

Kentucky Equal Justice Center

Board Minutes

July 19, 2018

Board Members Present: Hailey O’Hair (Client Member); Robert Brown, Rick Clewett, Christopher Frost, Mary O’Doherty, John Rosenberg (Community Members); Joshua Crabtree, Neva-Marie Polley Scott, Amanda Young (Program Directors); Brenda Combs, Nick Maraman, Angela Zeek (Staff Reps).

KEJC Staff: Miranda Brown, McKenzie Cantrell, Maddy Clark, Nathalie Dietrich, Leah Engle, Michelle Haubner, Anne Marie Regan, Rich Seckel, Cara Stewart, Corinna Svarlien, Marcie Timmerman.

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

Executive Session

Members of the Board held a brief executive session on personnel items in the proposed budget revision and on potential family leave proposals. No actions were taken during the executive session. (Action on the budget revision and on family leave is reported below.)

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 said that this would be the last board meeting for AmeriCorps VISTA Corinna Svarlien, whose year of service was coming to an end, and perhaps also for Senior Staff Attorney Anne Marie Regan, who planned to retire in the fall. Both received ovations. Rich said that new AmeriCorps VISTA member Beka Bruner would start in August.

Highlights of Recent Activity

Chris recognized Rich to share highlights of recent activity and events. Rich said the big news was a court ruling on the challenge to Kentucky’s proposed 1115 Medicaid waiver, a plan called “Kentucky HEALTH.” Rich said he would defer to Anne Marie for the update.

Anne Marie said she and Cara had attended oral arguments in the case, *Stewart v. Azar*, in the same building the same day that Paul Manafort appeared in a different court room. Anne Marie said it was a great hearing leading later to a good decision issued June 29 by Judge James Boasberg. She said that the court found that:

- The purpose of Medicaid was to help low income people with the cost of medical care

- CMS had not fully considered the potential impact of Kentucky HEALTH, including lost coverage
- CMS’ approval of the Kentucky plan was “arbitrary and capricious”

Anne Marie said Judge Boasberg sent the plan back to CMS for further review. The agency then opened a new public comment period.

Anne Marie said that the Bevin administration responded to the decision with a flurry of program changes that it claimed were forced by the Judge’s decision, including termination of dental and vision services for adults. However, Anne Marie said, the changes were discretionary and the state had not properly implemented them.

Board member John Rosenberg asked how to challenge the dental cuts. Anne Marie said that dental and vision services were optional services for state Medicaid programs, so the state could eliminate them but had to go through the proper steps to put in place an Alternative Benefit Plan.

Anne Marie said that non-emergency transportation services were not optional and that the state would have to receive a waiver from CMS to eliminate them. John asked whether children and pregnant women were affected by the dental and vision services cuts. Anne Marie said they were not.

Board member Bob Brown noted that the federal district court in Washington, DC, was described on National Public Radio as “first among equals,” so that Judge Boasberg’s decision might have value as a precedent. Bob asked about the case Governor Bevin had filed in the Eastern District of Kentucky against the *Stewart* plaintiffs—an apparent effort to change jurisdiction. Anne Marie said the *Stewart* team had filed a strong motion to dismiss but the timetable for a ruling was unclear.

KEJC is co-counsel in *Stewart v. Azar* with the National Health Law Program NHeLP and Southern Poverty Law Center. Attorneys from law firm Jenner and Block assisted NHeLP.

Approval of Minutes

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

- Motion:** John Rosenberg moved to approve the minutes of the May 1, 2018, board meeting.
- Second:** Joshua Crabtree
- Action:** Approved unanimously

Financial Report and Development Update 2nd Quarter 2018

Chris next recognized Rich to give the Financial Report. Rich drew the board’s attention to the handout for the 2nd Quarter. The cover sheet offered a summary as follows:

Profit and Loss Budget Overview FY 2018: anticipated a gain of \$1,633.

Profit and Loss through June 30: showed a loss of \$19,653 compared to the expected loss of \$10,966—a negative variance of \$8,687.

Balance Sheet as of June 30: showed Total Current Assets of \$312,638, down slightly from \$313,143 on March 31 but up 8.76% percent from \$287,467 on June 30, 2017.

Income and Expense Charts: 80.8% of spending was payroll. 63.5% of income came from grants.

Turning to the Profit and Loss statement, Rich said that income had come in at 102 percent of budget, with spending at 104 percent—slightly “upside down.” He noted, however, that revenue and expense for the new Victim of Crime Act (VOCA) grant had not yet been incorporated into the budget. He said he would present a budget revision to address it later in the meeting. In the meantime, he said, he had kept his end-of-year carryover projection at the original budget figure of \$335,366.

Rich said that his tally of unrestricted assets had risen considerably earlier in the year, to an estimated \$105,546 at the end of the first quarter. However, he said, they had declined by mid-year to a more typical figure: \$63,228. Rich said the higher figure might have supported some long sought expenditures for bookkeeping or development assistance. He wondered out loud whether to make the new expenditures even though unrestricted assets had come down.

Turning to the budget versus actual report, Rich provided background on two items that appeared to be over budget. One was Payroll Expenses. Rich said the reason for the overage was that VOCA salaries had not yet been included in the expense side of the budget. Similarly, Rich said, rent appeared to be over budget but the figures reflected the fact that KEJC was now reporting in-kind rent at Maxwell Street monthly for VOCA instead of in a lump sum at the end of the year.

Rich said he estimated that unrestricted reserves would last 1.05 months if they were the only funds available for operations. He said overall reserves had stayed steady at about 5.20 months—a reasonable indication of financial health. The trends were illustrated in a chart.

Rich’s table on “KEJC Recent Fundraising Effort” showed \$234,776 requested so far in the year, with \$185,107 awarded (79%), and one major grant still pending: the Public Welfare Foundation grant for the workers’ right project. Rich said KEJC had been invited to apply for a two-year \$160,000 grant for workers’ rights advocacy. He thanked McKenzie and Miranda for their help with the required report and proposal.

Finally, Rich said, KEJC would apply for renewal of the VOCA grant. He thanked Leah and the VOCA team for working on the proposal, which was due at the end of July.

Proposed Budget Revision: Incorporating VOCA

Chris next invited Rich to present the proposed budget revision. Rich said that the news of approval of KEJC's 2017-2018 VOCA grant had come the morning of the December board meeting—too late to incorporate into the budget being considered that day. He said that VOCA grant staff in Frankfort advised operating for several months to see whether the grant budget worked or needed changes.

Rich said that KEJC now had six months of experience under the VOCA grant. He said he was working on a small grant adjustment (GAN) to reinvest some of the savings from the hiring period into training for staff. Board member Brenda Combs encouraged him to consider using any additional savings for equipment needs.

Rich then described the elements of the proposed new budget. He said he had based it on actual VOCA spending for the year to date, with projections based on the salaries for program staff now on board. Rich said he assumed that KEJC would be renewed for a new VOCA grant year starting in October and trended the salaries and expenses forward.

Rich said the revised budget included a handful of other changes. He said that the Legal Work Oversight Committee had helped establish a salary range for Anne Marie's successor as senior attorney. He said the range was built on the staff attorney scale, with "escalators" for both experience and supervisory responsibility.

Rich said that the role of the program director role at Maxwell Street had grown, especially with the VOCA grant, to include greater supervisory responsibilities. He said the new budget included an extra \$200 a month (an annual increment of \$2,400) for the Maxwell Street directing attorney, effective in August and built into the base for future raises.

Rich noted that KEJC had no provision or policy on supplementing the salaries of employees who waived health insurance because they had other coverage. He said he surveyed the Kentucky legal aid programs represented on the board and found that what they provided spanned a wide range.

Rich said the budget revision incorporated a payment of \$240 a month for one employee in lieu of health coverage, about a third of what an individual plan would have cost. Otherwise, Rich said he had updated the retirement system contribution percentage to reflect action since the beginning of the year by the General Assembly on contribution rates and had corrected the calculations in a couple of spreadsheet cells.

Finally, Rich said he had amended the income and expense for the Skadden Fellowship. The Fellowship had ended early when fellow Cassie Chambers left to finish writing a book for Random House.

The bottom line in the budget: counting available one-time restricted funds from Skadden, the budget had a surplus of \$2,297. Not counting the funds, it had a net deficit of \$8,673.

Motion: Brenda Combs moved to approve the revised budget for 2018.
Second: Joshua Crabtree
Action: Approved unanimously

Rich said that the Board in executive session had talked about potential updates to KEJC's family leave policy. The policy provided only 5 days leave upon the arrival of a child, plus use of accumulated sick leave or vacation up to three months. (An addendum set the family leave number at 10 days.)

Rich said that board members felt further study was in order before taking action on a policy, including review of the current policies of the legal aid programs. Chair Chris Frost asked for volunteers for an ad hoc committee to study the issue and make recommendations.

Chris accepted offers to serve on the committee from staff members Michelle Haubner and McKenzie Cantrell and board members Angela Zeek, Brenda Combs and Neva-Marie Polley Scott. Rich said we would be happy to participate and provide staff services for the committee process.

Senior Staff Attorney Transition

Rich noted that the bylaws had made clear that hiring staff was his responsibility as director. For the Senior Staff Attorney position, he said he considered whether to go with a director-based, board-based or staff-based process. He said the answer as to which one was "yes."

Rich said he planned to implement a process in which a hiring committee with members from several segments of the board, plus a rep from staff attorneys, would advise him, as follows:

- a legal services program director selected by his or her peers
- the elected Attorney Staff Rep to the board (Nick Maraman)
- a Community member who could be advised by other Community Members
- a KEJC staff attorney selected by her peers to work in consultation with other staff

Rich said he hoped that candidates could meet remaining KEJC staff through informal "meet and greet" sessions on the day of their interview.

Josh Crabtree said that litigation and advocacy director positions were among the hardest to fill for legal aid programs. Josh recommended a period of overlap between Anne Marie and the incoming attorney.

(The process later unfolded much as Rich had described and attorney Ben Carter accepted KEJC's offer to be its Senior Litigation and Advocacy Counsel.)

Governance: Report of the Nominating Committee

Board Member Bob Brown said he had volunteered to chair and report for the Nominating Committee. Bob presented the proposed slates of officers and board members as follows:

Officers

Rob Johns, Chair
Mary O'Doherty, Treasurer

Client Member

Jackie Arakaki
Allison Crawford (alternate)

Continuing Community Members

Mary O'Doherty
John Rosenberg

New Community Member

Amanda Kool

Nominating Committee minutes and nomination forms of potential new members had been circulated prior to the meeting. Members discussed what new members might bring to the board. John Rosenberg described Ms. Kool's focus on rural areas and transactional legal services focused on entrepreneurship.

Motion: Bob Brown moved to approve the slate of nominees for officers and members put forward by the Nominating Committee.
Second: Joshua Crabtree
Action: Approved unanimously

Governance: Report of the Legal Work Oversight Committee

Chair Chris Frost reported on behalf of the Legal Work Oversight Committee. He said the committee consisted of himself and board members Robert Johns, John Rosenberg and Amanda Young, plus staff members Anne Marie Regan and Rich Seckel.

Chris said the committee met by conference call on June 7, with a focus on the hiring plan and job description for the senior attorney position. Chris said the committee reached consensus that the supervisory dimension of the job should get special attention. Chris said the committee was in the information gathering stage and that Anne Marie's successor should become part of the ongoing discussion.

Governance: Executive Committee

Chris next recognized board member John Rosenberg to offer thoughts on the idea of forming an executive committee. John said that it struck him from experience with other boards that there sometimes was a need to take action between board meetings. He said an executive committee could do that, especially if its scope and tasks were well defined.

John said that participation in an executive committee also could help develop leadership, perhaps through the creation of a vice chair role. He said executive committees often included both board officers and non-officer board members.

Board members offered various thoughts in response. Chris said he felt an executive committee was a good idea but since the board works well it was important to “thread the needle” on the scope of any new structure.

Josh Crabtree said that Legal Aid of the Bluegrass had an executive committee but that it could only act on matters authorized by the board. Rich suggested that members take the idea under advisement and hold it over for discussion under newly elected chair Robert Johns.

Governance: Next Meeting Dates

Rich said the final board meetings of the year were scheduled for Friday, October 5, and Thursday, December 13.

Special Recognition: Anne Marie Regan

After a working lunch, the group surprised retiring senior attorney Anne Marie Regan with a moment of recognition. Health Communications Coordinator Marcie Timmerman kicked off the festivities by showing a short video with highlights of Anne Marie’s advocacy and impact.

Chris observed that when he began on the board, Anne Marie was the sole attorney. He said that the concept of the job worked, as shown early on by the *Kerr* litigation that challenged—and stopped—long term care cutoffs, and again today in the challenge the Kentucky HEALTH plan. Chris said the substantial attorneys’ fees from *Kerr* had positioned KEJC to take risks, including its willingness to support immigration law services Maxwell Street Legal Clinic.

John said that he retired the month after Anne Marie had come on board at KEJC. He had been part of the hiring committee. He said he felt good about the results.

At this point, Cara Stewart announced breaking news: the state Medicaid agency had restored dental and vision services to the group that lost them after the court ruling on the Medicaid waiver.

Rich thanked Anne Marie for her steadfast and expert service. He recounted a favorite story line, saying that Anne Marie had overcome suspicion and resistance of banking association lobbyists, ultimately winning their respect and working in tandem to defeat “son of payday loan” proposals.

In typically modest fashion, Anne Marie said the job had been rewarding. She thanked the board for its recognition and asked Marcie for a link to the video.

Big Picture: Access to Justice Commission

Director Glenda Harrison of the Kentucky Supreme Court Access to Justice Commission began her report by reflecting on Anne Marie’s service. She said it had been a relief to establish among otherwise “restricted” legal aid programs a position that could take on class actions.

Glenda turned next to potential changes in *in forma pauperis* (IFP) policies and forms. (According to the kyjustice.org website, “a Petition to Proceed In Forma Pauperis is a request to the court, that due to your poverty, you should not have to pay the filing fee associated with your case.”)

Glenda said that Kentucky’s statute providing for IFP petitions had been nebulous in scope. She said that the 2017 General Assembly had amended it to clarify its application by adding an income guideline. (The changes came as part of [SB 120](#), a “first steps” corrections reform bill.)

Glenda said that in the wake of the changes, the Court had adopted a rule that people with income below 100% of poverty were entitled to waiver of fees, while between 100% and 200% of poverty courts could consider deprivation and apply a sliding scale.

Glenda said that given increases in filing fees, the Court now wanted to get the word out about the fee waiver scale. She said staff were working with the Administrative Office of the Courts to devise a form. The goal was to approach uniformity statewide in waiving fees. Glenda’s colleague Nan Hanley said that the process of creating a form through AOC might take a long time but that the Court could get something out in the form of guidance.

Turning to pro bono services, Glenda said that Kentucky Bar Association (KBA) president John Myers was interested in the idea of online matching of people seeking help with volunteer attorneys. The idea was that individuals could post inquiries and “lawyers come to them.”

Glenda said the Commission also is talking with the KBA about how the concept of limited scope representation (LSR) or “unbundling of legal services” could be introduced to the private bar, the courts and people needing legal representation. LSR allows an attorney to take on a discreet task within a case without having to represent the litigant in the entire case.

Glenda said a related idea was “unbundling of discreet tasks,” so that lawyers could answer a question or provide a brief service without taking on more general responsibility for a person’s circumstances.

Glenda said that Kentucky had been invited by the National Center for State Courts Chief Justice Association for apply for strategic planning funds.

Nan next reported on the civil legal services Statewide Conference, which had been held May 30-June 1. She said over 100 staff had attended and, in a follow-up survey, gave the conference good reviews.

Nan said that she now was working on plans for an intensive trial skills training for 16 legal aid attorneys, to be held in the fall. She said the training would feature the American College of Trial Lawyers (ACTL) curriculum, delivered by fellows from ACTL who would serve as trainers and judges.

Nan said the legal aid program directors from across the South would gather the week after the board meeting for the Southeast Project Directors Association meeting in St. Petersburg, FL. Nan said that Legal Services Corporation President Jim Sandman would address the group.

Board member Neva-Marie Polley Scott said that the Legal Services Corporation (LSC) offered funds to help programs launch online help. She said her program, Legal Aid Society, received funds but later took down their online offering because it was difficult to incorporate LSC’s required questions to establish client eligibility.

Neva said that in most states online legal help programs operated separately from LSC-funded entities. Glenda asked whether, when it was relaunched, the Legal Aid Society site would have “a piece open to everyone.” Neva said “not ours,” but that a separate site could be opened with different eligibility.

Big Picture: Legal Services Funding

Josh Crabtree reported that the budget bill enacted earlier in the year by Congress included a \$25 million increase in funding for the Legal Services Corporation. (The bill allocated \$410 million for LSC.) John Rosenberg added that the terms of six current members of the national LSC board would soon expire. He said that President Trump had re-nominated three of them plus three new members.

John said the American Bar Association committee that keeps an eye on legal aid—the Standing Committee on Legal Aid and Indigent Defendants (SCLAID)—found the new nominees to be qualified and gave them positive reviews.

Staff Reports Summaries

KEJC staff reported on activities, issues, projects and successes. The reports followed a new format featuring fewer but longer reports and allowing more time for board discussion. The topics for the current meeting included workers' rights, outreach and communications.

Because no board action was required in response, details on the staff reports are not included in these minutes. Instead, written staff reports were made available on the KEJC board web page under July 19, 2018, heading at:
www.kyequaljustice.org/Board+Meetings.

Announcement and Adjournment

John Rosenberg thanked KEJC for co-sponsoring the "Lawyers without Rights" exhibit, first at the Kentucky Bar Association convention and now at the Fayette County Courthouse. The exhibit told the stories of Jewish lawyers during the Nazi era in Germany. John said the exhibit was open both the day of the board meeting and the next day and then would move on to Nashville.

The agenda having been completed, Chair Chris Frost declared the meeting adjourned.

Reported by:

Richard J. Seckel, Director
September 28, 2018