

Kentucky Equal Justice Center

Board Minutes

October 6, 2017

Board Members Present: Hailey O’Hair (Client Member); Rick Clewett, Christopher Frost, Mary O’Doherty, John Rosenberg (Community Members); Neva-Marie Polley (Program Director); Brenda Combs, Angela Zeek (Staff Reps).

KEJC Staff: McKenzie Cantrell, Miranda Brown, Leah Engle, Rich Seckel, Corinna Svarlien, Marcie Timmerman.

Welcome and Introductions

A quorum being present, Chair Chris Frost called the meeting to order and invited members to introduce themselves. He thanked newly elected members Rick Clewett and Hailey O’Hair for joining the board.

Chris next recognized KEJC Director Rich Seckel to share highlights of recent activity and events. Rich’s addressed several topics, as follows:

Affordable Care Act debates: Rich noted that Kentucky had done a great job expanding health coverage under the ACA and therefore had a lot at stake in Congressional debates over “repeal and replace.” He said that Senator McCain’s dramatic late night thumbs down on the Senate version of repeal had been a relief, as had the failure to bring the Graham Cassidy bill to the Senate floor. Rich said repeal-and-replace bills had proven unpopular with the public, perhaps an example of the saying attributed to Abraham Lincoln that “You can’t fool all the people all the time.”

Extraordinary work on DACA: Rich said that everyone at Maxwell Street Legal Clinic had risen to the challenge of helping youth and young adults meet the new deadline for DACA renewal. He said they had stayed ahead of the crunch by serving a steady stream of returning clients. He said the good work had been captured nicely by new VISTA Corinna Svarlien in the latest edition of “The Torch,” the Maxwell Street newsletter. Rich said that while researching case data for KEJC’s United Way report, he found that Maxwell Street had opened 268 initial DACA cases and 290 renewals since the program began in 2012. He said he was pleased to hear Rep. Andy Barr express support for extending DACA at the recent Festival Latino.

Interview blitz: Rich said that the public response to proposed changes in Governor Bevin’s 1115 Medicaid waiver had been strong: about 1,200 people had commented to the state and the federal agency, most expressing concern that the changes would see people lose coverage or services. (A year after initial submission, Kentucky had proposed changes making a 20-hour work requirement immediate for “able bodied adults” without dependents. It also added a six-month lockout penalty for failure to report income changes

within ten days.) Rich said that KEJC had held a webinar for Kentucky legal services staff, featuring Jane Perkins of National Health Law Program and Judy Solomon of the Center on Budget and Policy Priorities, two top experts and long-time friends. He said KEJC's health team had been joined by staff from NHeLP and Southern Poverty Law Center to interview 30-40 people around the state about how the waiver might affect them, most of them in a single "blitz week" in mid-September.

When it's good not to be a lawyer: Rich said that Anne Marie had filed an Open Records request for correspondence between Kentucky and HHS on the Medicaid waiver. The Cabinet for Health and Family Services declined to respond. Upon review, the Attorney General sided with KEJC in a strongly worded opinion. Rich said that he'd received press calls about the standoff while Anne Marie was on vacation. Rather than attempting to interpret Open Records Law or explaining the appeals process, he said had pointed out to the reporter that the press corps had its own legal experts on Open Records. When the article appeared, it quoted several private attorneys saying that KEJC and the AG likely would prevail and also supporting the principle of transparency in government.

Rich said he had visited individually and met as a group with newly elected Client Board Member Hailey O'Hair and Community Members Rick Clewett and Rev. Anthony Everett. He said he had enjoyed the discussions. He said the new members had a lot to offer.

Approval of Minutes

Chair Chris Frost invited a motion on the minutes of the last meeting. Rich suggested two corrections. First, on Page 6, first paragraph, he suggested changing "were including" to "were included." On Page 7, first line, he suggested a correction to make clear that two rather than three new Community Members had been elected to the board.

Motion: John Rosenberg moved to approve the minutes of the July 25, 2017, board meeting, with the corrections suggested by Rich.
Second: Mary O'Doherty
Action: Approved unanimously

Administration: Financial Report through 3rd Quarter 2017

Chris next recognized Rich to give the Financial Report. Rich drew the board's attention to the memo "Financial report through September 30." The cover sheet offered a summary as follows:

Profit and Loss Budget Overview: the budget adopted by the board for 2017 anticipated a loss of \$16,273, including one-time spend down of CLINIC fellowship funds.

Profit and Loss through September 30: showed gain of \$41,813 compared to the expected loss of \$18,068, a positive variance of

\$59,881.

Balance Sheet as of September 30: showed Total Current Assets of \$341,756, up from \$304,026 on June 30, 2017, and up 9.9% percent from \$284,616 on September 30, 2016.

Income and Expense Charts: 80.1% of spending was payroll. 62.9 % of income was from grants.

Rich said he had adjusted his prediction of carryover at the end of the year upward. He said it still reflected the budgeted figures for the year but he had added in a \$40,000 grant through National Health Law Program (NHeLP) for advocacy to defend Medicaid and disability programs. The new figure was \$335,145.

Rounding out his review of the financial report cover memo, Rich said that unrestricted funds had declined from an estimated \$56,534 in the last report to \$41,437—lower than the 10% of budget he would like to hit (about \$65,000). He said the new grant from NHeLP could help drive up that figure, especially by paying for a significant portion of Anne Marie’s time.

Rich said that new, unexpected grants through Kentucky Center for Economic Policy (KCEP), the Legal Impact Network (LIN) and NHeLP all contributed to the YTD positive variance of \$41,813 on the Profit and Loss statement. (See the previous minutes for details on the KCEP and LIN grants.)

Turning to the Budget vs. Actual report, Rich said the big picture figures looked good: income was running at 110 percent of budget, with spending at 97 percent. On the details of income, he noted that KEJC had not held a 40th Anniversary event. He said that he had stopped feeling guilty about not throwing a party—it had been a busy year—and that the NHeLP grant appeared to support the idea that good work itself draws support.

Rich noted that donations for the year were almost \$14,000 ahead of budget. He complimented new board member Rick Clewett for working with community members earlier in the year to raise funds for Maxwell Street Legal Clinic emergency preparedness services, including several very generous donations.

Rich said one key benefit of the community support was the fact that Maxwell Street had achieved full-time phone coverage by adding a second Legal Assistant. Rick Clewett said the “Contact Group” he had helped organize early in the year was meant to support and respond to multiple groups that might feel threatened in the wake of the November 2016 election.

Rich noted that KEJC’s balance sheet now included the Vanguard brokerage account, to be overseen by the Investment Committee. He said that he had acted on the board’s instruction at the last meeting to invest the Mason Fund in mutual funds at Vanguard. He said the funds earlier had been held in KEJC’s savings account and, when the brokerage

account first was opened, in money market funds. Rich said he had just received a statement from Vanguard that put the current value of the the investments at \$54,167 on September 30 instead of the \$52,089 on the balance sheet—a notable gain in value since the investments were made on August 23. (The earlier figure represented the value just as the investments were made.)

Rich said that KEJC also had an endowment at Blue Grass Community Foundation (BGCF) totaling about \$16,000, all from prizes won in the annual holiday season Good Giving Challenge. Rich said that he had consulted with BGCF staff and with KEJC auditor Vickie Richardson and determined that the funds should be listed on the BGCF balance sheet rather than as a KEJC fund balance.

On months of reserves, Rich said that Total Current Assets as of September 30 would last over six months (6.43 months), up from the last report. He said unrestricted reserves would last less than one month (0.79 month), down a bit. He said each figure was based on the hypothetical scenario that no new funds would come in. He said he would like to keep the unrestricted figure at a month or more.

Administration: Development Update

Rich next turned to the handout “KEJC Recent Fundraising Effort.” It showed what KEJC had sought in funding and what it had received, as follows:

- In 2016 KEJC had received 91 percent of what it sought through grants and fundraising campaigns (\$344,344 of \$378, 401).
- From 2011 through 2016, KEJC had received 78 percent of what it sought (\$1,907,521 of \$2,456,274).
- So far in 2017, KEJC had received a total of \$237,140 of \$401,997, or 59 percent of what it sought.

Rich said the low percentage return for the current year was not due to grants being turned down. He said a big grant was still pending: KEJC’s application for VOCA funds to serve immigrant victims of crime. He said that if the VOCA figures were factored out, KEJC in the year to date had received 81 percent of the funds it sought.

Rich said that the KEJC VOCA request was for just over \$200,000, with required cash or in-kind match of almost \$60,000. He said that, for new applicants, the required match was 20 percent. He said that he had requested partial waiver of the match. Looking ahead, he said he hoped KEJC would raise \$20,000 through the 2017 Good Giving Challenge—just slightly higher than the year before—plus \$16,000 in response to its holiday letter.

Administration: Proposed Budget Assumptions for 2018

Chris next invited Rich to address plans for the 2018 budget. Rich said he had included a one page sheet of “KEJC Proposed Budget Assumptions for 2018” in the board package. He said he wanted to review the assumptions with the Board before using them as guidelines to prepare a budget for the coming year.

The first budget assumption laid a foundation for the budget process, stating that the “goal is to make a budget than can be paid for with known or predictable income while maintaining unrestricted reserves of about 10 percent of budget.” Additional assumptions:

- Identified a core staff of Director, Senior Staff Attorney and Maxwell Street attorney who could be paid for by grants, unrestricted income or reserves above the target
- Specified that workers’ rights, health, outreach and communications positions were grant funded
- Said that KEJC would pursue the sustainability plan it had submitted to CLINIC for the DOJ Accredited Rep position
- Said that Maxwell Street Legal Assistants would be paid from Maxwell Street grants or unrestricted Maxwell Street income, including a potential special donor appeal
- Proposed that, to the extent permitted, new grant proposals would include funding for communications, development and administrative assistance
- Called for numerical goals for both fundraising and reserves

Rich said full-time salary increments likely would take into account findings of the 2013 board committee on salary comparability, with \$900 increments rounded upward where needed to ensure at least a 2 percent increase for full-time employees. In addition, Rich said he planned to propose a 50 cent an hour increase for each part-time employee, effective on anniversary dates. Rich said his own salary would be set by the board. Chair Chris Frost affirmed that he would convene an evaluation committee to make a recommendation.

Rich said one big challenge in 2018 would be to continue the second Legal Assistant position for Maxwell Street, which had been funded by generous donations and, in part, by a one-year grant from Kentucky Bar Foundation.

Rich said that the pending VOCA grant would add positions at Maxwell Street to serve immigrant victims of crime—two case handlers and a Legal Assistant. If approved as submitted, he said, the grant would also fund a quarter of existing case handlers’ time.

Rich said a key question for the board was the degree of risk members would be comfortable building into the budget, in the form of grants and other funding not yet identified or secured. Chris said that “what we’ve been doing is working” and that a bit of risk was in order. Rich said that recent budgets had built in a “new grants” figure of about 5 percent of budget.

Mary O’Doherty asked whether Rich had maximized administrative overhead in the VOCA proposal. Rich said that he had tried but was still new at the task and probably could have done a better job. He said he had addressed overhead in a request for waiver of much of the required match for the grant, expressing a willingness to work with program staff to refine the budget.

Neva-Marie Polley said that her program, Legal Aid Society, had created a new position of Chief Financial Officer. Rich said that he could benefit from talking with the legal aid program staff in business and financial management positions. Chris said Rich had presented “good budget assumptions” and encouraged him to craft a budget based on them.

Administration: Audit and 990 Update

Chris next recognized Rich to report on the KEJC audit. Rich said that he had compiled and submitted all requested information to auditor Vickie Richardson. He said that audited figures would be used to prepare the 990 for FY 2016, due November 15. He said that he would circulate the 990 to the board prior to submission. Rich said that the Audit Committee consisted of board members Bob Brown and Treasurer Mary O’Doherty, with Chair Chris Frost participating ex officio.

New board member Hailey O’Hair asked when the audit was due. Rich said that it would be prepared in time for consideration at the next board meeting on December 14. He said the Audit Committee would hold a conference call with auditor Vickie Richardson to review the audit report, absent him as management, prior to the December 14 meeting. The committee would then report to the board.

Strategic Planning and Governance: Report of the Bylaws Discussion Group

Chair Chris Frost reported on the conference call of the volunteer ad hoc committee he had convened to discuss the bylaws. Chris said that the broad purpose of the discussion was to explore how to tap energies beyond the oversight role of the board. He said the key questions were (a) what members could do and (b) what size board would facilitate activity.

Chris said committee members were very interested in the possibilities of engagement in the work of KEJC. He said they did not see a need to expand the board itself beyond the current size of sixteen members, but they expressed strong interest in launching ancillary committees that would include outside members. He offered the example of a fundraising arm to pursue campaigns and events.

Chris said a provision of the existing bylaws allowed creation of committees containing outside members, with the proviso that two board members also would serve.

Chris said that after the committee discussion, he and Rich had prepared a markup of the bylaws with revisions that included technical updates and clean up language to bring them

in line with current practice. Chris said that he was offering the document for discussion in the current meeting with the hope of voting on it later, at the December meeting, with the required 14-day notice in between. He then did a walk-through of key changes including:

- Clarification that the Executive Director rather than the board hires staff other than the Executive Director
- Elimination of the Pro Bono Coordinator Staff Rep board position (since there was no longer an organization of coordinators to appoint a rep) with clarification that Pro Bono Coordinators could run and serve as an Attorney, Support Staff or Paralegal Rep depending on their credentials
- Clarification the Client Members need only be eligible for services from KEJC or a legal services program at the time of their nomination, so that new jobs or income would not jeopardize their board positions
- A new “self-executing” rule on board attendance, stating that members absent without cause 4 times in a two-year term would be ineligible for board membership for four years

Chris invited discussion on the absence provision. A number of members expressed agreement with the four year period of ineligibility. Health Communications Coordinator Marcie Timmerman (also the new director of Mental Health America Kentucky) said “I’ve seen that on a lot of boards.”

John Rosenberg pointed out that the Quorum provision is Section VI applied to committees rather than the board. The provision required 1/3 of a body to be present, but no less than two. It began with the phrase, “Unless otherwise provided for in these bylaws,” separating it from the quorum provision for the board itself, which remained at seven members. New Community Member Rick Clewett asked whether committees could make decisions for the board. Several people noted that recommendations came back to the board for action.

Chris said that he saw untapped energy in KEJC’s wider network that could be brought to bear in committee work. He said he wanted to convey “a vision of energized people supporting our work.” He offered the example of the Foundation for a Health Kentucky, which had incorporated a Community Advisory Committee in its structure from the outset. He said membership in a KEJC board might convey professional or community recognition, but the key was that committees have something meaningful to do.

Chris invited discussion on whether committees should have a minimum of one or two board members. New member Hailey O’Hair said two would facilitate “more involvement without overwhelming the group.”

- Motion:** John Rosenberg moved to direct Chris and Rich to finalize the bylaws document based on the board’s discussion and circulate it with notice in sufficient time to allow a vote at the next board meeting.
- Second:** Neva-Marie Polley
- Action:** Approved unanimously

Rich said one idea that might work for a committee would be to conceive and launch an inaugural Equal Justice dinner event at which heroes of advocacy for low income people could be recognized. Hailey O’Hair noted that young people want to be involved. She said “Let’s give them an avenue.”

Strategic Planning and Governance: Administrative “Win the Lottery” Ideas

Chris invited Rich to address the topic of creating a deeper administrative bench, first to assure that key functions would be carried out if he was unable to do them, and, second, to begin laying groundwork for continuity should he “win the lottery” and leave.

Rich review a one-page handout he had created, entitled “What if Rich Wins the Lottery? Ideas for Backup Administration Support.” The handout set out ideas in five categories of activity, from accounting and payroll to grant seeking and reporting. For each idea, the handout identified resources for make it happen. Resources include time, money, technology and volunteers.

Rich said his biggest concern was to make sure that staff would be paid if he were absent, with related payroll liabilities submitted timely. He said that QuickBooks offered a higher level of automation for payment of payroll taxes than currently implemented. He said he was intrigued with the idea that a retired bookkeeper or accountant could help with payments and books as a volunteer or as Assistant Treasurer, a role allowed under the bylaws.

Chris said he was reluctant to have a volunteer Assistant Treasurer handle significant accounting tasks, preferring instead that an employee do them.

Rich noted that KEJC was attracting significant volunteer talent in other realms. He said that he had met with retired state employee Geri Grigsby to explore potential volunteer activities. He said he had remembered Geri from her service as counsel a few years back to the Senate Democratic caucus. John Rosenberg said that Geri had retired after a distinguished career in state government, also including a period as General Counsel of the Transportation Cabinet. John said Geri was also well known for setting high school basketball scoring records.

John identified several potential sources of ancillary help, including work study students from UK business school for accounting. John said the SBA Service Corps of Retired Executives (SCORE) program might be a good source of volunteers with business acumen. New Community Member Rick Clewett asked how much it would take each year to make a difference in administrative functions. Rich said he would look at figures while developing the budget for 2018.

Rich asked Neva-Marie Polley to describe the new CFO position and related roles in her program, Legal Aid Society in Louisville. Neva-Marie described a set of positions including a CFO who “knows the grants;” a development and communications staffer who

assists with applying for and reporting on grants and managing related social media; a human resources administrator for benefits; and an executive assistant.

Strategic Planning and Governance: Staff Reps Election

Rich said that KEJC's bylaws set up a process for nominating and electing an Attorney, Paralegal and Support Staff Representative from the Legal Services Corporation-funded legal services programs to the KEJC board every two years. He said this year was an election year. He said he would manage the process set out in the bylaws, inviting nominations by program staff in October and conducting an election in November.

Strategic Planning and Governance: Meeting Dates

Rich said that under the schedule for the year, the next and final board meeting would be December 14. He said that he would present a proposed schedule for 2018 at the December 14 meeting.

Big Picture, Joint Concerns and Joint Projects

Legal Aid Society Director Neva-Marie Polley reported that Congressional funding for the Legal Services Corporation (LSC) was still up in the air. She said that current funding had been extended under a Continuing Resolution through December with a small reduction of less than 1 percent. Neva said the House had proposed a reduction of 25 percent in its own budget, but she noted that in recent years funding ultimately ended up higher than the House figure. Neva said that programs could address cutbacks by saying "if we get cut, this is what will happen" to clients.

John Rosenberg added that the Senate budget so far include no cuts to LSC. He said that the American Bar Association supported LSC and was taking steps to energize its members to defend the LSC budget. John noted that, apart from the annual budget debate "inflation has killed us the last twenty years." He said that Congressional budget-makers often juggled figures in the billions but the \$300 million range for LSC was a "drop in the bucket."

John said that AppalRed Legal Aid was about 50 percent funded by LSC. Neva said the figure for Legal Aid Society in Louisville and surrounding counties was 27 percent. Neva said that part of the argument for funding LSC was the alternative: people would show up on the courthouse steps without representation. She said legal aid helps the justice system run smoothly. "We're the grease in the machine," she said.

John noted that LSC regulations allowed programs to lobby for their own funding, including state level funding. He praised Voices for Civil Justice, a recently formed national group that helped programs promote their work and its impact. Marcie said client stories helped make the case. Hailey said a public forum with stories might be effective.

Staff Reports

KEJC staff reported on activities, issues, projects and successes. Because no board action was required in response, summaries are not reported here. Written staff reports were available on the KEJC board web page under the October 6, 2017, heading at: www.kyequaljustice.org/Board+Meetings.

Adjournment

The agenda being completed, the meeting was adjourned by acclamation.

Reported by:

Richard J. Seckel, Director
December 8, 2017