

Kentucky Equal Justice Center

Board Minutes

October 9, 2015

Board Members Present: Robert Brown, Mary O’Doherty, John Rosenberg, Dianet Valencia (Community Members); Josh Crabtree, Scott Crocker, Robert Johns (Program Directors).

KEJC Staff: Sarah Adkins, Miranda Brown, McKenzie Cantrell, Guion Johnstone, Spencer Mancillas, Anne Marie Regan, Rich Seckel, Cara Stewart.

Guests: Max Shipley (Maxwell Street Legal Clinic Intern).

Welcome and Introductions

KEJC Director Rich Seckel said that Chair Chris Frost had a schedule conflict that came up at the last minute. He said Chris had invited Treasurer Mary O’Doherty to chair in his absence. A quorum being present, Mary called the meeting to order and invited attendees to introduce themselves.

Highlights of Recent Activity

Mary recognized Rich to present highlights of recent activity. Rich highlighted five things, as follows, and indicated that staff would report in more detail on several of them:

SIM pays off: Rich said that Kentucky had received a State Innovation Model planning grant from CMS. The grant focused on payment and delivery reform in health care. Rich said he and Cara had attended multiple stakeholder meetings in Frankfort on topics like quality and health information technology. The good news: Families USA had invited Kentucky Equal Justice Center and Kentucky Voices for Health to apply for a grant to support advocate and consumer engagement in the SIM process.

Don’t DisKyenct: Rich said that Foundation for a Healthy Kentucky had invited a “Rapid Response” grant proposal for coordination of communications about Kentucky’s health gains under the ACA. Rich said KEJC would use the funds (a) to support ongoing work by videographer Ryan Morris to produce consumer stories and (b) for four hours a week of Miranda’s time to gather and edit audio stories. Rich said KEJC had just hosted the first call with Kentucky Voices for Health to coordinate social media distribution.

One Fellow, Two: Rich said that Sarah Adkins had started her Public Service Venture Fund Fellowship at Maxwell Street just a few weeks earlier. He said it was a milestone to have two attorneys working full time at Maxwell Street. He added that Sarah would not be the new advocate for long. The reason: the primary national resource center for immigration law nonprofits, CLINIC, had awarded a second fellowship to the program as

part of an effort to build nonprofit immigration law capacity across the South. Rich said CLINIC would provide \$50,000 the first year and \$25,000 the next for the Fellowship. He said the funds could be used to support either an attorney or a BIA- accredited representative.

On the road again: Rich said he wasn't sure how it would go over. Jeff Been had invited a presentation about KEJC at a Legal Aid Society staff meeting. Rich said he was pleased with the response: Guion's presentation about immigration law services and McKenzie's on worker's rights reinforced each other and appeared to resonate well with staff. Rich said it worked well to focus on two topics instead of trying to list everything that KEJC did.

"Boots" are made for talking: Rich said that KEJC's "Boots on the Ground" grant had linked KEJC and the programs into a feedback loop with kynect, Medicaid and DCBS. One recent example: Miranda had attended a kynect Education and Outreach advisory meeting. Following a discussion on "bad address" disenrollment, she had suggested that kynector dashboards be reworked to show clearly which enrollees had received an address-related warning. She later learned that kynect planned to make the change.

Rich said that he would let McKenzie tell one more story without him giving it away.

Approval of Minutes

Mary next invited a motion on the minutes of the previous meeting:

- Motion:** John Rosenberg moved to approve the minutes of the July 16, 2015 board meeting.
- Second:** Josh Crabtree
- Action:** Approved unanimously

Rich said he appreciated the board's willingness to receive meeting materials by email.

Administration: Financial Report through the 3rd Quarter

At Mary's invitation, Rich gave a financial report for the year through September 30. He began with a walkthrough of the coversheet, noting that:

Profit and Loss Budget Overview: budget for the year anticipated a gain of \$5,003.

Profit and Loss Budget vs. Actual through September 30: showed a gain of \$94,514 compared to the expected gain of \$261—a positive variance of \$94,253.

Balance Sheet as of September 30: showed Total Current Assets of \$365,221 down from \$371,785 on June 30 but up 36.1% percent from \$268,388 on September 30, 2014.

Income and Expense Charts: Showed 80.4% of spending was payroll, while 66.1% of income was grants.

Rich said that main drivers behind the \$94,253 positive variance in Profit and Loss were the Harvard Public Interest Fellowship award of \$45,000 for salary for Sarah's Fellowship at Maxwell Street and the new CLINIC fellowship award of \$50,000.

Rich said that it was great to have the Fellowships and the funds but noted that KEJC was obliged to contribute funds toward each position: fringe benefits for Sarah's grant, any extra needed for CLINIC payroll and, in each case, operating cost.

Continuing through the handout, Rich:

- predicted carryover of \$345,475 into the coming year
- estimated unrestricted reserves of \$71,221 as of September 30, 2015

Rich said unrestricted reserves were down slightly from a high on June 30 of \$75,221. He said the end of the CHIPRA grant in July might account for the drag on reserves.

Turning to the chart on months of reserves, Rich said unrestricted funds would last about 1.45 months and total funds about 7.38 months if income from all sources stopped, down just slightly from the last report but still at healthy levels.

Commenting on the income and expense graph in the report, Rich pointed out that the big spike in income in June represented Fellowship money coming in. He said that the funds were restricted: the bar would come down over time and would draw on other funds for required match. "It's not as high as it looks," he said.

Rich said that KEJC's balance sheet was healthy, at \$365,223 in Total Current Reserves. He said that part of the balance was the Mason Fund contribution that KEJC had received a year earlier, when trustees of the former Mason Foundation had closed up shop and contributed remaining funds to Maxwell Street.

Rich said the letter accompanying the donation had asked KEJC to treat the funds as a "quasi endowment," with income to be used for Maxwell Street and appreciation available for budgeting to Maxwell Street with approval of the board. He said the fund differed from a true endowment in that the letter permitted expenditure of the corpus with approval of Marilyn Daniel.

Rich said he had put the Mason Fund in savings and allocated \$500 from unrestricted reserves as interest. He said the funds probably should be invested more creatively but he

was both risk averse when it came to equities and bonds and unfamiliar with best practice options. During discussion:

- Bob Brown suggested it was good to have some tolerance for risk, because long term funds could be held long enough to ensure gains.
- Scott Crocker pointed out that some stock products guarantee that the original investment is not at risk.
- Guion Johnstone said that a friend of Marilyn had offered to advise KEJC on ways to build the endowment.
- Josh Crabtree said that Children’s Law Center, his former employer, had adopted an investment policy for non-cash investments.
- John Rosenberg said that many mutual fund companies offered socially conscious investment portfolios. He said Appalachian Citizens Law Center had an endowment.

John said that Mutual of America offered institutional money market funds that might bring a higher return than a savings account. He suggested that Rich talk with Steve Sanders at ACLC about the program’s endowment and investments. He added that it used to be easy to manage cash for better returns, simply by putting it in CDs at 8 and 10 percent.

Administration: Development Update

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

- In 2014, KEJC had received \$315,772 while seeking \$290,411 through grants and fundraising campaigns, or 109 percent of what it sought.
- From 2011 to 2014, KEJC had received \$1,163,388 of \$1,509,139 sought, or 77 percent.
- So far in 2015, KEJC had received \$326,978 while seeking \$520,734, or 63 percent of what it sought.

Rich said that items set out in green font in the handout were grant awards that were unexpected as the year began, including the awards for the CLINIC Fellowship (\$50,000), Harvard Fellowship (\$45,000) and Health Gains funding from the Foundation for a Healthy Kentucky and Interact for Health (\$10,000 and \$20,000).

Rich said designation of a donation to Maxwell Street Legal Clinic of \$2,000 by Judge Phillip Shepherd was a nice surprise. The Judge had received the Distinguished Judge award from the Kentucky Bar Association. As part of the award each year, the honoree is invited to designate a charity to receive \$2,000.

Looking ahead, Rich said that two seasonal events were coming up, each with fundraising goals: the Good Giving Guide Challenge (\$10,000) and the annual holiday fundraising letter (\$8,000).

Sarah Adkins added that she had applied to King's Daughters Foundation for \$6,000 for a new printer-copier for Maxwell Street.

Mary commented that the grant Rich had written to CLASP, though unsuccessful, was a really strong proposal. The grant would have provided for joint policy work with other Kentucky groups to streamline access to public benefits, starting with Medicaid and SNAP. With the CLASP grant factored out (\$150,000), Rich said, KEJC had raised 88 percent of what it sought.

Administration: 2014 Audit and 990

Rich said that the audit process had begun and that he had provided auditor Vickie Richardson with the materials she requested for both the audit and the KEJC 990 for 2014. He said that next steps would include:

- Circulation of the 990 to the board prior to submission
- An Audit Committee conference call with Vickie to review the draft audit report

Following the call, Rich said, the Audit Committee would report to the board at the next meeting and make a recommendation on the audit.

Administration: Budget Assumptions for 2015

Mary next invited Rich to address plans for the 2015 budget. Rich said he had included a one page sheet of "KEJC Proposed Budget Assumptions for 2016" in the board package. He said he wanted to review the assumptions with the Board before using them as guidelines to prepare the budget.

The first assumption stated 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, as in recent years:

- 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 employment law, Fellowships and health outreach positions were grant funded
- Called for numerical goals for both fundraising and reserves

Rich said full-time salary increments would take into account findings of the 2013 board committee on salary comparability. He said new language addressed capacity by calling for the budget to include an allotment for communications and development and for grant budgets, wherever possible, to include a line for project-related communications.

Rich said the budget would maintain employer shares for health coverage at \$720 for individuals and an amount sufficient to ensure that employee shares for family coverage would be no higher than shares for state employees, with one change.

Rich explained that the one plan option for 2016 had a premium of \$721.14, just above the \$720 limit. He said it was not worth the extra accounting effort to collect a \$1.14 employee share. He said that in the budget he would recommend raising the \$720 employer share to \$725, or at least to \$721.14, to avoid the extra bookkeeping.

Governance: Staff Reps Election 2015

Rich said that Staff Reps to the board were elected every two years in the fall. He said that he would conduct a nomination and election process for the positions before the next meeting. The elected Reps would then serve for 2016 and 2017.

Big Picture: Legal Services Announcements

Mary invited announcements and discussion on matters affecting the Kentucky legal services community.

Robert Johns, Director of AppalRed, said his program would hold its second fundraising event for the AppalRed Rosenberg Fellowship the evening of the board meeting at the Clarion Hotel in Lexington. Rob said that the event would honor long-time legal aid supporter Warren Keller and would feature Don Saunders of NLADA as a keynote speaker.

Rob said that tickets for the event were still available at \$100. He said the event would feature a silent auction with many items including UK basketball tickets and an original painting by Dal Macon of Union College, with prints of the painting also for sale. Rob said the painting honored the fortitude of AppalRed clients.

Josh Crabtree said that on the coming Thursday, Legal Aid of the Bluegrass would convene a summit on domestic violence in Covington, with 6.5 Hours of CLE available. He said the event would include a movie screening.

Big Picture: “Eric Conn Fiasco”

Mary invited an update on the “Eric Conn fiasco” affecting disability recipients who had been represented by Mr. Conn and who now faced review and new hearings on the original determination. (The reason for the review: SSA believed Mr. Conn had used fraudulent evidence in their cases.)

Rob said AppalRed was serving as the point of contact for people seeking help with hearings. He said the program had received over 500 applications, had referred 286 cases and had accepted over 120, with 70 ready to go out for referral through its pro bono panel.

Rob said “everyone who shows up with an attorney gets a continuance,” so it was important to get people connected with staff and volunteers. He said that the National Organization of Social Security Claimants Representatives (NOSSCR) had helped with volunteer training at UK, sending volunteer trainers from around the county. He said that AppalRed had posted links to training materials on its website.

Rob thanked John Rosenberg for his efforts to recruit volunteers. He said there had been “an outpouring from the private bar,” with over 100 volunteers stepping forward. He gave the example of attorney John Goss, who had taken on 60 cases, handling them through 3-way video.

Rob said AppalRed staff had handled 6-10 hearings so far, with a mixed experience for advocates. He said “by and large these have been strong cases” and that none of the claimants had any knowledge of fraud. Rob said that many people are afraid of showing up for the hearings because they think SSA suspects them rather than Eric Conn of fraud.

John Rosenberg added that federal litigation had been filed to stop the hearings. He said it was unfair to have to prove that one was disabled years ago. He added that KEJC’s Anne Marie Regan had done most of the work on the recent reply brief to SSA.

Anne Marie said the case turned on issues of jurisdiction and exhaustion of administrative remedies, with SSA arguing that claimants couldn’t raise issues about the validity of the process until they’d gone through the hearing. She said, “They’re not getting a hearing on the issue of fraud.”

In continuing discussion, Mary said that the pro bono volunteers were a helpful addendum to a grim story. John and Bob Brown discussed the agency response to a Freedom of Information Act request on its Inspector General’s investigation into Mr. Conn. Bob said the response was replete with redactions. Anne Marie said that a grand jury was considering whether to indict Mr. Conn.

John added, “He has a new billboard next to the Social Security office.” He added, “We can write a book.”

Big Picture: Legal Services Funding

Josh Crabtree said the Congressional funding picture for legal aid was unclear. John Rosenberg asked about plans for the General Assembly. Scott Crocker said the decision so far had been to advocate for continuation of the General Fund allocation, with a potential proposal to increase filing fee proceeds on tap for the next Session.

John said that several filing fee “add ons” had succeeded in the last several sessions, including funds for public defenders. Josh said that Justice Michelle Keller was now serving as chair of the Kentucky Supreme Court Access to Justice Commission. He said she understood both the need for and the challenges facing legal aid programs.

Anne Marie asked whether the Access to Justice Foundation (AJF) was dissolving. Scott said that AJF director Nan Hanley had taken a new position with the Kentucky Home Health Association but was serving part-time with AJF. He said the program would stay intact during the coming Session and perhaps hire a lobbyist to represent programs on funding.

Scott suggested that the future of AJF might depend on what the parallel Supreme Court Access to Justice Commission did. If it expanded its role and staff, the need for AJF might be correspondingly less, he said.

Regarding AJF funding, John said the program had generally taken 20 percent “off the top” of the General Fund distribution (at one time as high as \$750,000). Josh Crabtree said that AJF board chair Warren Keller and other board members would assess next steps over the next few months.

Anne Marie suggested that KEJC should benefit from funds that no longer went to AJF. She said that in many states unrestricted legal aid programs received directly a sizable share of funds from statewide sources.

In an animated discussion, board members discussed the idea of KEJC receiving former AFJ funds and whether former AJF functions should follow them, including the role of seeking funding for the programs.

Recalling the original division of labor between AJF and KEJC, Josh Crabtree said it might make sense to keep advocacy on policy issues affecting clients separate from advocacy for program funding. Mary O’Doherty observed that the Kentucky Coalition Against Domestic Violence combined both types of advocacy.

John recounted the history of state funding for the LSC-funded programs, saying that in 1996 a General Fund appropriation was initiated to help make up for deep federal cuts.

Mary asked “what’s the timeline?” Scott said that Warren and the AJF board would revisit the mission and role by June, when current funding ended. Scott suggested that the role of the Supreme Court Commission would be a big variable in the story.

Staff Reports: Maxwell Street Fees

Reporting for Maxwell Street Legal Clinic, Guion Johnstone said that the program had implemented a revised fee schedule as encouraged at the last meeting. She said the new fees had been based on side-by-side comparisons with fees charged by Catholic Charities in Louisville and Kentucky Refugee Ministries in Lexington.

As well, Guion said, she had considered the best practice guideline suggested by CLINIC that fees bring in 30 percent of an immigration law program’s budget. She said the current figure for Maxwell Street was about half that.

Guion said the revised fee schedule included a new consultation fee of \$25 for initial review and advice. Josh suggested that fee schedules should be reviewed by the board and allocated in the budget.

Mary recalled that during discussion at the last board meeting, members had encouraged Guion to proceed. Guion agreed to send the new fee schedule to the board. Rich said that fees were allocated as part of the budget process, as part of the Maxwell Street budget.

Motion: Josh Crabtree moved to approve the fees as developed by Guion.
Second: Rob Johns
Action: Approved unanimously

Staff Reports: Highlights

KEJC staff reported on activities, issues, projects and successes. Because no board action was required in response to remaining reports, only highlights are reported here. The written staff reports are posted on the KEJC board web page at:

www.kyequaljustice.org/Board+Meetings.

Highlights:

- **Miranda Brown** said she had transitioned from the expiring CHIPRA grant to the “Boots on the Ground” grant, giving her new freedom to enroll adults and address options for immigrants ineligible for plans through kynect.
- Guion Johnstone said that **Sarah Adkins** had started her one year Fellowship and that Maxwell Street Legal Clinic had just been approved by CLINIC for an additional Fellow for two years.
- **Senior Staff Attorney Anne Marie Regan** noted that in January the SNAP program would reinstitute a work requirement for Able Bodied Adults without Dependents. She said that ABAWDS would be limited to 3 months of benefits in a 36 month period unless they engaged in work or work activities. The good news: DCBS sought to exempt 95 counties from the requirement, based on high unemployment.
- New **AmeriCorps Financial Literacy Specialist Spencer Mancillas** introduced himself, saying he had already engaged in outreach sessions with about 100 community members and had participated in his first wage claim clinic.
- **Employment Law Attorney McKenzie Cantrell** said she had attended the White House Summit on Workers’ Voice. She held up her right hand and said it was “the hand that shook the President’s hand.” McKenzie said the President, Vice President and Secretary of Labor had participated in the town hall style event.

Adjournment

Rich said that the next meeting date had been set for Thursday, December 10, 2015.

Motion: Scott Crocker moved to adjourn the board meeting.
Second: Josh Crabtree
Action: Approved unanimously

Reported by:

Richard J. Seckel, Director
December 5, 2015