

# Kentucky Equal Justice Center

## Board Minutes

December 10, 2015

**Board Members Present:** Robert Brown, Christopher Frost, John Rosenberg, (Community Members); Jeff Been, Josh Crabtree, Scott Crocker, Robert Johns (Program Directors); Loree Stark (Staff Representative).

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

**Guests:** Amanda Bear, Acena Beck (Children's Law Center).

### Welcome and Introductions

A quorum being present, Chair Chris Frost called the meeting to order and invited members and guests to introduce themselves.

### Highlights of Recent Activity

Chris recognized Director Rich Seckel to present highlights of recent activity. Rich said that since it was the final meeting of the year, he would offer three retrospective highlights and two predictions for the year ahead. He said the highlights were:

**Non-judicial foreclosure foreclosed:** Rich noted that Senior Staff Attorney Anne Marie Regan had almost single-handedly turned back a bill put forward by the Kentucky Bankers Association to turn Kentucky into a non-judicial foreclosure state. Rich said that Anne Marie had analyzed the bill, crafted the talking points, alerted the press, reached out to allies and more. In the end, the sponsor withdrew the bill.

**Lexington Council approves \$10.10:** Rich said he was there at City Hall when the Lexington City Council voted to approve a new minimum wage going up in three annual steps to \$10.10 an hour. He said that McKenzie did most of the work, including testimony on the city's power to act. He added that a picture of McKenzie and him signaling 10 and 10 made for good social media.

**For they are very good Fellows:** Rich said that new staffing had to make his Top Three. He said Maxwell Street Legal Clinic now had one not just one but two fellowships. One came from the Harvard Public Service Venture Fund, the other from CLINIC, the pre-eminent resource center for immigration law nonprofits. He said it was great to have the Fellows Sarah Adkins and Nathalie Dietrich on board, Sarah for a year and Nathalie for two years.

Rich offered two predictions for the year ahead. First, he ventured that new Governor Matt Bevin would continue the Medicaid expansion initiated by former Governor Steve Beshear. Second, he predicted that the waiver to be sought by Governor Bevin would be—if Cara had her say—a “slightly better waiver than Indiana” when it came to cost sharing.

Cara topped the waiver prediction, saying that the Kentucky plan would be “way better” for consumers than the Indiana model.

### **Approval of Minutes**

Chris invited a motion on the minutes of the previous meeting:

- Motion:** Scott Crocker moved to approve the minutes of the October 9, 2015, board meeting.  
**Second:** John Rosenberg  
**Action:** Approved unanimously

### **Administration: Financial Report and Development Update through November 30**

At Chris’ invitation, Rich next gave the financial report for the year through November 30. He began with a walkthrough of the financial report cover sheet, noting that:

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

**Profit and Loss Budget vs. Actual through November 30:** showed a gain of \$74,151 compared to the expected loss of \$36,947—a positive variance of \$111,098.

**Balance Sheet as of November 30:** showed Total Current Assets of \$345,793, down from \$365,221 on September 30 and up 24.2% percent from \$278,423 on November 30, 2014.

**Income and Expense Charts:** 81.1% of spending was payroll. 62.7% of income was grants.

Rich said that main drivers behind the positive variance in Profit and Loss were the:

- Harvard Public Service Venture Fund Fellowship award of \$45,000
- the new CLINIC immigration fellowship award of \$50,000
- new funding of \$30,000 for communications to protect Kentucky’s health gains

Rich said that funding for health communications had come from the Foundation for a Healthy Kentucky and Cincinnati-based Interact for Health.

Continuing through the handout, Rich:

- predicted carryover of \$358,275 into the coming year
- estimated unrestricted reserves of \$77,998 as of November 30, 2015

Rich noted that in the coming year, the Fellowship funds would be drawn down from their peak. As well, each Fellowship project would require contribution of funds from KEJC.

Turning to the chart on reserves, Rich said unrestricted funds would last about 1.58 months and total funds about 6.99 months if income from all sources stopped—healthy levels that might allow KEJC to spend a portion of reserves. Rich said he would present ideas for selective spending of excess reserves during the budget discussion later in the meeting.

Commenting on the Budget vs. Actual report, Rich said that the section on grants helped tell the story of the year. Four new grants had not been foreshadowed in the budget: the Harvard and Clinic Fellowships, the new “health gains” funding and a small grant from the Louisville Bar Foundation to replicate the Lexington wage claim clinic in Louisville.

### **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 \$350,355 while seeking \$536,734, or 65 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 that the two items in red font represented grants sought but not awarded, including a \$150,000 proposal to the Center for Law and Social Policy for joint work by four Kentucky groups to coordinate and streamline Kentucky application processes for Medicaid and SNAP.

Rich said KEJC’s partners in the CLASP grant were Kentucky Center for Economic Policy, Kentucky Coalition Against Domestic Violence and Kentucky Youth Advocates. He said that if the CLASP proposal were factored out, the percent of funding awarded would rise from 65 to 91 percent for the year.

Rich said the 2015 Good Giving Campaign—still underway—had already met its bottom line goal of \$10,000 in online individual donations, thanks in large part to two spinoff

fundraising pages launched by board member Loree Stark and Cara’s friend Courtney Ham. Rich said Loree and Courtney had used social media to promote KEJC as a cause to their friends, with great success: KEJC was running in the top five among over 100 Good Giving groups in the number of donors.

(Ultimately, KEJC would go on to place second among medium size nonprofits in two categories—most “unique donors” and most funds raised—and to win a \$5,000 endowment contribution in each category from Blue Grass Community Foundation.)

**Administration: IRS 990 for 2014**

Rich said that auditor Vickie Richardson had completed KEJC’s 990 for FY 2014. He said copies were circulated by email before submission by the November 15 extended deadline.

**Administration: Audit Committee Report**

Board member Bob Brown reported for the Audit Committee. Bob said the committee had met by phone with Auditor Vickie Richardson on December 7 to review the audit report for FY 2014. Committee members were Bob and Mary O’Doherty, with Chair Chris Frost participating ex officio. (Rich as management did not participate.)

Bob said the committee had walked through the document with Vickie, who noted a significant increase in program income. Bob said the committee recommended only one change in the report: addition of the phrase “or nominally priced” to the description in Note 1 which had originally described “free civil legal services.” The change was made in the final pdf, copied and bound versions of the audit circulated to the board.

Chris added that Vickie had expressed “no exceptions or concerns” with respect to the financial statements.

- Motion:** John Rosenberg moved that the Board should accept the FY 2014 audit report.
- Second:** Loree Stark
- Action:** Approved unanimously

**Administration: Proposed 2016 Budget**

Director Rich Seckel presented a proposed budget for FY 2016, using a projector to display the details. He said he had prepared the budget guided by the budget assumptions discussed at the last meeting and had held a staff briefing by webinar a few days earlier. Rich briefly reviewed the budget assumptions, including the goal of making a budget that could be paid for with known or predictable income while maintaining unrestricted reserves of about 10 percent of budget.

Rich said a new strategy was set out in the assumptions: inclusion of funding for communications to the extent possible in each new grant proposal.

Rich said the budget assumptions and proposed budget included a proposal to raise from \$720 to \$725 the limit on employer contributions to individual health coverage. The reason: one of the plan offerings for 2016 was just a couple of dollars over \$720. Rich said it simply wasn't worth the hassle to deduct a miniscule amount as a payroll liability.

Turning to details, Rich said the budget featured:

- expenses based trend or, if available, actual costs and rates
- modest new equipment expenditures
- 50 cent per hour raises for hourly employees
- \$900 increments for full-time employees, as provided under the staff attorney scales developed several years earlier in committee discussions
- additional \$480 increments for the Director and Senior Staff Attorney, whose salaries had been found farthest from comparability
- an additional \$50 increase to bring Cara's salary similarly to scale

Rich also recommended that Amanda's salary as Legal Intern be brought up to from \$14 to \$15 an hour on January 1. He said the increase was warranted by good performance and the fact that, counting the new Fellows, she now served three case handling staff instead of one.

Rich said that the increments proposed in the budget would bring all salaried employees to a 2% raise or slightly higher, with part-time employees getting a larger percent raise ranging from 2.6% to 7.3%.

Chris Frost reported that the board had held an Executive Session earlier in the day to consider a recommendation for Rich's salary as director. Chris explained that without board action, Rich would be in the position of proposing his own salary. Chris said the board recommended a 5% raise for Rich in each of the next two years.

Rich noted that the board proposal was higher than a counteroffer he had made. He said he would consider donating back the extra above what he had proposed. But Rich said he agreed that some adjustment of salary toward comparability was in order, with the idea in mind of attracting a successor down the road.

Turning to income side of the budget, Rich said he had made cautious assumptions about grant renewals. He said the budget featured a \$30,000 "risk level" of new grants to be sought from sources not yet identified, an amount he felt could be achieved.

Rich said that the "bottom line" of the budget initially appeared to be a considerable negative amount: \$40,091. But he said the major portion of the \$40,000 was not unfunded spending or use of unrestricted funds. Instead, \$30,000 of the total was the remaining amount from the Harvard fellowship grant that would be spent down in the coming year.

Rich said that when the fellowship was factored out, the bottom line was a negative \$9,491, well within the programs reserves.

Looking forward, Rich said that the CLINIC immigration fellowship could present a challenge. It had come with first year funding of \$50,000, but a potential drop to \$25,000 in the second year, starting November 2016. The good news: CLINIC had offered to help with fundraising by reaching out to the local Catholic Diocese.

John Rosenberg observed that the \$2,400 budgeted for equipment was very low. He said good equipment helped people do and enjoy their jobs.

Revisiting the question of reserves, Rich presented a handout on potential spending of unrestricted reserves above 10% of the budget, an estimated \$15,250. He suggested use of the excess for bookkeeping assistance, starting with payables, and for development assistance.

Rich said he had not included the reserve spending in the budget since he wanted first to get a sense of the board on the matter. He proposed that the board authorize him to spend excess reserves up to the levels described in the handout in consultation with the officers and after determining that the reserves were still available several months into the year.

Jeff Been observed that the consultations need not be required, given Rich's cautious approach to spending.

- Motion:** Jeff Been moved to approve the budget as proposed, with the addition of:
- the five percent raise for Rich recommended by the board
  - flexibility for Rich to spend unrestricted reserves above 10% of budget for the uses described in the excess reserve handout
- Second:** Robert Johns  
**Action:** Approved unanimously

### **Administration: Family Leave Policy**

Rich said that Fellow Sarah Adkins had brought to his attention the fact that KEJC's policies for family leave fell short of current best practice, especially for leave after childbirth. He read the current language from a copy of the policies, which allowed only 5 days of paid leave upon birth or adoption of a child, plus use of accrued sick leave, annual leave or comp time.

Sarah added that the policies were well behind the times. She suggested that the goal should not just be to catch up but to set a leading example.

Rich said that Sarah had volunteered to investigate best practice policies and report back to the board with recommendations. He noted that these were the steps McKenzie had taken to bring a whistleblower policy before the board. McKenzie volunteered to work with Sarah on the research and recommendations.

### **Governance: Staff Rep Election Results**

Rich said that since the last meeting he had conducted an election process for Staff Representatives to the KEJC board, including a call for nominations and an online voting process. He said the results of the process were newly elected Staff Reps, as follows:

|                     |   |
|---------------------|---|
| Attorney Staff Rep  | Loree Stark (AppalRed, Richmond)                    |
| Paralegal Staff Rep | Angela Zeek (Legal Aid of the Bluegrass, Lexington) |
| Support Staff Rep   | Brenda Combs (Legal Aid of the Bluegrass, Morehead) |

Rich said he looked forward to having the new members on the board.

### **Big Picture: Legal Services News**

As a working lunch was wrapping up, Chair Chris Frost invited legal services Project Directors to report on multi-program concerns, including funding.

Josh Crabtree of Legal Aid of the Bluegrass noted that the Frankfort scene was changing, with former House Judiciary Chair John Tilley serving as newly appointed Secretary of the Justice Cabinet. (The Justice Cabinet budget in each recent year had contained an Access to Justice appropriation of General Funds for the four regional LSC-funded programs in Kentucky, currently \$750,000 a year.)

Director Rob Johns of AppalRed reported on the ongoing “Eric Conn Fiasco,” in which over 1,500 Social Security and SSI recipients faced review of earlier decisions awarding them benefits. The reason for the reviews: SSA suspected fraud by Conn in the initial determinations. There was no indication that applicants knew of Conn’s scheme.

Rob said AppalRed had screened over 600 callers and was representing 150 clients in house, with 450 referred to volunteers. Despite the massive effort and outpouring of pro bono assistance, Rob said he was concerned that the program might run out of capacity. He said one thing that helped was the use of three party video conferencing for hearings, allowing a volunteer from far away to represent someone in Kentucky or West Virginia.

John Rosenberg added that a training session for Conn Fiasco volunteers was set for December 19 at the UK College of Law. He encouraged people to think about practitioners who could help. He said attorneys from California, Colorado and all over had stepped forward, even though no fees were available for the administrative proceedings. John said that John Goss and members of his firm in Virginia had taken 50 to 60 cases. Rob said that ALJs so far had been sympathetic to requests for continuances.

Jeff said it should be possible to “tap deeper into Louisville” for volunteers, through Bar Briefs articles and perhaps a training session through the Louisville Bar Association. By way of example, Jeff said that Legal Aid Society had seen sixty volunteers step forward to help with its initiative around homelessness.

Scott Crocker took the opportunity to recognize Jeff on the upcoming occasion of his retirement. Scott said that in his fifteen years as director of Legal Aid Society, Jeff had been a leader in many areas. Chris thanked Jeff for his service on the KEJC Board, saying his experience, judgment and commitment to the best interests of the program had been invaluable.

In response to a question about his successor, Jeff said that three finalists had been selected for the position, with a decision on the new director expected by early January. He said he would stay on through a brief transition period once a successor was selected.

In other transition news, Scott said that long-time intake director Norm Wheeler would soon leave Kentucky Legal Aid. He said that Norm might work next with the area’s United Way 211 program. Meanwhile, Scott said, the medical center in Bowling Green had offered matching funds toward a new Medical Legal Partnership initiative.

John Rosenberg asked about plans to address legal services program funding in the upcoming General Assembly. Scott said that the program directors would meet following the KEJC board meeting to discuss plans.

### **Staff Reports: Highlights**

KEJC staff reported on activities, issues, projects and successes. Because no board action was required in response, only highlights are reported here. The written staff reports are posted on the KEJC board web page under the December 10, 2015, heading at:

[www.kyequaljustice.org/Board+Meetings](http://www.kyequaljustice.org/Board+Meetings).

Highlights:

- **Employment Law Attorney McKenzie Cantrell** said she had just returned from a training in Washington, DC, on defending local gains on workers’ rights. On that theme, McKenzie said she had worked with NELP and multiple Kentucky partners to file two amicus briefs with the Kentucky Supreme Court in response to a challenge to Louisville’s new minimum wage ordinance. The briefs addressed:
  - The city’s powers to act on the minimum wage and to create a private right of action for workers
  - The good public policy reasons for localities to raise the minimum wage
- **Health Law Fellow Cara Stewart** said that two new developments called for federal advocacy on state issues: Governor Bevin’s plans (a) to dismantle kynect and move to

healthcare.gov and (b) to seek an 1115 waiver featuring new cost-sharing in Medicaid. The downside of the first proposal, Cara said: “healthcare.gov can’t do Medicaid.” Cara also said that multi-benefit enrollment platform benefind would roll out soon.

- **Health Outreach Coordinator Miranda Brown** said that KEJC had forged a good relationship with kynect. As a result, in her role as a Certified Application Counselor, she said she could make policy and practice suggestions to the agency around issues like “bad address” disenrollment. Miranda said there was lots of confusion about kynect in the wake of the Governor’s announced proposal to dismantle it.
- **Senior Staff Attorney Anne Marie Regan** reported on multiple matters: concern that non-judicial foreclosure bill would reappear in the General Assembly; a favorable ruling in the SLAPP suit against a student who had complained on TV about National College; the uphill battle in federal court to protect Conn fiasco victims; and the upcoming return, in eight counties, of a SNAP requirement that most able-bodied adults without dependents engage in work or work activities.
- **Guion Johnstone** and **Sarah Adkins** described Maxwell Street Legal Clinic’s new approach to intake, which afforded clients an initial consultation to screen for all possible immigration remedies. Sarah said that through the new screening process the program had picked up several U visa cases, putting clients on a potential path to citizenship. Guion said that since the last board meeting, Maxwell Street had opened 154 new cases.

Children’s Law Center guests Amanda Bear and Acena Beck introduced themselves as new staff with the program, with Amanda in charge of a new Lexington office and Acena serving as the program’s new managing attorney in Covington. Rich said that the Center’s Lexington office was in the same building as KEJC headquarters at 201 West Short Street.

John Rosenberg asked about the status of the Child Advocacy Today program, the Medical Legal Partnership that had been attached to Access to Justice Foundation and located at UK Hospital. Josh Crabtree said the program was in transition but might land in the new organization started by Rebecca DiLoreto and partners, the Institute for Compassionate Justice. Cara said the Institute focused on “school to prison pipeline” issues.

## **Adjournment**

The agenda having been completed, Chair Chris Frost declared it adjourned by acclamation.

## **Reported by:**

Richard J. Seckel, Director  
April 19, 2016