Board members for attending on such short notice and asked Mr. Dixon to give a brief summary of the issues to be discussed.

Mr. Dixon reported that Capital Case Coordinator Jean Faria and he have been subpoenaed to reappear on August 26, 2015, in Sabine Parish (11th Judicial District Court) before Judge Beasley in the matter *State v. Robert J. Barthelemy* to resolve the representation and funding issues in that capital case. Mr. Dixon stated that staff was seeking approval and direction by the board

regarding contracting with counsel, which contract would include payment of legal and other fees.

2. Executive Session*. Mr. Borghardt moved to go into executive session, which was seconded by Hector Linares and passed unanimously.

Mr. Borghardt moved to leave executive session, seconded by Herschel Richard and passed unanimously.

3. Contract Attorney, State v. Barthelemy*. Upon return to regular session, the Board discussed the pending issues in the *Barthelemy* case. Mr. Dixon reported that he and Ms. Faria have been ordered to submit the LPDB's recommendation for contracting with Mr. Richard Goorley to remain as counsel or record through the trial and to provide funding to cover legal expenses. Mr. Goorley has submitted proposed budget in the amount of \$308,923.35 which staff has reviewed. Mr. Larson proposed a six part motion for incorporation into a resolution for board discussion and adoption.

Upon the reading of the proposed motion, the Board asked for further clarification regarding funding policy, protocol and precedent. After a brief discussion the Board resolved that in the best interest of the client, Robert J. Barthelemy, the LPDB would contract with Mr. Richard Goorley as lead counsel at an hourly rate not to exceed \$110 per hour and would provide funding for a mitigator, paralegal, and investigator capped at \$45,000 (pursuant to approved invoices submitted pursuant to LPDB guidelines and protocols) with travel time to be reimbursed at one-half the hourly rates; but, would not include any funds for Mr. Daryl Gold or any other not-certified attorney, or an office administrator.

Mr. Borghardt moved to adopt the six part proposed motion presented by Mr. Larson. The following friendly amendments were made: removal of cites to be replaced by "state laws," that the proposed motion is to indicate unanimity of the Board, and that the unanimous six part motion be presented to the Court by LPDB attorneys of record, John Landis and/or Maggie Broussard. Mr. Larson accepted the friendly amendments and seconded the motion as follows, for adoption and inclusion in a resolution:

(1) That the Louisiana Public Defender Board cannot acquiesce in, and does not agree to the appointment of Mr. Daryl Gold as counsel for Robert J. Barthelemy in State v. Barthelemy, Docket Nos: 2013-CR-072667, 072668, and 27669, in the 11th Judicial District Court;

That such an appointment is contrary to law; this being Louisiana Supreme Court Rule XXXI and La. R.S. 15:169;

Moreover, the LPDB will not fund or pay for any work performed by Mr. Gold as capital counsel due to lack of certification;

(2) That the Court appoint properly certified counsel as second chair in State v. Barthelemy;

(3) That any funding of Robert J. Barthelemy's defense is pursuant to the Court's express Order; and that as a consequence is not to be construed as a waiver of any rights

of the LPDB in its litigation with Richard Goorley or CAPOLA or both. All such rights are expressly reserved;

(4) That the funding of the capital defense of Robert J. Barthelemy will be done in accordance with the standards of this Board and state law;

(5) That payment will be made in accordance with those same standards and regulations, upon receipt of contractually required documentation; and,

(6) Payments will be made in accordance with established LPDB capital procedures and the State of Louisiana Division of Administration.

The motion passed unanimously.

Mr. Larson moved that minutes should reflect that State Public Defender and Capital Case Coordinator Jean Faria have recommended to the Board and the Board has accepted the recommendation that contracting with Mr. Goorley and funding in *State v. Barthelemy* be provided in a manner that is consistent with law. Mr. Borghardt seconded the motion which passed unopposed.

Judge Burns instructed staff to draft a resolution pursuant to the Board's action.

4. Adjournment*. Mr. Richard moved to adjourn, seconded by Mr. Larson and passed unopposed.

I HEREBY CERTIFY that the foregoing is a full, true, and correct account of the proceedings of the Louisiana Public Defender Board meeting held on the 30th day of July, 2015, as approved by the Board on the 15th day of September, 2015, at Baton Rouge, Louisiana.


Robert J. Burns (Ret.), Chairman

**Requires Board Action*



LOUISIANA PUBLIC DEFENDER BOARD

BOARD MEETING
Tuesday, December 1, 2015
LSU Law Center, Tyson Room
Baton Rouge, LA 70806
2:00 p.m.

MINUTES (Amended)

1. **Call to Order and Remarks of the Chairman.** A meeting of the Louisiana Public Defender Board, pursuant to lawful notice, was duly convened and called to order by its Chairman on Tuesday, December 1, 2015, at 2:05 p.m. at the LSU Law Center, Tyson Room, in Baton Rouge, Louisiana.

The following Board members were present:

Robert Burns
Leo Hamilton
Tom Lorenzi
Gina Womack

Franz Borghardt
Robert Lancaster
Herschel Richard

Hampton Carver
Hector Linares
Steven Singer

The following Board members were absent:

Flozell Daniels, Jr.
Herbert Larson¹

Frank Holthaus
Jacqueline Nash-Grant

Rebecca Hudsmith

The following members of the Board's staff were present:

Jay Dixon, State Public Defender
Barbara Baier, General Counsel
Natashia Carter, Acting Budget Officer
Jean Faria, Capital Case Coordinator
Anne Gwin, Executive Assistant
Richard Pittman, Dep. State Public Defender, Dir. Juvenile Defender Services
Tiffany Simpson, Juv. Justice Compliance Officer/Director of Legis. Affairs
Erik Stilling, ITM Director

Chairman Burns reminded everyone that the deadline to complete the annual mandatory ethics course is December 31, 2015.

2. **Call for Public Comment.** No one presented for public comment.

¹ Herbert Larson was inadvertently omitted from the Minutes as presented to the Board for adoption on February 16, 2016. These amended minutes reflect his absence.

3. Adoption of the Agenda*. Mr. Hamilton moved to amend the agenda. Ms. Womack seconded the motion. Mr. Hamilton moved that items 5 and 6, Executive Session and Policy Committee Report and Recommendations, respectively, be switched in order on the agenda for discussion and that the agenda be approved as amended. Ms. Womack seconded the motion which passed unopposed.

4. Review of the Minutes, September 15, 2015*. Mr. Richard moved that the minutes of the September 15, 2015 meeting be adopted as presented. Mr. Hamilton seconded the motion which passed unopposed.

5. Policy Committee Report and Recommendations. Policy Committee Chairman Leo Hamilton reported that the Policy Committee did not meet due to lack of quorum and moved that the following issues be brought to the full Board for discussion and action without Committee recommendations. Mr. Borghardt seconded the motion which passed unopposed.

a. **Resolution: Costs of Prosecution/Investigation.** State Public Defender Jay Dixon reported that a recent Supreme Court case allows for the costs of prosecution and investigation to be imposed on convicted criminal defendants which could result in the assessment of fees without any determination of a defendant's ability to pay and without any regard for the hardship that would result from the additional fees. Further, there are concerns that an agreement to pay costs of prosecution and investigation could be required by the state in return for a plea offer to an indigent defendant. LPDB staff is proposing, by Resolution, that all District Defenders are to be vigilant toward court assessment of such fees against their clients, diligent in opposing the practice of requiring the acquiescence of clients to pay such fees in return for a plea offer, vigilant in requiring the state and the court to determine a client's ability to pay such fees in cases wherein the client has been deemed indigent and is provided the services of the public defender and directs all District Defenders to inform line defenders whose clients may be impacted by this practice of its effect on clients and instruct them consistent with this Resolution. Mr. Hamilton moved for adoption of the proposed Resolution as presented, which was seconded by Mr. Borghardt and passed unopposed.

b. **Full Time vs. Part Time Status for District Defenders - District 3 and 5.** SPD Dixon reported that, in the search for a District Defender in Districts 3 (Lincoln/Union) and 5 (Franklin, Richland, W. Carroll), the interims who have been put in place have indicated they will not accept the position full-time, which would require relinquishing their private practices. After a brief discussion, Mr. Hamilton moved that, prospectively, the Board hire district defenders strictly on a full time basis. Mr. Richard seconded the motion. Prof. Singer proposed a friendly amendment to include a waiver based on exceptional circumstances which would require approval by the Board. Mr. Hamilton accepted the amendment and the motion passed unopposed, as amended. Also discussed was that the policy would permit a new hire to keep an existing private practice provided no new case are accepted, and the private practice would be worked down to closure.

c. **Resolution: Districts in ROS—Capital Case Assignment.** Capital Case Coordinator Jean Faria presented a Resolution which would prohibit a District Defender Office in Restriction of Services (ROS) from accepting new capital cases, ceasing capital expenditures beyond those already required by existing cases and repurposing any money or attorney time budgeted for capital representation that is not being used on existing cases for non-capital representation. After a brief discussion, Mr. Hamilton moved

adoption of the Resolution as presented which was seconded by Mr. Borghardt and passed unopposed.

6. **Executive Session***. Mr. Borghardt moved to go into Executive Session which was seconded by Professor Singer and passed unanimously. Prof. Singer moved to leave executive session which was seconded by Franz Borghardt and passed unanimously.

7. **District Issues.**

a. District 9. SPD Dixon reported that District Defender Glenn Cortello (Rapides) has resigned his position effective November 30, 2015, and that the chief judge and State Bar President have been contacted to begin the formation of a selection committee in that district. Pending selection of a new District Defender, SPD Dixon requested the Board's ratification of the appointment of Tony Tillman as interim at a salary of \$3000 a month. Mr. Richard moved for appointment and salary ratification which was seconded by Mr. Lorenzi and passed unopposed.

b. **District Defender Selection Status and Recommendations***

i. District Defender Interim Appointments/Salary Ratifications for Districts 1 (Caddo), 2 (Claiborne/Bienville/Jackson), 3(Lincoln/Union), 5 (Franklin/Richland/W Carroll), and 26 (Bossier/Webster). SPD Dixon requested ratification of the following interim appointments and salaries:

District 1 – Ms. Pamela Smart/\$8,333 per month. Mr. Hamilton moved for ratification which was seconded by Mr. Richard and passed unopposed.

District 2 – Donald Kneipp/\$6250 per month. Mr. Richard moved for ratification which was seconded by Mr. Hamilton and passed unopposed.

District 3 – Rick Candler/\$6,666 per month. Mr. Hamilton moved for ratification which was seconded by Mr. Richard and passed unopposed.

District 5 – Dawn Mims/\$6,666 per month. Mr. Richard moved for ratification which was seconded by Mr. Hamilton and passed unopposed.

District 26 – Pamela Smart/\$3,000 per month. Mr. Hamilton moved for ratification which was seconded by Mr. Richard and passed unopposed.

ii. District Defender Appointments and Salary Recommendations, for Districts 1, 2, 3, 5, and 33 (Allen). SPD Dixon requested that the Board appoint the following as permanent District Defenders and approve salaries as presented:

District 1 –Pamela Smart, Full-Time, \$100,000 annually. Mr. Hamilton moved for approval which was seconded by Mr. Richard and passed unopposed.

District 2 – Donald Kneipp, Full-Time, \$75,000. Mr. Hamilton moved for approval which was seconded by Ms. Womack and passed unopposed.

District 3 – Rick Candler, Part-Time, \$80,000. The appointment of Mr. Candler failed without a motion being raised.

District 5 – Dawn Mims, Part Time, \$80,000. The appointment of Ms. Mims failed without a motion being raised.

District 33 – Greg Guidry, Full-Time, \$90,000. Mr. Lorenzi moved for approval which was seconded by Mr. Hamilton and passed unopposed.

iii. District Defender Appointment Status – Districts 3, 9, and 26. SPD Dixon reported that the selection process would re-open in Districts 3 and 5. The LSBA President and chief judge have been contacted to begin the process in District 9, and a selection committee has been formed in District 26.

Mr. Hamilton moved to amend the agenda which was seconded by Mr. Borghart and passed unopposed. Mr. Hamilton moved to add an out-of-state travel policy waiver to the agenda as item 8c, for discussion. Mr. Borghardt seconded the motion which passed unopposed.

8. Budget and Fiscal Issues.

a. **Financial Report***. Acting Budget Officer Natasha Carter reported that \$21,993,841 has currently been expended, \$938,7461 encumbered, \$2,202,906 projected to be expended or encumbered through Jun 30, 2016, leaving \$146,474 available for reallocation. Of the reallocation funds, \$85,441 for personal services may not be reallocated, leaving \$61,034 currently available for reallocation to the districts. Mr. Hamilton moved to adopt the financial report as presented which was seconded by Herschel Richard and passed unopposed.

b. **Laura and John Arnold Foundation Grant – Update.** Ms. Faria reported that the LPDB has an opportunity to receive \$119,000 in grant funds for the on-going caseload study; however, LPDB will need to cover the cost of the econometric portion of the study to be provided by the Baton Rouge based CPA firm Postlewaithe and Netterville. Prof. Singer moved to allocate \$30,000 to cover these costs in order to receive the full grant funding of \$119,000. Budget Officer Carter clarified that the \$30,000 would come from the remaining \$61,034 previously reported as available for reallocation to the districts. Mr. Hamilton seconded the motion which passed unopposed.

c. **Travel Waiver.** Ms. Faria reported that she has been invited to participate as faculty at two out-of-state conferences, which she has accepted. Ms. Faria is requesting a waiver of the Board's policy freezing out-of-state travel and approval of reimbursement her travel expenses. Prof. Singer moved to waive the current out-of-state travel policy and approval of the submittal of Ms. Faria's expenses for possible reimbursement. Mr. Hamilton seconded the motion which passed unopposed.

9. Restriction of Services

a. **ROS Updates:** District 5, 7, 15, 16, 22, 23, 25, 33, 34, 37, 41. Dr. Tiffany Simpson provided a brief update on the districts currently in or anticipating restriction of services. Dr. Simpson reported there are nine districts currently in ROS. As of January, 1, 2016, there will be two additional districts. Dr. Simpson further reported that one district (5 – Franklin/Richland/WCarroll) has recently exited ROS.

10. Legislative Session, 2016. Dr. Simpson reported that there will be a special legislative session called in early February; however, the focus is not known at this time. Dr. Simpson reminded the Board that the \$10 court cost increase will expire in 2016 and urged all Board members and District Defenders to talk to their legislators regarding the increase renewal in 2016. Mr. Lorenzi requested that staff provide the Board with the districts' local filing data. Dr. Stilling indicated staff could and would provide the data derived from the supreme court filings.

11. Capital Update. Capital Case Coordinator Jean Faria reported that all activities of the capital division can be reviewed in the SPD report.

12. Juvenile Strategic Planning Update. Deputy Public Defender/Director of Juvenile Defender Services Richard Pittman reported that statewide informational meetings have concluded and that additional meetings will be held to form work groups to advance the juvenile strategic plan.

13. **SPD Report.** Mr. Dixon reported that staffs' activities since the September Board meeting are outlined in the SPD report located in the Board materials.

14. **Other Business.** Mr. Hampton Carver reported that he recently attended a Koch Foundation meeting in New Orleans and reported a consensus between the attending liberals and conservatives on the necessity of criminal sentencing reform.

Current LSBA President, Mark Cunningham, gave thanks to everyone for dedicating time and effort to the indigent defense issues. Judge Burns thanked Mr. Cunningham for his leadership.

15. **Next Meeting(s)- Proposed Dates, 2016.** The Board set its next meetings for 2:00 p.m. on the following dates: January 12, 2016; February 16, 2016; April 6, 2016 and May 10, 2016. The location is to be announced.

16. **Adjournment***

Guests:

Reggie McIntyre
John Burkhart
Alan Robert
Paul Fleming
Andrew Hairston
Matt Robnett

Richie Tompson
Kerry Cuccia
Vic Bradley
Tony Champagne
G. Paul Marx
Mark Cunningham

Jim Looney
Cecelia Bonin
John Lindner
Pamela Smart
Derwyn Bunton
Don Kneipp

I HEREBY CERTIFY that the foregoing is a full, true, and correct account of the proceedings of the Louisiana Public Defender Board meeting held on the 1st day of December, 2015, as approved by the Board on the 16th day of February, 2016, at Baton Rouge, Louisiana.



Judge Robert J. Burns (Ret.), Chairman



LOUISIANA PUBLIC DEFENDER BOARD

*Effective: January 13, 2015
Last Updated: March 24, 2015*

Protocol For Management of the Capital Expert Witness Fund

1. Policy

1.1 This policy addresses the responsibility of the Louisiana Public Defender Board (“LPDB”) to efficiently and effectively manage the monies designated as the Capital Expert Witness Fund.

2. Purpose

2.1 The purpose of this policy is to formalize LPDB’s internal procedures for managing the Capital Expert Witness Fund (“EWF”). This policy defines the responsibilities of staff to effectively track and distribute monies from the Fund.

3. Reviewing Applications for Funding

3.1 Upon receipt of a completed application for expert witness funding, the Capital Case Coordinator shall confirm that all relevant and required case information has been entered into LPDB’s statewide case management system.

3.1.1 If the required information is not present in the case management system, the Capital Case Coordinator shall notify counsel that the application will not be accepted until the case management system is up to date.

3.2 Applications for expert witness funding will only be considered if signed and dated when submitted by counsel, with a completed application and all necessary documents attached thereto.

3.3 Applications for expert witness funding will be reviewed by the Capital Case Coordinator to determine that:

- a. The attorney seeking funding has established that the expert for which funds are being requested is relevant to the defense;
 - b. The requested expert's hourly rate is within the guidelines approved by the Board; and
 - c. The expert's expected maximum number of hours and anticipated travel and other expenses are within reasonable limits.
 - d. That the amount requested does not exceed the amount of available Expert Witness funds.
- 3.4 Upon approval in full or part of the application for expert witness funding, the Capital Case Coordinator shall notify lead counsel in writing and by email that the application has been approved and provide the maximum amount approved.
- 3.5 Upon denial of an application for expert witness funding, the Capital Case Coordinator shall notify lead counsel in writing and by email of the denial and reason for denial.

4. Tracking Approved Expert Witness Funds

- 4.1 Upon approval of an application for expert witness funds, the Capital Case Coordinator shall cause to be entered the pertinent case information, and the date of approval and maximum amount approved, into LPDB's Expert Witness Fund spreadsheet, database, or other tracking system.
- 4.1.1 All applications for expert witness funds will be reviewed to determine whether they are in proper order and meritorious. In the event the request for funding exceeds the amount of the funds available in the Expert Witness Fund, the application shall be placed in a queue and counsel shall be notified by email as to the application's position in the queue.
 - 4.1.2 The applications will remain in the queue in the order in which they were received. Once sufficient funding is accrued to fund the first application for approval, counsel will be notified of the approval and funding for the next application in line will begin to accrue.
- 4.2 All applications for expert witness funds will be reviewed to determine whether they are in proper order and meritorious. In the event the request for funding exceeds the amount of the funds available in the Expert Witness Fund, the

application shall be placed in a queue and counsel shall be notified by email as to the application's position in the queue.

4.3 Expert Witness requests for approval are subject to the availability of funding. While Expert Witness requests for approval may be approved to begin work immediately, they cannot be paid until funds are available.

4.4 Ninety (90) days after approval the Capital Case Coordinator shall contact lead counsel to determine whether the expert has begun work. Thirty (30) days before the funds are to be released, the Capital Case Coordinator shall notify lead counsel that the invoice for the expert must be submitted within thirty (30) days.

4.4.1 One hundred and eighty (180) days following approval of an application for expert witness funds, the Capital Case Coordinator shall notify counsel by letter and by email, with a copy to the expert, that any un-invoiced funds are being released back into the Expert Witness Fund.

4.4.2 Un-invoiced funds are released based on the passing of one hundred and eighty one (181) days following approval, not upon the receipt of a notice letter.

4.5 Should counsel require additional services from the expert after un-invoiced funds are released back into the Expert Witness Fund, the Capital Case Coordinator shall require counsel to submit a supplemental application for expert witness funding. Extensions may be granted for good cause shown.

4.6 Upon release of the un-invoiced funds, the Capital Case Coordinator shall note in LPDB's tracking system the date and amount of the funds being released and the net difference to the Expert Witness Fund.

5 Processing of Invoices

5.2 Upon receipt of an invoice by counsel for payment drawn on previously approved expert witness funds, the Capital Case Coordinator shall ensure that:

- a. The invoice has been reviewed and approved for accuracy and amount by counsel;
- b. The invoice includes counsel's signed affirmation that counsel has reviewed and approved the expert's invoice and that payment is appropriate;

- c. The invoice is for payment of work performed by the expert within the previous sixty (60) days;
 - d. The amount of the invoice, including the total of any previous invoices paid to the same expert, does not exceed the maximum amount approved.
- 5.3 After confirming that all appropriate documentation has been submitted with the invoice, including the Capital Expert Witness Fund Invoice Submission Form executed and signed by counsel, the Capital Case Coordinator shall review the invoice for approval of the amount submitted.
- 5.4 LPDB will consider an invoice for payment only if the invoice is submitted within sixty (60) days of the work being performed by the expert and all required documentation is submitted with the invoice. Absent exceptional circumstances, any invoice submitted after sixty (60) days of work being performed shall be deemed stale and not-payable by LPDB.
- 5.5 Once the invoice has been approved by the Capital Case Coordinator, he/she shall place the invoice in line for payment according to the First In – First Out payment principle.
- 5.6 Upon approval of the submitted invoice for payment by LPDB, the Capital Case Coordinator shall cause to be input the invoice amount, payment approval date, and payment amount into LPDB’s tracking system.
- 5.7 If the amount of the invoice approved for payment is less than the initial maximum amount approved for work, LPDB shall ensure that counsel has indicated in the Capital Expert Witness Fund Invoice Submission Form whether additional work is expected to be performed by the expert.
- 5.7.1 If additional work is expected to be performed by the expert, the Capital Case Coordinator shall cause a notation to be made to that effect in LPDB’s tracking system.
 - 5.7.2 If additional work is not expected to be performed by the expert, the Capital Case Coordinator shall release any un-invoiced funds back into the Expert Witness

Fund and notify counsel in writing and by email of the release.

5.8 Any invoice submitted without all appropriate documentation will be returned to counsel for re-submission. Any required re-submission must be made within sixty (60) days of the work being performed. Absent exceptional circumstances, a re-submission does not extend the time within which invoices must be submitted.

5.9 Invoices must be submitted by counsel, with all appropriate documentation. LPDB will not pay any invoice submitted directly from an expert.

6 Continual and Contemporaneous Tracking of the Expert Witness Fund

6.1 The Capital Case Coordinator shall be responsible for continual and contemporaneous tracking of the Expert Witness Fund, including the balance of approvals for services, invoices pending payment, invoices paid, and total funds remaining available.

6.2 The Capital Case Coordinator shall cease approving applications for expert witness funds should the total amount of approvals plus invoices paid and approved for payment equal the maximum amount available in the Expert Witness Fund.

6.2.1 Should the maximum amount of the Expert Witness Fund be reached, the Capital Case Coordinator shall not approve any additional applications for expert witness funds until and unless additional funds become available by virtue of release of funds for previously approved work or other action of the Board.

6.2.2 In the event that approvals are ceased pursuant to Section 6.2.1 of this protocol, the Capital Case Coordinator shall notify any counsel seeking approval for funds that the maximum amount of the fund has been reached and that no approvals may be granted by LPDB until and unless additional funds become available or other action is taken by the Board. The notification shall estimate the month in which the Expert Witness Fund approval reasonably can be expected.