Kentucky Equal Justice Center

Board Minutes

April 22, 2016

Board Members Present: Chris Frost, Mary O'Doherty, John Rosenberg (Community Members); Scott Crocker, Neva-Marie Polley, Robert Johns (Program Directors); Brenda Combs, Loree Stark, Angela Zeek (Staff Representatives).

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

Guests: Amanda Bear (Children's Law Center).

Welcome and Introductions

Chair Chris Frost welcomed board members and staff and invited people to introduce themselves. Rich thanked newly elected Paralegal Staff Representative Angela Zeek for joining the Board. Rich said that new Support Staff Rep Brenda Combs also might join the meeting later by phone.

Rich said he was sad to say that Attorney Staff Report Loree Stark would be leaving soon for a new job with Mountain State Justice in West Virginia. He thanked Loree for her Good Giving spin-off fundraising page during the holiday season. Rich said Loree's board position would be filled by a special election later in the year.

Loree said that her new job was a dream job, too tough to turn down, but that she had enjoyed and learned from her time on the KEJC board. She said that she and "poster cat" Lennie would remain supporters of KEJC.

Highlights of Recent Activity

As a quorum gathered, Rich said he would offer highlights of the recent General Assembly. He drew the board's attention to a color coded spreadsheet entitled "Quick Guide to 2016 Legislative Advocacy." The spreadsheet listed seventeen bills on which KEJC staff had spent more than minimal time.

For each bill, the spreadsheet indicated the topic, KEJC's position and a key activity like testimony, press conferences or meetings with sponsors. Rich said he scored each bill according to the outcome, with +1 for a favorable outcome and -1 for unfavorable. The idea was to assess whether KEJC activity was associated with positive results.

Rich said that overall, the score was a positive 4.

Rich also explained the color coding on the sheet. He said green rows indicated a positive result on a “high concern or high effort bill” and pink the opposite. He said pink rows outnumbered green but mainly because good bills stalled—like measures on URLTA and misclassification—not because bad ones passed.

Rich said the scoring was not weighted. He said that Anne Marie’s work on the flex loan bill alone justified KEJC’s presence and effort in the General Assembly: its defeat spared perhaps hundreds of thousands of Kentuckians, collectively, millions in new debt.

Rich said he had been pleased when the House bills to keep kynect and Medicaid expansion were assigned single digit bill numbers, HB 5 and 6. The reason: the numbers signaled majority leadership support in the chamber. (The measures passed the House and stalled in Senate Committee.)

Rich said that during the Session funding to sustain Medicaid expansion was the “friendly gorilla in the room.” It was included in each version of the budget: the Governor’s proposal, the House version, the Senate version and the final conference committee report. Rich said the action on Medicaid now would shift to the Governor’s plan to seek an 1115 waiver, with a theme of “skin in game” (new costs for participants).

Rich told a story that he said illustrated the Frankfort experience. He said he and Miranda had run into a prominent, high paid lobbyist in the Capitol Annex parking garage. Rich had introduced him to Miranda as a distinguished former office holder and legislative agent. Rich said the lobbyist in turn said Rich was a “hall of fame” advocate. Rich said he felt good about the accolade until he overheard the lobbyist offer the next person he ran into a similarly grand compliment. Rich said he thought, “Oh, so that’s how it works.”

Approval of Minutes

A quorum being present, Chris invited a motion on the minutes of the last meeting.

Motion:	Scott Crocker moved to approve the minutes of the December 10, 2015 board meeting.
Second:	Mary O’Doherty
Action:	Approved unanimously

(Note: Brenda Combs, Robert Johns and John Rosenberg participated by phone.)

Administration: Financial Report for FY 2015

Chris next recognized Rich to give the Financial Report. Rich said he would offer two reports: one for FY 2015 as a whole and the other for FY 2016 through the first quarter. He then drew the board’s attention to the handout for FY 2015.

The cover sheet offered a summary as follows:

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

Profit and Loss Budget vs. Actual through December 31: showed a gain of $87,273 compared to the expected gain of $5,003—a positive variance of $82,270.

Balance Sheet as of December 31: showed Total Current Assets of $361,976, up 33.7% from $270,772 on December 31, 2014.

Income and Expense Charts: 74% of spending was payroll. 60.4% of income was grants.

Rich said that KEJC's carryover of $361,976 at the end of the end of the year was slightly higher than the $358,275 he had predicted at the last meeting.

Turning to unrestricted reserves, Rich said they had held steady in 2015. His estimate of $82,925 for December 31, 2015 fell just short of the audited amount of $87,925 a year earlier.

Rich next did a quick page-by-page walkthrough of the handouts in the report, including budget vs. actual and balance sheet spreadsheets. He highlighted details as follows:

- Overall income had come in at 123 percent of budget and expenditures at 109 percent. Rich said it was a nice ratio to have.
- The high end-of-year balance was driven by new and unexpected opportunities:
    - the Harvard Public Service Venture Fund Fellowship for Sarah's position
    - the CLINIC Immigration Fellowship for Nathalie's position
    - new funds for story gathering and communications about Kentucky's health gains
    - a small grant from the Louisville Bar Foundation for a Louisville wage claim clinic

Rich called attention to the graph showing income by month during 2015. He said the Fellowship start-up funds had driven up the summer bars to unusual heights. He said each Fellowship would be spent down over time and would require at least some match.

Rich noted that the Harvard Fellowship was a one-year position, so that the 2015 funds would be spent down in 2016. He said that the CLINIC fellowship was a two-year position, with $50,000 to support it the first year and $25,000 the second year.

Rich said that the second year of the CLINIC Fellowship wouldn't start until late 2016, moving a big portion of the fundraising challenge to 2017 instead of the current year.

Turning to the Balance Sheet, Rich said that depreciation figures for 2015 had been updated but that changes in the balance for Accrued Leave would be calculated later, in preparation for the FY 2015 audit.

As FY 2015 year had ended, Rich said, the program had enough Total Current Assets to last over 7 months if no new income were received and enough unrestricted assets to last 1.7 months, each indicator at a healthy level.

Administration: Financial Report for First Quarter

Rich next reviewed the report for the first Quarter of 2016. The cover sheet stated that:

> **Profit and Loss Budget Overview:** the budget for 2016 anticipated a loss of $12,760 plus $30,000 in spent down Harvard Fellowship funds.
>
> **Profit and Loss through March 31:** showed a loss of $6,514 compared to the expected gain of $2,076—a negative variance of $8,590.
>
> **Balance Sheet as of March 31:** showed Total Current Assets of $365,102, up from $361,976 on December 31 and up 45% percent from $251,850 on March 31, 2015.
>
> **Income and Expense Charts:** 79.7% of spending was payroll. 66.3% of income was grants.

Based on the budget for the year, Rich predicted carryover at the end of 2016 at $319,216, down about $43,000 from the beginning of the year. He said the decline represented the budgeted loss of $12,760 and the spend down of $30,000 in Harvard Fellowship funds.

Rich estimated unrestricted funds at $68,665 on March 31, down from $82,925 at the beginning of the year. He noted that when the board had approved the budget for the year, it also authorized him to spend unrestricted amounts above 10 percent of budget on bookkeeping, fundraising assistance or both.

Rich said the unrestricted reserves were right at the 10 percent threshold, with no clear excess. He said would monitor them to see whether the authorized expenditures could go forward, especially since they might prove helpful to him or to development efforts.

Rich then offered a quick walk through of supporting handouts in the report. Turning to the Budget versus Actual, he said that income had come in at 95.7 percent of budget YTD, while expenditures had come in at 100.4 percent, slightly “upside down” from what he would like.

Rich said a large part of the income shortfall could be accounted for by the fact that he had budgeted $30,000 in potential new grants across the year, quarter by quarter. He said the negative $7,500 in the restricted grant line represented the first quarter's portion of that allocation. Without it, he said, income was very close to 100 percent for the year to date.

Turning next to the Balance Sheet, Rich reported that KEJC recently had received $10,000 in endowed funds from Blue Grass Community Foundation (BGCF). The funds represented two $5,000 prizes, one for placing second among medium-size nonprofits in the number of online 2015 Good Giving donors and the other $5,000 for placing second in the mid-size group in total donations.

Rich said that he had entered the new BGCF endowed funds as an asset rather than as income. He said they therefore showed up on KEJC's balance sheet but not in the Profit and Loss statement for the first quarter. Rich said that if the endowed funds had been counted as income the small loss for the year-to-date again would disappear.

On Budget vs. Actual detail, Rich said the overage in the Consultant line represented fees for the story-gathering, editing and production of videographer Ryan Morris under the health communications funding. He said the consultant fees were covered within the grant budget and did not affect reserves or draw on other funds.

Chris Frost asked why Litigation Expense appeared higher than budget and higher than usual for the quarter. (The actual was $2,476.58 compared to a budget of $735.) Rich said he wasn't sure but his best guess was that the extra spending represented immigration filing fees paid on behalf of DACA students at BCTCS under a mini-grant to help them seek permission to travel abroad.

Rich said he would drill down into Litigation Expense details after the meeting and let the board know what he found. (He later did so and found that he had been right: $1,800 of the total had been filing fees for the BCTCS students, with the rest including filing fees for workers' rights amicus briefs and CourtNet subscriptions for program attorneys.)

Rich noted that the $50,000 Mason Fund "quasi endowment" was still included in the program's savings account, with an intent to attribute an additional $500 as earnings and at some point to transfer the funds to an investment portfolio.

On months of reserves, Rich pointed to a slight downward trend. He said Total Current Assets as of March 31 would last about six months and unrestricted reserves about one month if no new funds came in—in each case a shorter period than calculated at the end of 2015. He said he would carefully track the amounts and trends.

Rich concluded the 1st Quarter report by saying that KEJC now had about $60,000 in endowments (or "quasi endowments") and about $70,000 in reserves—a somewhat different, and clearly better, position than it had a couple of years back.

Administration: Development Update

Chris next invited Rich to give the update on development. 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 2015 KEJC had received 70 percent of what it sought through grants and fundraising campaigns ($399,790 of $568,734).
- From 2011 through 2015, KEJC had received 77 percent of what it sought ($1,563,178 of $2,077,873).
- So far in 2016, KEJC had received three grants, for a total of $115,000 of $309,900 sought, or 37 percent.

Rich said that in each of the last two years a single big grant had skewed the percentage:

- In 2015 a multi-partner proposal to the Center on Law and Social Policy had been turned down.
- In 2016, Public Welfare Foundation had invited KEJC to apply for $160,000, twice as much for the year before, with a theme of building coalition and advocacy capacity. The grant was still pending.

Rich said that if the CLASP grant were factored out for 2015, the percent funded would rise to 95 percent.

(**Update on 2016:** Rich later learned from the grant officer at Public Welfare Foundation that the officer had intended to invite a $160,000 proposal for two years, not one. However, the invitation sent by staff at PWF said:

> "In recognition of the important work of your organization, we invite you to submit a proposal for funding from our Foundation in the amount of $160,000 over 12 months."

As of this writing, Rich was preparing revised documents to reflect the two year period, with likely quick approval for a two year grant.)

Administration: Family Leave Policy

At the last meeting, the Board accepted an offer from Harvard Fellow Sarah Adkins to research best practices on family medical leave and develop a proposal for consideration. Employment Law Attorney McKenzie Cantrell offered to help.

Chris invited Sarah to report on the research and resulting recommendations. Sarah drew the Board's attention to the handout "Kentucky Equal Justice Center Family Medical Leave," which summarized the current policy and background research and set out recommendations.

Sarah said that for background research, she and McKenzie had talked with staff—in KEJC's case, mostly women—and reached out to national policy center A Better Balance. She said she and McKenzie had reviewed the Family Medical Leave Act (FMLA), but ultimately didn't consider the unpaid leave it required to be significant support for families.

Sarah noted that KEJC was under the threshold for the number of employees for the FMLA to apply.

Sarah said that to investigate comparability and current practice, she, McKenzie and Guion also had reached out to legal aid nonprofits and private law firms. She said they found that private firms generally offered stronger protections. In nonprofits, she said, several women said that they felt powerless.

Sarah said that in a policy tracking spreadsheet maintained by Above the Law, with 61 private firms surveyed, average paid maternity leave equaled 15.5 weeks.

Sarah said that KEJC's current policy was outdated and that the program had an opportunity to set a leading edge example. She said that A Better Balance staff had identified 12 weeks annual paid family leave as the "gold standard." KEJC's current policy provided only:

- Parental leave of up to five days with pay upon birth or adoption
- Additional leave of up to three months without pay
- The option to use any accumulated paid sick leave, annual leave or comp time

Sarah outlined the proposal as set out the handout, including 12 weeks job-protected paid leave with benefits for several circumstances: pregnancy, prenatal care or childbirth; parental leave upon birth, adoption or start of foster care; care for a spouse, son, daughter or parent with a serious health condition; and the employee's own serious health condition. Sarah said the proposal would continue the policy of allowing use of other accumulated paid leave, up to six months. She recommended using the FMLA definition of a "serious health condition."

In discussion, Chris noted that the 12 weeks leave as set out in the proposal appeared to be "per event." He asked whether the reasons for leave could be used without limit in a year, with 12 weeks for each triggering event. Sarah said a limit of "once in twelve months" could be added on the number of times the policy could be invoked in a year.

Other discussion centered on planning with supervisors, co-workers and funders so that cases and other work would continue during leave and grant expectations would be met. Rich said that he felt most of KEJC's funders would be supportive of a progressive policy.

Scott Crocker said that Kentucky Legal Aid allowed five weeks each year for full-time employees for any purpose, not based on need. Of the proposal, he said, "in my shop, it would impact clients." Sarah observed that in immigration law, leave is feasible. (Once applications are filed there is generally an inactive waiting period.)

In additional discussion:

- Chris observed that in a small organization, it's harder to "throw additional lawyers at a problem," as might be possible in a large private firm.
- Loree said she had seen women leave their jobs when faced with inadequate family leave policies.
- Sarah observed that a good policy helps women stay in the workplace.
- Mary O'Doherty said her organization, Kentucky Coalition Against Domestic Violence, did not have a medical leave policy but offered generous general leave.
- Neva-Marie Polley said that contract workers could help during a person's leave, an approach that would require planning—and budgeting—ahead.
- McKenzie observed that Kentucky Center for Economic Policy recently had adopted a six week parental leave policy.

Following discussion, Sarah said she would bring a revised policy to the next meeting that would address the questions of annual (or other) limit and the idea of planning with supervisors and colleagues how work would be handled during family leave.

Governance: Community and Client Member Update

Rich said that, as promised, he had consulted with Community Members of the Board with expiring terms: Mary O'Doherty, John Rosenberg and Dianet Valencia. He said he was pleased that each had expressed interest in a new term.

Rich said he then had consulted by email with the members of the Nominating Committee (Jamie Abrams, Scott Crocker and Loree Stark.) The members were unanimous in supporting new terms for the current members. They also agreed that the process could be simplified by skipping a formal committee meeting and simply making the nominations from the floor at the current meeting.

Motion:	Nominating Committee member Loree Stark nominated Mary O'Doherty, John Rosenberg and Dianet Valencia to new two-year terms as Community Members of the KEJC board.
Second:	Scott Crocker
Action:	Approved unanimously

Rich said the Nominating Committee members had also agreed that a Call for Nominations should be issued next for Client Members of the Board, with an intent to bring nominations before the July 21 board meeting.

Governance: Officers Nominations

Rich said that current Chair Chris Frost and Treasurer Mary O'Doherty were willing to continue for new one year terms, though Chris had said he might want to hand things over to a successor in a year. Here, too, Rich said, the committee had agreed simply to nominate from the floor.

Motion:	Nominating Committee member Scott Crocker nominated Chair Chris Frost and Treasurer Mary O'Doherty to new one-year terms.
Second:	Loree Stark
Action:	Approved unanimously

Given Loree's departure from the board—and therefore the Nominating Committee—a question was raised about whether to replace Loree on the Nominating Committee or otherwise reconstitute it.

Rich observed that the Nominating Committee usually was comprised of members representing all segments of the board: Program Directors, Community Members, Client Members and Staff Representatives.

Rich said there were no current Client Members whose terms were not expiring. He noted, however, that Angela Zeek and Brenda Combs had been elected as new Staff Reps. Angela expressed interest in serving on the Nominating Committee.

Motion:	Scott Crocker moved to add Paralegal Staff Rep Angela Zeek to the Nominating Committee.
Second:	Mary O'Doherty
Action:	Approved unanimously

Big Picture: Legal Services Funding and Updates

Board member John Rosenberg reported on his participation in visits with the Kentucky Congressional delegation and staff as part of "ABA Days" in Washington, DC. John said the ABA supported funding for the Legal Services Corporation (LSC) at $475 million for the next budget year. He said the Senate was considering a "good number" but the House funding level was unclear.

Scott Crocker added that the Senate had recommended an increase of $10 million for LSC over current funding. He noted that Bank of America settlement money would help programs deal with state or federal shortfalls. He said the funds would be distributed through the Kentucky IOLTA program for legal services activities focused on foreclosure and community redevelopment.

Rich asked how much was available through IOLTA under the settlement and whether funding was limited to LSC-funded programs. Scott said the amount for Kentucky was $6 million and that there was no requirement that recipients be LSC-funded.

New Program Director Board Member Neva-Marie Polley said that the Louisville Legal Aid Society Volunteer Lawyers for Veterans project was up running. She said the project was staffed by Sean Dennis and Courtney Lutz. She said key features of the project were community-based clinics and a statewide toll free 800 number to link vets to volunteers through legal services programs in their area.

Neva-Marie also described a Justice Online project as embodied in a Technology Innovation Grant proposal to LSC. She said the project would allow community members access via internet, including a chat line with law librarians and functionality for volunteer lawyers to interact with clients. She said that legal services programs in Tennessee had launched it first.

Nathalie Dietrich asked whether the online process afforded language access for people with Limited English Proficiency. Neva-Marie said she would find out. She described other features of the program, including income pre-screening and conflict checks for participating attorney volunteers. On confidentiality of interaction with attorneys, she said "it's individual" rather than a forum.

Strategic Planning

Rich noted that KEJC's 40th anniversary was coming up later in the year. (The program was incorporated in November 1976.) He said it might be a good occasion for an event, perhaps like the 30th anniversary dinner held at Portofino in Lexington, this time with sponsorships to help raise funds.

Rich asked whether people thought an afternoon "looking back and looking ahead" forum on poverty law in might be "value added" for the anniversary. Board members expressed interest. (Rich later consulted with Chair Chris Frost about timing. It appeared to them that an event in the spring might have less potential for conflict with holiday fundraising.)

Rich noted that the Board had held several discussion and brainstorming sessions on ideas to update the KEJC strategic plan. The sessions had focused on advocacy, communications and development. Rich said the sequence of discussions had been interrupted in part by the December meeting focused on the budget.

Rich said he would like to conduct a discussion on governance at the next meeting. Without objection, Rich said he would develop a short set of materials to guide discussion.

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 April 22, heading at:

www.kyequaljustice.org/Board+Meetings.

Highlights:

Senior Staff Attorney Anne Marie Regan described action around predatory lending, including successful coalition activity to defeat a proposal in the General Assembly to allow a new high fee product called "flex loans." She said that no new bill to allow non-judicial foreclosure had been filed. In activity focused on the federal level, Anne Marie said she had participated in a Consumer Financial Protection Bureau (CFPB) field hearing in Louisville, including a private meeting with CFPB director Richard Cordray.

Immigration Attorney Guion Johnstone reported that Maxwell Street Legal Clinic had opened 356 cases since the last board meeting. She said the Clinic had initiated a new intake model, offering individual consultations with in-depth screening to assess potential immigration remedies. Guion said that Lexington police had for the first time referred a victim of crime to Maxwell Street, showing they had begun to understand U and T visas. Guion noted that the Supreme Court decision on President Obama's DAPA and DACA-expansion proposals would come within a few weeks. She said it would affect an estimated 20,000 Kentucky residents.

Health Law Fellow Cara Stewart talked about the rocky startup of the state's new online portal for public benefits, saying "benefind has taken over everyone's life." Thousands of erroneous requests for information and termination notices had been sent to public benefits recipients. Cara said KEJC had sent a demand letter seeking improvements and planned to meet with DCBS officials on May 4. Meanwhile, during the General Assembly, Cara said, she had provided information and testimony in support of HB 5 and HB 6, the bills to keep kynect and Medicaid expansion. The bills passed the House but stalled in Senate committee. Cara said she also testified in favor of a bill to make the Uniform Residential Landlord Tenant Act (URLTA) apply statewide. The House passed it by a narrow margin but it stalled in the Senate.

Health Outreach Coordinator Miranda Brown said she had filed 52 kynect apps since November and now was helping fix benefind cases. She said a tech rep from kynect had come to visit her to see face-to-face the functionality issues that kynectors experienced after benefind came online. Miranda described an outreach visit to a church in Somerset as well as ongoing presence at Village Branch Library in Lexington. In new outreach, Miranda said she was making regular visits to New Life Day Center, a drop in center from homeless people. She also had participated in story gathering and press conferences in Frankfort on kynect and Medicaid expansion.

Health Gains Communications Coordinator Marcie Timmerman passed around a handout showing examples of top-performing social media posts, plus charts on social media performance. She said she had curated over 150 earned media instances and sent 800 messages via Facebook and Twitter. Marcie said that since the beginning of the year, KEJC had seen 3.8K online interactions and that in “potential reach” may have hit the social media feeds of 1.2 million people. Marcie reported both Twitter and Facebook followers each in the 800 range, heading upward.

Employment Law Attorney McKenzie Cantrell first described in-depth news coverage on wage theft by a Paducah TV station, whose reporter and videographer had traveled to Frankfort for interviews—including one in the Capitol with McKenzie. McKenzie said she had helped file multiple amicus briefs in two crucial workers’ rights cases before the Kentucky Supreme Court, one case on cities’ powers to enact a local minimum wage (and associated private right of action) and the second on whether workers could file wage claims under Kentucky wage and hour law as class or collective actions. McKenzie said a bill to strengthen misclassification enforcement penalties had won bi-partisan approval in the Kentucky House but stalled in the Senate.

AmeriCorps Financial Literacy Specialist Spencer Mancillas described outreach visits, including new monthly events at Dress for Success and Greenhouse 17 (the domestic violence shelter for the Lexington area). Spencer said he had delivered presentations on workers’ rights to almost 500 people since starting his year of service the previous September. During tax season, Spencer said, he had prepared over 100 tax returns at the Parkside Tax Clinic. Spencer said he helped McKenzie operate wage claim clinics each month in both Lexington and Louisville, with a couple of recent successful wage recoveries.

See the online Staff Reports for additional matters and details.

Adjournment

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

Reported by:

Richard J. Seckel, Director
July 14, 2016