

# LOUISIANA PUBLIC DEFENDER BOARD

Thursday, January 22, 2009  
11:00 AM

Louisiana State University  
Agricultural Center  
Efferson Hall, Room 214  
Baton Rouge, LA 70804

## Agenda

1. Call to Order and Opening Remarks by Chairman
2. Roll Call
3. Review and Approval of Previous Minutes of November 25, 2008 Board Meeting
4. Public Comments
5. Report of the Chair
6. Budget Cuts
7. Budget Officer
8. Civil Service Hearing February 4, 2009
9. Web Site Contract
10. Requests for Offers for the 15<sup>th</sup> JDC Site Visit
11. Executive Session Pursuant to La. R.S. 42:6.1 A(1) to Discuss Personnel Issues – Professional Competence of Applicants for District Public Defender for the 25<sup>th</sup> Judicial District
12. Status of District Defender Selection Committees
  - 14<sup>th</sup> Calcasieu
  - 20<sup>th</sup> East and West Felicianas
  - 28<sup>th</sup> LaSalle
  - 30<sup>th</sup> Vernon
  - 38<sup>th</sup> Cameron
13. Caseload Limits
  - Subcommittee to create limits and procedure to utilize when limits are reached
  - New Orleans Municipal Court caseload discussion
  - Formal Response to New Orleans City Council Resolution
  - Jurisdictions which may stop taking cases

14. Caddo Parish

- Executive Session Pursuant to La. R.S. 42:6.1 A(1) to Discuss Personnel Issues – in the Caddo Parish Public Defender Office

15. Survey and Annual Report

16. Report of the State Public Defender

17. Adjournment

# LOUISIANA PUBLIC DEFENDER BOARD

Minutes of the Board Meeting

January 22, 2009

Louisiana State University Agricultural Center

Efferson Hall, Room 214

Baton Rouge, Louisiana

**Members Present:** Jim Boren, Judge Robert Burns, Cleveland Coon, Sam Dalton, Leo Hamilton, Janet C. Hoeffel, Rev. Dan Krutz, Luceia LeDoux, Lucy McGough, Frank Neuner, D. Majeeda Snead, and Rémy Starns.

***Ex Officio* Members Present:** Rebecca Hudsmith

**Staff Present:** Lesia Batiste, Lynda Colomb, John Di Giulio, Jean Faria, Heather Hall, Erik Stilling, and Clay Walker.

**Guests Present:** Vic Bradley, Tony Champagne, Bradley Dauzat, Jim Looney, Reggie McIntyre, Gary Clements, David Price, Bob Noel, Mike Mitchell, Richard Tompson, Bret Brunson and Mitch Bergeron.

**Call to Order and Opening Remarks.** The meeting was called to order at 11:05 a.m. Mr. Walker called the roll; a quorum was present. Mr. Neuner, Chair, called the meeting to order. Rebecca Hudsmith was introduced as a new, *Ex Officio*, member of the Board. Heather Hall and Lynda Colomb were introduced as new members of the state staff.

**Approval of Minutes from the November 25, 2008 Meeting.** Mr. Dalton moved that the minutes from meeting held on November 25, 2008 be adopted. Mr. Starns seconded the motion which passed without opposition.

**Public Comments:** There was no public comment at this time.

**Budget Cuts:** As an informational item, Ms. Faria reported that due to the shortfall in the State's budget, the LPDB budget for 2008-09 was being cut by approximately \$1.4 million. The proposed cuts for 2010-11 are \$4-10 million. Ms. Faria has been in contact with several members of the Governor's staff as well as the Division of Administration to work on having the budget restored. Liz Merrill, the Deputy Executive Counsel for the Governor, has been assisting staff to request the LPDB budget be restored, based in large part on the litigation in the 14<sup>th</sup> JDC and the potential litigation in the 15<sup>th</sup> JDC.

Mr. Neuner pointed out that other agencies were facing even more drastic cuts, citing a 30% reduction for higher education. Mr. Neuner reported that he and Ms. Faria had met with the members of the Supreme Court regarding LPDB funding. Chief Justice Kimball had written a letter in support of the LPDB. Mr. Neuner also reported that the Board of Governors for the LSBA are considering a resolution in support of LPDB funding and that LSBA President Beth

Foote also had written a letter in support. Mr. Neuner reported that Pete Adams, the President of the District Attorney's Association, will ask his Board to support LPDB funding.

### **Staffing Update**

Mr. Hamilton inquired about the status of the remaining (LPDB) state positions in relation to the Administration's hiring freeze.

Ms. Faria reported that the three statutory positions (Budget Director, Director of Training, and Juvenile Compliance Officer) which remain vacant have been "unfrozen." However, the Civil Service Administration is seeking to classify all of the state positions except the State Defender, the State Juvenile Defender, and the Director of Training. Ms. Faria reported that there is a meeting with Civil Service Commission on February 4, 2009 at which she will request a three year waiver period – that the executive positions remain unclassified for a period of three years after which the issue will be reexamined.

Mr. Boren inquired as to the consequences of the positions being classified. Ms. Faria reported that as a result of a position being classified, each position will have a strict job description. A classified employee cannot be directed to work outside the parameters of his or her job description. In contrast, the work of the state staff and the small number of staff requires that each member be able to work on projects outside of his or her discipline. Classification would therefore restrict the staff's agility, reducing its effectiveness. Ms. Faria also reported that due to the small staff size, each staff member was responsible for developing policy for the LPDB and making policy decisions. Classified employees cannot make such policy determinations. This too would restrict the staff's effectiveness. Ms. Faria reported that classification would also limit the rates of pay, thereby limiting the Board's ability to find the most qualified personnel. Ms. Faria also reported that the discipline process for classified employees is slow, thereby limiting the Board's agility and effectiveness. Ms. Faria explained that the positions that are already filled (except the State Defender and State Juvenile Defender) would have to be re-advertised and the staff now in place would have to reapply. Mr. Boren inquired about the distinction for Juvenile Defender. Ms. Faria explained that the State Defender and the Juvenile Defender and Director of Training, as Deputy Public Defenders, were exempt. These positions have authority over people and/or programs, thus making them exempt.

Mr. Hamilton pointed out that the Civil Service Administration considers all non-constitutional positions to be subject to civil service. He explained therefore that the dispute is not a legislative one, but rather a constitutional one – which would require a constitutional amendment to overturn. Mr. Hamilton stated that because the state staff will be working with local governmental entities, as sub-agencies, that an exception might be granted. Ms. LeDoux questioned whether each position had some programmatic authority. Ms. Faria responded in the affirmative and reported that the three year waiver would allow the staff to evidence the need for agility and policy work and the level of programmatic authority, at which time the Board/staff would make its case to the Civil Service Administration. Mr. Dalton inquired whether the positions could be contracted. Ms. Faria stated that contracting for the positions was not a viable long-term solution. Mr. Hamilton agreed to work with the staff on the presentation to the Civil

Service Commission on February 4<sup>th</sup>. Mr. DiGiulio stated that the subject staff agreed the positions should not be classified.

Mr. Boren moved that Ms. Faria be granted the authority to ask that all executive positions remain unclassified, with the discretion to reduce the number of unclassified staff as necessary in the negotiation. Ms. Hoeffel seconded. The motion passed without opposition.

**Web Site:** Ms. Faria reported that the staff had finished the process of seeking bids for the web site contract and that an offer to contract for the creation of a web site for \$21,000 had been received. Mr. Boren asked whether the funds had been budgeted. Ms. Faria explained that the funds were from the executive funds rather than general budget. Mr. Stilling explained that the current web site is running on a 12 year old program and that it does not meet the needs of the staff. Ms. Hall explained that the newly designed web site will increase the Board and Staff's ability to communicate with the districts as well as the public. Mr. Starns explained that a new web site had been part of the original plan for the new Board. Mr. Starns asked whether the new site would have the ability to store a motion bank, a list serve and the data base. Ms. Hall explained that the new site was designed for a motion bank and list serve, but not the database, for confidentiality reasons. Mr. Starns inquired as to the timeline. Ms. Hall explained that after the contract had been approved, the site would take 8 to 10 weeks to create. Ms. LeDoux asked about the bidding process. Mr. Hamilton explained that the amount was less than \$50,000 and therefore not subject to the bidding process. Ms. Faria acknowledged that it was less than \$50,000 but that the staff had followed the bidding process properly nonetheless. Mr. Hamilton moved that the \$21,000 contract be approved. Mr. Coon seconded. Motion passed without opposition.

**Budget Committee:** Ms. LeDoux reported that the Budget Committee had interviewed three people for the Budget Director position and were recommending Ms. Buchanan. Ms. Buchanan has 26 years of experience and would be a good fit for the staff. Ms. Faria reported that pending the Civil Service determination, that the Division of Administration had granted the LPDB to hire a budget analyst on an hourly basis. Ms. Faria reported interviewing a Ms. Collins who agreed to work for \$25/hr.

Mr. Boren moved that Ms. Faria be able to hire Ms. Collins at a rate of \$25 per hour. Mr. Coon seconded. Motion passed without opposition.

Mr. Neuner inquired as to when Ms. Faria could hire Ms. Buchanan as the Budget Director. Mr. Hamilton moved that Ms. Faria be given authority to hire Ms. Buchanan immediately upon learning the outcome of the Civil Service determination. Ms. Snead seconded. Motion passed without opposition.

**The 15<sup>th</sup> JDC:** Ms. Faria reported that she had spoken with several stakeholders regarding the potential litigation in the 15<sup>th</sup> JDC and had been advised that rather than have the staff investigate the district, that a neutral party should conduct the investigation. The staff sought proposals for such an investigation and received two – one from the Spangenberg Group and a second from NLADA. Ms. Faria explained that pursuant to the ACLU complaint, the request

included an examination of the organizational structure of the office in the 15<sup>th</sup> JDC, the process and use of investigators in the 15<sup>th</sup> and the workload of the attorneys in the 15<sup>th</sup>. Ms. Faria recommended the NLADA proposal. Ms. LeDoux asked which proposal addressed the ACLU complaint better. Ms. Faria explained that the Spangenberg proposal offered more information, and that the NLADA proposal was more tailored to the ACLU complaint. Ms. LeDoux stated that she felt an examination of the 15<sup>th</sup> and its appropriate use of funds would involve an examination of the distribution of state funds and therefore would require more data than simply the workload in the 15<sup>th</sup> JDC. Ms. Hudsmith concurred with Ms. Faria's assessment of the NLADA's work product and agreed with Ms. LeDoux that the Board would need more than simply the 15<sup>th</sup> JDC data to assess state distribution of funds. Mr. Dalton explained that in his experience while the Spangenberg Group has done good work, it will likely produce a report explaining how an ideal system would work, but not pinpoint how the LPDB system can be corrected. Ms. Batiste stated that because the report might be discovered in any potential litigation, the Board should consider limiting the investigation to the 15<sup>th</sup> JDC only. Ms. Snead stated that if we are going to spend \$50,000 it should not be limited to one district. Judge Burns accepted Ms. Faria's recommendation and expressed that any report should be considered work product and not discoverable. Mr. Boren inquired as to the 30% discount in the NLADA proposal. Ms. Faria explained that the discount is pursuant to our membership in NLADA. Mr. Boren stated that the Report should be considered work product and should be protected unless and until the Board decided to use it for systemic changes. Mr. Boren also pointed out that NLADA and David Carroll, having recently worked on Act 307, has credibility and contacts in Louisiana. Mr. Champagne agreed that David Carroll has credibility with District Defenders.

Mr. Boren moved that the NLADA proposal be approved and that in the Contract it should state clearly that the LPDB is engaging NLADA pursuant to the ACLU complaint and therefore in anticipation of litigation and that the investigation and report should be kept confidential unless and until the Board determines if it should be released. Ms. Snead made a friendly amendment that if Ms. Faria determined that portions of the proposed Spangenberg report were desirable, that NLADA be asked if they could add such portions to its report. Friendly amendment was accepted by Mr. Boren. Mr. Dalton seconded. Motion passed without objection.

Ms. LeDoux inquired whether the Board should request a workload/allocation of state funds study that is broader than an examination of the 15<sup>th</sup> JDC. Mr. Boren agreed that an examination of the allocation of state funds and workloads would clarify future Board determinations. Ms. LeDoux explained that her Foundation might fund a part of such a study. Ms. Faria explained that a case-weighting study is something that only the Spangenberg Group can do. Mr. Starns suggested a subcommittee form to examine workload and the allocation of state funds.

### **Executive Session**

Mr. Starns moved that the Board go into Executive Session to discuss personnel issues in Plaquemines and Caddo Parishes. Ms. Snead seconded. Approved.

**District Defender Selection Committees:** Mr. Di Giulio explained that in the 20<sup>th</sup> JDC there had been one recommendation. In the 28<sup>th</sup>, requests for names from the contiguous districts had produced two additional names. He also indicated that the committees in the other jurisdictions

with open positions had made their recommendations and that interviews would be scheduled. Ms. Faria asked for all those interested in interviewing for these positions to contact her. Mr. Starns stated he would be interested.

### **Caseload Limits**

Mr. Starns and Mr. Dalton expressed their view that the Board should examine and discuss caseload standards and PD reaction to excessive caseloads. Mr. Bergeron inquired as to whether District Defenders could be involved in such an examination. Mr. Champagne agreed and will seek District Defender involvement. Mr. Boren stated that accurate data will be necessary to study caseloads. Mr. Noel explained that before we can get accurate data we need agreement on case definitions. Ms. Hudsmith stated that accurate data and uniform definitions are essential. Without accurate data the caseload studies needed to inform funding decisions will be inaccurate. Mr. Starns moves for a subcommittee to study caseload standards and reactions to excessive caseloads. Mr. Boren seconded. Motion passes without objection. Subcommittee assigned: Ms. McGough, Mr. Dalton, Mr. Starns, Mr. Boren, Ms. Hudsmith, and Mr. Champagne who will recruit other district defenders.

### **New Orleans Municipal Caseloads and Funding**

Ms. LeDoux stated that whereas the New Orleans City Council will not assist in funding for municipal court, the staff should prepare a policy for rationing services and correspondence to the City Council explaining the funding situation. Mr. McIntyre explained that in the 21<sup>st</sup>, he does not send attorneys to all municipal cases. Ms. LeDoux explained that the difference in Orleans is the way in which the City Jail is utilized. Ms. LeDoux requested that the staff prepare a policy to support OPD. Mr. Simmons explained though that in any case where there is even the threat of incarceration an attorney must be appointed. Mr. Hamilton moved that the staff prepare a response to the City Council. Ms. McGough seconded. Motion passed without objection.

### **Jurisdictions Declining to Take New Cases:**

Ms. Faria reported that we have a high number of capital cases. Ms. Faria will examine costs on capital cases to support the action of jurisdictions which may need to refuse new cases due to excessive caseload. Mr. Boren asked whether there is a plan in place when districts reach capacity and cannot take additional cases. Ms. Faria replied that no such plan exists.

### **Caddo Parish:**

Mr. Hamilton moved that a subcommittee be formed to examine the personnel situation in the 1<sup>st</sup> JDC. Ms. LeDoux seconded. Motion passed without objection. Subcommittee assigned: Ms. LeDoux, Mr. Boren, and Ms. Hudsmith.

### **Board Member Books:**

As an informational item, Ms. Faria reports that the staff is creating a new board member book to assist new Board members. Ms. Faria also reports that the board meeting books will be posted on the web site as well as emailed to each member. Hard Copy books will continue to be provided.

**Next Meeting Date:**

The Chair discussed the current year's meeting dates and time. By consensus the Board agreed that Board meetings will be held on the 4<sup>th</sup> Thursday of each month at 2:00 p.m. The next meeting is February 26, 2009 at 2:00 p.m.

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