

Kentucky Equal Justice Center

Board Minutes

December 14, 2017

Board Members Present: Robert Brown, Rick Clewett, Christopher Frost, Mary O’Doherty, John Rosenberg (Community Members); Joshua Crabtree, Robert Johns, Amanda Young (Program Directors); Brenda Combs, Nick Maraman (Staff Reps).

KEJC Staff: Miranda Brown, Cassie Chambers, Leah Engle, Anne Marie Regan, Rich Seckel, Cara Stewart, Corinna Svarlien.

Guests: Nan Hanley, Glenda Harrison (Access to Justice Commission); Amanda Bear (Children’s Law Center); Geri Grigsby (Volunteer).

Welcome and Introductions

A quorum being present, Chair Chris Frost called the meeting to order and invited members to introduce themselves. KEJC Director Rich Seckel congratulated newly elected Attorney Staff Representative Nick Maraman and welcomed volunteer Geri Grigsby, each of whom had joined the meeting.

Chris next recognized KEJC Director Rich Seckel to share highlights of recent activity and events. Rich said he would follow the format he had suggested for staff reports: three recent highlights and three challenges going forward.

Rich’s highlights from the year:

Reports of its death have been exaggerated: Rich said that in several conversations, at meetings and in calls, national advocates had expressed sympathy for what happened to Kentucky’s Medicaid expansion. The good news: nothing had happened. Rich said that despite all the clamor surrounding Kentucky implementation of the ACA—the demise of the kynect brand, the benefind crash, and the Kentucky HEALTH waiver—Medicaid expansion was still in effect. Rich said that KEJC’s decision to engage in “hands on” enrollment helped guide and inform KEJC’s policy advocacy around Medicaid and benefind. As well, the work had drawn new grant support from several sources.

How HEALTHY is it: Rich said that the real jeopardy for the expansion population came from provisions of the Kentucky HEALTH Medicaid waiver proposal: premiums, lockouts, work requirements and more. The waiver application itself project 97,000 fewer enrollees at the end of the five year demonstration period. Rich said the proposal had been met with energetic public response, including about 1,200 public comments over the summer on proposed revisions to the plan. Rich said KEJC had conducted an “interview blitz” with Medicaid recipients, mostly in September, on how they might be affected by

the changes. He said that Kentuckians for the Commonwealth had been a particularly effective community partner in arranging interviews.

DACA deadlines: Rich said he was impressed with how the team at Maxwell Street Legal Clinic rose to the occasion when the Trump administration announced changes in DACA and later regarding Temporary Protected Status renewals. He said that adding a second Legal Assistant had brought about a sea change: together with AmeriCorps member Corinna Svarlien, Legal Assistants Ivonne Camacho and Michelle Haubner provided full-time phone access for clients, without having to rely on case handlers to pick up the phone. Rich thanked Maxwell Street attorney Leah Engle for managing the recruitment process for the new staff and for teamwork around DACA and TPS. He said it was hard to believe she'd only been with the program since March.

Rich described three challenges going forward:

Workers' rights as the new consumer law: Going back a few years, Rich said, most defensive battles in the General Assembly revolved around lending, from high cost mortgage loans to "Son of Payday Loans" proposals. While "SOPDL" was still a troubling threat, Rich said that new jeopardy for low income families came from bills to diminish workplace rights, including basic wage and hour protections. One example was a 2017 bill that he had named "Wage and Hour like It's 1929." The bill did not pass. But, he said, workers' comp and mine safety inspections also had been in play in the 2017 Session. Rich said that KEJC's workers' rights task force fostered a good interchange between advocates from different spheres: labor, ACLU, legal services programs, victims' advocates and more.

1115 challenge: Rich said that KEJC had conferred regularly with a potential litigation team on the waiver. Jane Perkins of the National Health Law Program had chaired calls that also included staff from the Southern Poverty Law Center and private firm Jenner and Block. Rich said the claims of a litigation challenge would depend on what was actually approved and the details set out in the Terms and Conditions of approval. Rich noted Governor Bevin's threat to end Medicaid expansion should elements of the waiver be struck down in final decisions on appeal. He said the 97,000 people already were slated to lose coverage and should not be "left on the field." Rich identified a key question on the upcoming budget proposal from the Governor: would expansion again be fully funded?

VOCA implementation: Rich said that the very morning of the board meeting he'd received notice: KEJC had been approved by the Justice Cabinet for a substantial Victim of Crime Act (VOCA) grant. He said the grant would enable Maxwell Street Legal Clinic to build a team practice to help immigration victims of crime with U visas, T visas and more. Rich said that the grant was KEJC's first in many years of government funds. He said that it presented administrative challenges along with the casework, including implementation of "next level" timekeeping and billing, tracking of match and more. Rich said that the grant would allow hiring of three new staff: two case handlers and a Legal Assistant.

Approval of Minutes

Chair Chris Frost invited a motion on the minutes of the last meeting.

Motion: Brenda Combs moved to approve the minutes of the October 6, 2017, board meeting.
Second: John Rosenberg
Action: Approved unanimously

Administration: Financial Report through November 30

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

Profit and Loss Budget Overview: budget for 2017 anticipated a loss of \$16,273.

Profit and Loss through November 30: showed a loss of \$15,630 compared to the expected loss of \$69,079—a positive variance of \$53,449.

Balance Sheet as of November 30: showed Total Current Assets of \$285,501, down from \$341,756 on September 30 but up 8.3% percent from \$263,595 on November 30, 2016.

Income and Expense Charts: 80.6% of spending was payroll. 57.57% of income was from grants.

Rich said he had adjusted his prediction of year-end carryover downward slightly from the prediction he made with the 3rd Quarter report at the last meeting (\$335,145). He said the new projection built on the November 30 actuals for current assets, deducted projected December expense and added potential proceeds from the Good Giving Challenge and holiday season donations. The resulting amount: \$325,501.

Rounding out his review of the financial report cover memo, Rich said that unrestricted funds had declined slightly from an estimated \$41,437 in the last report to \$39,551—quite a bit lower than the 10% of budget he would like to hit (about \$66,000). Rich identified three things that could drive the number higher: the new grant from NHeLP (especially by paying for a significant portion of Anne Marie's time); holiday season donations and, in the coming year, VOCA funding for part of current Maxwell Street case handler salaries.

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 \$53,449 on the Profit and Loss statement. (See the previous minutes for details on the grants.)

Turning to the Budget vs. Actual report, Rich said the big picture figures looked good: income was running at 105 percent of budget, with spending at 96 percent. Rich noted that donations for the year were almost \$16,000 ahead of budget. He again 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.

Rich noted that KEJC's balance sheet now included the investment of the Mason Fund in a Vanguard brokerage account. Rich said he had just received a statement from Vanguard that put the current value of the account at \$55,786—a worthy gain from the July 31 cash value of \$52,129 just before the funds were invested in several different mutual funds.

On months of reserves, Rich said that Total Current Assets as of November 30 would last less than six months (5.37 months), down from the last report. He said unrestricted reserves would last less than one month (0.74 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 \$367,140 of \$526,997, or 70 percent of what it sought.

Rich said that at the time he had compiled his written report, the VOCA grant was still pending. The grant now was approved. Rich said that if VOCA funds were added in, KEJC's “batting average” for the year to date would be about 108 percent of the funds it sought. Rich noted that the VOCA grant brought a matching requirement of about \$60,000, a worthy new challenge.

Administration: IRS 990 for 2016

Chris invited Rich to report on preparation of KEJC's IRS 990 report for 2016. Rich said that he had emailed the filing prepared by auditor Vickie Richardson to the board before it was submitted on November 14. Rich circulated hard copy around the room. He said the figures were based on the audited financial report also prepared by Ms. Richardson, on which the Audit Committee would report momentarily.

Administration: Audit Committee Report

Treasurer Mary O’Doherty reported for the Audit Committee. She said that the Committee had held a conference call on December 11 with auditor Vickie Richardson to review and discuss Ms. Richardson’s report. Committee members included Bob, Treasurer Mary O’Doherty and Chair Chris Frost (ex officio).

Mary said it was a clean audit with no findings and just one adjusting journal entry. She said that Vickie had complimented Rich for strong financial management and the board for good oversight. Mary briefly described items in the Notes section of the audit, including notes on:

- the in-kind donation of \$16,000 for rent and utilities for Maxwell Street Legal Clinic from Maxwell Street Presbyterian Church
- the new brokerage account at Vanguard where KEJC invested the Mason Fund contribution in mutual funds
- renewal in September of assumed name “Kentucky Equal Justice Center” with the Secretary of State

Mary said Vickie had commented that KEJC never had a bad receivable, which was unusual in her auditing experience. She said Vickie recommended clearing old, unreconciled checks and deposits, but otherwise had no recommendations for accounting or oversight.

Mary said that the Committee recommended revising the report to move income and expense for the workers’ rights project from the Immigration column to Poverty Law Advocacy. She said that Vickie had made the change. (Rich had circulated copies of the revised, final version.)

Chair Chris Frost invited a motion on the report of the Audit Committee.

- Motion:** John Rosenberg moved that the board accept the “Financial Statements and Independent Auditor’s Report, December 31, 2016,” as prepared by auditor Vickie Richardson.
- Second:** John Rosenberg
- Action:** Approved unanimously

Administration: Proposed Budget for 2018

Rich presented a proposed budget for FY 2017, using a projector to display the details. He said he had prepared it guided by the budget assumptions discussed at the last meeting and that he had held a budget briefing for staff by webinar earlier in the week.

Rich briefly reviewed the budget assumptions he had followed, including the goal of making a budget that could be paid for with known or predictable income while

maintaining unrestricted reserves of 10 percent of budget. He said perhaps the biggest question for the board was whether the income set out was “predictable.”

Turning first to detail on salaries, Rich said the budget included increments of \$900 a year for full-time staff, with additional adjustments of (a) \$540 for the Senior Staff Attorney to bring salary closer to comparability and (b) \$96 for the Health Law Fellow to bring the increase to at least 2%. He said all full-time staff would receive at least a 2% increment.

Rich said the budget included a 50 cent an hour increase for part-time hourly staff, effective on their anniversaries.

For his own salary, Rich said, he relied on the board’s recommendation the previous year of a 5% increase. He said the board had confirmed the figure for the coming year in executive session just before the board meeting.

Rich said that the figures for FICA, UI and fringe benefits were driven by known rates—including the new, higher rate recently announced by the County Employees Retirement System (CERS): 28.86 percent employer match, up from 19.18 percent. Rich said the increase was a borderline “budget buster,” but the good news was that it wouldn’t apply until July. In the meantime, he had applied a blended average of current and new rate to applicable salaries.

Rich said operating expenses were based on billing rates where available or trended across the last two years.

On the income side of the budget, Rich said he had made cautious assumptions about grant renewals but less cautious ones about finding new grants. He said the budget assumed that KEJC would repeat its unexpectedly strong performance in 2017 in winning funds for safety net defense. The budgeted figure for new safety net grants was \$30,000 compared to the \$73,500 actually received in 2017 from NHeLP, LIN and KCEP.

Rich said the income side of the budget also featured \$36,000 in new grants to be sought from sources not yet identified. Rich said that the \$36,000 figure was the same “new grants” figure proposed for the 2017 budget—but now with the \$30,000 safety net figure added on top. He said the question for the board was whether members were comfortable with the resulting level of risk (about 8.7% percent of budget).

Board member Rick Clewett noted two ways to address the risk: lots of small donations, the approach taken by Kentuckians for the Commonwealth, or a few major gifts.

Rich said that big news was not yet reflected in the budget: approval of the VOCA grant for Maxwell Street. Rich said he recommended adoption of a working budget without the VOCA figures. He said he would bring a revised budget to the Board during 2018 that reflected the grant award and any adjustments.

- Motion:** Joshua Crabtree moved to approve the proposed budget for 2018 as a working budget until VOCA grant figures could be incorporated.
- Second:** Mary O’Doherty
- Action:** Approved unanimously

Governance: Staff Reps Election Process

Rich said that he had conducted an election process for new or continuing Staff Reps to the KEJC Board, with a nomination period in October and online voting in November. He said the result was re-election of Brenda Combs as Support Staff Rep, re-election of Angela Zeek as Paralegal Staff Rep and election of new Attorney Staff Rep Nick Maraman. He again welcomed Nick to the meeting.

Governance: Bylaws Revisions

Chair Chris Frost described the process leading up to proposed changes in the Bylaws, including ad hoc committee discussion, a preliminary draft and a “walk through” of proposed changes at the last meeting.

Chris said the resulting revision had been circulated to the board timely for a vote at the current meeting. Chris recapped key changes. He said the proposal clarified the date of the annual meeting. As well, he said, key changes (as summarized in the last minutes):

- Clarified that the Executive Director rather than the board hires staff other than the Executive Director
- Eliminated the Pro Bono Coordinator Staff Rep board position with clarification that Pro Bono Coordinators could run and serve as an Attorney, Support Staff or Paralegal Rep depending on their credentials
- Clarified that 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
- Adopted 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 said that, speaking more broadly, the ad hoc subcommittee had sought to encourage board engagement beyond simple oversight. He said that Bylaw V was key to the possibilities: it allowed the KEJC board to form new committees that included non-members as long as at least two board members were part of the body.

- Motion:** John Rosenberg moved to adopt the revised Bylaws as circulated to the board with the required 14-day notice.
- Second:** Robert Johns
- Action:** Approved unanimously

Governance: Conflict of Interest Form Updates

Rich next drew the group’s attention to the KEJC Conflict of Interest (COI) form included in the Board package. He said that the Board had adopted a Conflict of Interest policy requiring board members and staff to declare business interests or memberships other than KEJC. The idea was to encourage decision-making with KEJC’s best interests foremost and other interests disclosed.

Rich said the policy called for new COI forms from Board and staff each year. He said the time for updates had come. Bob Brown made copies for board and staff who hadn’t yet printed out a copy. A number of board and staff members completed and turned in the forms during the meeting.

Governance: Proposed Meeting Dates 2017

Rich passed around a sheet with proposed dates for four board meetings in 2018, as follows:

April 20	Friday	Board Meeting
July 19	Thursday	Board Meeting
October 5	Friday	Board Meeting
December 13	Thursday	Annual Meeting

Board members suggested no changes. However, the first date subsequently was delayed until May 1 so that Rich could attend the Legal Impact Network convening hosted by the Shriver Center in Chicago, April 19-21.

Big Picture: Access to Justice Commission

Newly appointed Executive Director Glenda Harrison of the Kentucky Supreme Court’s Access to Justice Commission joined the board meeting to describe the Commission’s mission and activities—the latter, she said, still “to be determined.”

Glenda said she had worked at Legal Aid of the Bluegrass in Covington for 42 years before retiring and, at the behest of Supreme Court Justice Michelle Keller, joining the Commission. Glenda recalled that she had been a Paralegal Rep to the newly formed KEJC board in 1977, back when the program went by its underlying corporate name of Office of Kentucky Legal Services Programs (OKLSP).

Glenda said the mission of the court’s Access to Justice Commission was to promote access to the courts by all Kentuckians and to foster high quality legal representation through partnerships with both legal aid and the private bar.

Glenda briefly recapped the history of the Commission, noting that it had been formed in 2010 by order of the Kentucky Supreme Court. She said the action was inspired by the launch of commissions in other states, most often with a central objective of helping fund

civil legal aid. Glenda said the Commission originally was solely a volunteer endeavor, with members taking an early interest in dedicating cy pres awards in appropriate cases to civil legal aid. She said that Chief Justice Minton had asked Justice Keller to take the initiative to the next level. Justice Keller in turn secured a grant from the Kentucky Bar Association to bring on staff, including Glenda and assistant Nan Hanley.

Glenda said there were lots of issues to be pursued, from concrete matters like uniform forms to broad aspirations like ensuring civil right to counsel. She said poverty was still pervasive in Kentucky—Nan provided several illustrative statistics—so much so that “legal aid programs can’t do it alone.” But Glenda said she looked forward to dialog with stakeholders on how best to ensure equal access to justice. Glenda expressed confidence that within a year she would have successes to describe.

Board member John Rosenberg noted that the Kentucky Bar Association grant to fund the Commission came from its pro bono donated legal services fund, which was generated by a \$1 add-on to bar dues. He said the funds could be drawn down quickly only to be built back slowly by fees from the fifteen thousand or so attorneys in the state. Nan said the Commission was studying potential strategies and plans for sustainability.

Chair Christ Frost asked about the membership composition of the Commission itself. Glenda said the Supreme Court order had established a fifteen member board, including clerks, judges and a legal aid director. She said the Commission now would seek 501(c)(3) status to encourage donations.

KEJC director Rich Seckel asked whether Glenda and Nan were pursuing social media communications. He noted that national Voices for Civil Justice, launched by long time civil legal aid leader Martha Bergmark, had good research, resources and examples for messaging. Glenda said that she had no restrictions on using social media or on lobbying, as long as lobbying met the nonprofit standard of being an “insubstantial” part of activities.

Nan said that the Commission would coordinate with legal aid programs in developing fact sheets on legal aid impact and funding. Board member Joshua Crabtree added that basic education about civil legal aid was important. He said many members of the General Assembly had little information about the programs and often asked questions about types of cases the programs were barred by law from handling.

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 December 14, 2017, heading at: www.kyequaljustice.org/Board+Meetings.

Adjournment

Motion: Robert Johns moved to adjourn.
Second: Rick Clewett
Action: Approved unanimously

Reported by:

Richard J. Seckel, Director
April 28, 2017