

# Kentucky Equal Justice Center

## Board Minutes

July 21, 2016

**Board Members Present:** Sandra Martinez (Client Member); Bob Brown, Chris Frost, John Rosenberg (Community Members); Joshua Crabtree, Neva-Marie Polley, Robert Johns (Program Directors); Brenda Combs (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:** Ismaila Ceesay (Maxwell Street Intern), Acena Beck (Children’s Law Center).

### Welcome and Introductions

Chair Chris Frost welcomed board members and staff and invited people to introduce themselves. KEJC Director Rich Seckel said it was newly elected Support Staff Representative Brenda Combs’ first meeting. He thanked her for being willing to serve. (Client Member nominee Sandra Martinez joined the meeting later and was approved for membership on the board.)

### Highlights of Recent Activity

Chris declared a quorum present and invited Rich to start the meeting with highlights of recent activity. Rich’s highlights addressed three topics, as follows:

**Frankfort Medicaid Waiver Hearing:** Rich said that Governor Bevin had proposed a Medicaid waiver plan that included increased costs (under the theme of “skin in the game”), reduced benefits and added complications to get and keep coverage. Rich said he had attended one of three public hearings on the plan, the one in Frankfort. He said he was impressed by people’s willingness to challenge the “welfare dependency” stereotype that pervaded the proposal and with the eloquence and dignity with which they did so.

**AppalRed Reunion:** Rich said that he usually resisted reunions but had decided to attend the AppalRed event this year. He said the gathering reminded him of the long tradition of creative and expert advocacy by Kentucky legal services programs. He said he was lucky to have been part of that tradition. He noted that a historian, Jessie Wilkerson, had attended the event as part of a year of research on women and advocacy to fight poverty in the South. Rich said Ms. Wilkerson planned to write both a book on the topic and an article on the role of legal services programs in the story.

**Benefind and Boots:** Rich said that KEJC staff had met several times with Cabinet for Health and Families Services officials around problems cause by the rollout of benefind, the new online portal to apply for Medicaid, SNAP and K-TAP. Its launch in February had been plagued with problems, including thousands of erroneous termination notices and unnecessary “Requests for Information.” Rich said that in each meeting, Cabinet claimed progress on multiple fronts, including reduced phone wait times for consumers and advocates trying to call in. Rich said it was good that KEJC and the programs had a network of advocates to check the Cabinet’s claims of improvement: the “Boots on the Ground” network funded under a grant from the Foundation for a Health Kentucky.

On the Kentucky tradition of advocacy, Rich noted that board member John Rosenberg had spoken on the Governor’s Medicaid plan at the recent public hearing in Hazard.

### **Approval of Minutes**

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

- Motion:** John Rosenberg moved to approve the minutes of the April 22, 2016, board meeting.
- Second:** Josh Crabtree
- Action:** Approved unanimously

### **Administration: Financial Report through Second Quarter**

Chris next invited Rich to review the financial report through the second quarter of 2016. Rich began with a review of the summary figures on the cover sheet, as follows:

**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 June 30:** showed a loss of \$87,471 compared to the expected loss of \$18,392—a negative variance of \$69,079.

**Balance Sheet as of June 30:** showed Total Current Assets of \$284,755, down from \$365,102 on March 31 and down 24% percent from \$372,492 on June 30, 2015.

**Income and Expense Charts:** 77.5% of spending was payroll. 56.9% of income was grants.

Rich’s cover sheet estimated carryover at the end of 2016 at \$369,216, up from \$361,976 at the beginning of the year. Rich said the figure was based on the budget and a potential increase of \$80,000 in funds for the workers’ rights project from Public Welfare Foundation (PWF).

Rich said, however, that the extra \$80,000 from PWF had proved illusory. Since he had prepared the financial report, Rich had learned that the grant officer had intended to invite a proposal for \$160,000 for two years, not one. (Note: The error was not KEJC's. 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.")

With an adjustment to remove the extra \$80,000, Rich said he predicted carryover of \$289,216. (Note: Subsequent review showed that Rich's estimate had double-counted the spenddown of Harvard fellowship funds. With a corresponding adjustment, the carryover figure would have been \$319,216.)

Rich said he had submitted revised materials as requested but that PWF had not yet awarded the first year grant of \$80,000. Rich said the slowdown in the process explained most of the negative variance in the June 30 Profit and Loss statement. He said that with the \$80,000 in hand, year-to-date net income would have been ahead of budget instead of behind it.

Rich said he estimated unrestricted reserves at \$61,201 on June 30, down from \$82,925 at the beginning of the year. He said the drop unrestricted reserves also was driven by the PWF delay. The reason: there was a gap in funding. The previous year's grant had ended May 14. Rich said KEJC would have to pay from its own pocket for the period before the new grant started. His estimate of unrestricted reserves included a two month "gap" cost of \$13,740.

Rich next noted that the board had authorized him to spend unrestricted reserves above 10 percent of budget on bookkeeping, fundraising assistance or both. He said unrestricted reserves now were slightly below the 10 percent threshold. He added that he would try to work up the nerve to spend funds on fundraising assistance, since ultimately the investment could pay for itself.

Rich then offered a quick walk-through of supporting handouts in the financial report. On Budget versus Actual, he said that income had come in at 83.4% percent of budget and expenditures at 103.8% for the year to date, "upside down" from what he would like, and also driven largely by the PWF delay.

On months of reserves, Rich pointed to a downward trend. He said Total Current Assets as of June 30 would last about 4.7 months and unrestricted reserves about one month under the hypothetical scenario that no new funds would come in—in each case a shorter period than calculated for March 31 and, in each case, also affected by the PWF delay.

Rich next said he had some less than happy news to report: \$865 dollars in cash from client fees had gone missing from Maxwell Street Legal Clinic, apparently stolen. Rich said that he and Guion had taken immediate action. Guion reported to the police and Rich to KEJC's small business insurance carryover.

Rich said program then purchased a “drop box” safe and changed protocols so that case handling staff who collected fees would put the fees in an envelope marked with the client name, date, receipt number and amount and place them directly in the drop box. Rich said that only he and Guion had the keys and combinations to open the new safe.

Rich said Maxwell Street also had changed its fee payment policy to reduce the amount of cash it collected. For now, he said, the program would require payment by check or money order for fees higher than the \$25 initial consultation fee. Later, he said, the program might eliminate cash altogether and look into accepting credit and debit cards as a client convenience.

Rich said it was not clear what had happened. He said the police had begun an investigation and completed an initial report but had not completed the investigation. He said the detective assigned to the case was on vacation. He said he would review the details of the incident in the course of preparing and submitting the insurance claim.

Maxwell Street Immigration Attorney Guion Johnstone said she had reported the missing funds to the Kentucky Bar Association, since in some cases they were fees toward services that had not yet been performed. Chris asked whether Rich had reported the loss to KEJC’s auditor. Rich said he had not, but would.

Board members posed several questions and made several suggestions in response to the report of the missing \$865, as follows:

- Josh Crabtree asked (a) whether the lockbox for fees appeared to have been broken and (b) whether the funds were fees for services or client funds being held in trust. Rich said the lockbox had not been damaged. He said the fees were fees for services rather than funds held in trust (a) on their way from the client to a third party or (b) on their way from a third party to the client.
- Chair Chris Frost observed that Guion had done a lot of work to identify fees for which services had already been provided and fees for work not yet complete. Chris said that all services would be rendered. Rich said clients would be credited for missing fees.
- Brenda Combs asked about the frequency of deposits. Guion replied that fee reports were made twice a month, corresponding with preparation of payroll on the 15<sup>th</sup> and last day of the month. The Legal Assistant delivered the report with fees collected to Rich, who reviewed the payments and receipts and prepared the bank deposits. Josh noted that LABG deposited funds daily.
- John Rosenberg suggested that Maxwell Street could take the funds to the bank directly, with Rich reviewing after the fact, thereby removing a step.

Chris said that Guion’s time was valuable and that the frequency of deposit might be appropriate given the other precautions KEJC had taken.

## **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 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 75 percent of what it sought (\$1,563,178 of \$2,077,873).
- So far in 2016, KEJC had received seven grants, for a total of \$145,238 of \$312,400 sought, or 46 percent.

Rich said that if the amounts for Public Welfare Foundation were adjusted to reflect the latest news, the percentage awarded would rise to 72% on the year.

Rich said that the 40<sup>th</sup> anniversary of KEJC’s original incorporation was coming up in November. He said he had thought of having a celebration and fundraiser around that time. Rich said that he and Chris had talked about the timing of the anniversary and agreed that it might be better to move the event later—to March or April—so it would be separate from Good Giving campaign and holiday fundraising letter.

Rich said the new schedule also would afford more time to organize the event. (Note: the program’s 30<sup>th</sup> anniversary event had been held in late March.)

## **Administration: Mason Fund Options**

Rich said that the funds transferred to KEJC from the Mason Foundation and its board members were still in KEJC’s savings account. He said the letter of instruction that came with the donation asked that the funds be managed as a “quasi endowment.”

Rich said he hoped to place the funds in an investment account to draw greater returns, but had moved slowly because the funds were “safe” in savings. He said Guion had begun researching alternatives with potentially higher returns.

Rich said the Mason Foundation had been connected with the firm where Maxwell Street founder Marilyn Daniel had worked as General Counsel. Guion passed around the letter from Marilyn with instructions on how amounts could be spent. The letter said:

- Income could be spent on Maxwell Street each year
- Appreciation in assets could be spent on Maxwell Street with board approval
- Portions of the original corpus could be spent after consultation with Marilyn

Rich said the fact that all or part of the original corpus could be spent made the donation a “quasi” endowment rather than a formal endowment. (Under a “true” endowment, the original corpus cannot be spent.)

Rich next outlined a “best practice” process of comparison shopping and selection of an investment manager. The workflow: research best practices, brainstorm potential managers, develop selection criteria, develop investment guidelines, apply the selection criteria and narrow the field down to three potential managers to be presented as options to the board. Chris said the process Rich outlined seemed like a lot of work for a relatively small investment. He suggested it be streamlined to move more quickly to “off the shelf” solutions and asked about options considered so far.

Guion said she had talked with Blue Grass Community Foundation (BGCF) and a local investment management firm that handled funds for nonprofits. She said disbursements from funds at BGCF had to be approved by the BGCF board. She said that that BGCF promoted the idea of endowments but could manage a “quasi” endowment as well.

Josh commented that “we all have investment policies” on how to invest funds (for the federally funded legal services programs). Bob Brown commented that the decision inevitably involved an issue of control over disbursements. Chris suggested that Guion and Rich consider three or four investment managers and report back to the board. They agreed to do so.

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

Harvard Fellow Sarah Adkins passed around a “Kentucky Equal Justice Center Family Medicaid Leave Draft Policy.” She said that since the last board discussion she had worked with McKenzie to make changes that would allow the director to make judgement calls on when to grant leave, particularly repeated leave. She noted that “we’re small” and that KEJC operated with the trust the policy might require.

Bob Brown said he was sorry to have missed the last discussion. He asked how the draft policy compared with the Family Medical Leave Act. Employment Law Attorney McKenzie Cantrell said the main difference was that the KEJC policy would provide for paid rather than unpaid leave. She added that existing guidance on FMLA could provide useful guidance for KEJC.

Bob asked the directors of legal services programs how many weeks of family medical leave they provided under their policies. Josh said Legal Aid of the Bluegrass provided three. Neva-Marie Polley said Louisville Legal Aid Society provided four. Robert Johns said AppalRed allowed up to 12 weeks of family medical leave but not all paid.

Bob suggested there be a minimum term of three months before the policy kicked in, so that an employee could not take a job and immediately go on leave. He suggested three months. McKenzie said “we can do it.”

Brenda Combs asked how leave was funded and whether disability insurance or a pool created through payroll deductions would pick up salary during leave. McKenzie noted that Kentucky state employees have a sick leave “bank” to which they can contribute.

Josh asked how KEJC would pay to keep projects going during paid leave. Rich said that KEJC's funders would be supportive and that paid leave likely could be handled without hiring replacement staff during leave.

Bob asked whether the policy for birth or adoption of a child would apply to fathers. McKenzie said, yes, the policy was gender neutral.

In additional discussion a variety of points were raised:

- Josh provided further detail on Legal Aid of the Bluegrass policies, saying the program afforded 15 days family leave, 15 vacation days, and 15 days sick leave, for a total of 45 days, plus potential access to a "sick bank" of donated leave. He said there were too many unknowns on the financial impact for him to support the proposed KEJC policy.
- Sarah said a good leave policy helps employees keep their job. She noted that KEJC employees did not have a way under current policy to get to the 45 days Josh had described.
- Josh asked whether KEJC provided Long Term Disability coverage. Rich said yes, but only for full time employees. He said no one had ever used it and "we haven't looked at it."
- Bob said that he had managed a large law firm for a period of time. He said the firm had a policy similar to what was being proposed. He said the cost of compliance came from "partners rather than clients." He said abuse, if any, had come from newly covered employees. He expressed concern that cost could be an impairment to the program.
- Brenda Combs noted that in the discussion so far members had been using examples of leave triggered by childbirth. She said the policy was broad and allowed for leave triggered by other medical events. She expressed concern that "everybody could be out every 18 months."
- John Rosenberg noted that "it's different if you have long term disability."
- Chris Frost said that his biggest concern had been how work would be done during leave. He said "you handled that" in the current draft.

Chris suggested that a small committee look closely at the policy with the concerns raised during the discussion in mind and with information about KEJC's long term disability coverage taken into account. Brenda, Neva-Marie, Chris and Rich volunteered to participate with Sarah and McKenzie in follow up discussions.

## **Governance: Client Member Nomination Process**

Rich said that KEJC had received two nominations for Client Members of the Board. He said that in email exchanges the Nominating Committee had unanimously approved of both nominees and agreed that the nominations could be made from the floor during the board meeting. Nomination forms for Rosa Martin and Sandra Martinez had been included in the Board materials for the meeting.

**Motion:** Robert Johns nominated Rosa Martin and Sandra Martinez to two-year terms as Client Members of the KEJC Board.  
**Second:** Bob Brown  
**Action:** Approved unanimously

Sandra Martinez had joined the meeting by this time. Members welcomed her and Chris invited her to share a little bit about herself. Sandra said she was attending the University of Kentucky and working at the Village Branch Library in Lexington. (Note: Sandra's nomination form, submitted by Guion, described her participation on a panel and film screening on DACA hosted by Maxwell Street Legal Clinic and Kentuckians for the Commonwealth.)

## **Governance: Meeting Dates 2016**

Rich drew board members' attention to the handout with the board meeting schedule for the year. Remaining meetings were scheduled for Friday, September 23, and Thursday, December 8.

## **Big Picture, Joint Concerns and Joint Projects**

Legal Aid of the Bluegrass Director Josh Crabtree described Congressional action on funding through the Legal Services Corporation (LSC) for the local programs. He said that in most years the House and Senate passed different amounts and later split the difference. Josh predicted "it's not going to happen," and said the most likely scenario would be a Continuing Resolution with the same funding level for LSC as in the current year.

Josh said that Census data on poverty drive the allocations of LSC dollars. He said that lower poverty in Kentucky might offset any gains in funding enacted by Congress, but would affect each program differently: AppalRed might see an increase while Legal Aid Society and Kentucky Legal Aid might see decreases.

Going forward, Josh said, LSC would adjust allocations every three years to reflect new Census survey data rather than every ten years following the Census itself. As a result, he said, changes might not be as dramatic each time.

Josh said that he and board member John Rosenberg had attended American Bar Association "ABA Days" in Washington, DC, and had met with staff of all of Kentucky's Congressional delegation except Rep. Whitfield.

AppalRed Director Robert Johns reported on the distribution of Bank of America (BoA) settlement funds in Kentucky. He said that \$6 million would be available for foreclosure assistance and legal assistance with community development. Rob said that program directors were working with the Interest on Lawyers Trust Accounts (IOLTA) board of the Kentucky Bar Association to determine the scope and meaning of both “foreclosure assistance” and “community development.”

Rob said the BoA settlement was an “exciting and wonderful” opportunity. He said the funds would be distributed over a five year period, allowing programs to add and retain staff and increase services. Bob Brown asked whether the funds would only be available to legal services programs. Rob said the details were being worked out by IOLTA. John Rosenberg observed that the funds were targeted for client services.

### **Strategic Planning: Governance Brainstorm and Discussion**

Rich described the process by which the Board had revisited KEJC’s strategic plan. In a series of meetings, he said, board members had reviewed what got done and what didn’t get done from the old plan. They had also discussed short surveys about what to do next.

Over a series of meetings, Rich said, board members and staff had focused on advocacy, communications and fundraising. Rich said the discussions had been interrupted by events and the annual meeting devoted to the budget. He said that in the current meeting, he would like to address a final topic: governance. He then gave an overview of the governance provisions of the old strategic plan. Among the things that got done:

- The board had reviewed progress quarterly, helping ensure that the plan was carried out.
- KEJC had engaged technical assistance consultants on communications and fundraising.
- KEJC had continued a commitment to diversity and capability in building its board membership.

Rich said a couple of things didn’t get done but might be worth reconsidering. KEJC had not:

- Launched new advisory committees with both board and non-board members to guide and promote an annual campaign or to help guide Maxwell Street Legal Clinic
- Drawn on a “best practices” consultant such as the national Management Information Exchange or the Kentucky Nonprofit Network

In discussion, it appeared that members felt (a) that there was already a great deal of knowledge of nonprofit best practices in the room and (b) that a separate advisory board for Maxwell Street would be duplicative and time consuming. However, there was

considerable interest in building a new advisory board of young professionals and charging it with a project like promoting KEJC's 40<sup>th</sup> anniversary celebration.

To evaluate additional ideas for next steps, Rich passed around a "Capacity Building Matrix." He asked members and staff to rank a number of strategies on a scale from "No value" to "Must Do." Strategies included "revisit mission and values," "include a 'give or get' expectation," "consider new meeting times" and more. The sheet also asked members and staff to indicate how much they would be willing to invest in different strategies, from \$5,000 to \$50,000. Finally, the sheet invited members to indicate the three best ideas they heard during the discussion and one "Forget about it."

The exercise elicited a lively discussion. Rich later tallied the score sheets. High scoring items included:

- Adding a special purpose committee to include young professionals, focused on the 40<sup>th</sup> anniversary
- Supporting client participation in the board, including orientation materials and training sessions
- Adopting formal board member expectations
- Rotating staff reports to allow more in depth presentations and discussions

"Forget about it" items included Saturday meetings and engaging consultants on governance.

### **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 July 21, 2016, heading at:

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

Highlights:

Rich noted that AmeriCorps member Spencer Mancillas' year of services was coming to an end. He thanked Spencer for his good work. Board and staff gave him a round of applause.

**AmeriCorps Financial Literacy:** Spencer said he had given lots of presentations in recent weeks, including sessions on the new, higher minimum wage that had gone into effect in Lexington on July 1. Spencer said the monthly wage claim clinic was going strong at Maxwell Street but that he and McKenzie were still trying to market the newer Louisville version to build attendance. Spencer said that he had begun work on "The Torch," the annual Maxwell Street Legal Clinic summer newsletter.

**Workers' Rights:** Employment Law Attorney McKenzie Cantrell said the recent Workers' Rights Task Force meeting saw broad participation, including labor, ACLU and human trafficking advocates. On the policy front, McKenzie said she was encouraged by an inquiry from staff in Mayor Gray's office in Lexington. It appeared there was interest not just in complaint-driven enforcement of the city's new minimum wage, but in active, targeted investigation. McKenzie said she had attended the Kentucky Supreme Court arguments on two key workers' rights issues: whether cities had the power to enact a minimum wage higher than the state level (and create private right of action to enforce it) and whether workers could pursue wage claims under Kentucky law as a class or in a collection action. She said she expected decisions in September at the earliest.

**Health Communications:** Health Communications Coordinator Marcie Timmerman said KEJC was winning online loyalty for a new role as a "news aggregator" on Kentucky health policy. She said new issues like wage theft also got a good online response. Marcie said that KEJC had 970 Facebook "likes" and 985 Twitter followers, with each figure likely to exceed 1,000 soon. Marcie said one "tag" on health care had proved particularly successful: "kysays." Together with Kentucky Voices for Health, KEJC had used the tag to highlight public responses to Governor Bevin's proposed Medicaid waiver. Marcie said the tag had trended nationally on days it was deployed. (Another indication of impact and reach: Marcie said KEJC had been added to CNN's health care "follow" list on Twitter.)

**Health Law Fellow:** Health Law Fellow Cara Stewart described recently legislative and public hearings on Medicaid, with a special focus on Governor Bevin's proposed Medicaid waiver. She said that her role with legislators had transformed over time from simply finding the right room to observe a meeting to being a resource to lawmakers who wanted to protect Medicaid expansion and kynect. Example: during a recent hearing, a lawmaker had pointed to her to go out into the hall to explain something. Cara said she had testified eight times in legislative and public hearings. She thanked board members Scott Crocker and John Rosenberg for speaking at the hearings in their regions on the Governor's Medicaid plan. Cara said that in the state public hearings the plan appeared to have over a hundred critics and only two supporters.

**Health Outreach:** Health Outreach Coordinator Miranda Brown said she had added a new organization to her recurring outreach sites: The Well, an organization helping women who had been victims of sex trafficking. Miranda said she had enrolled fourteen new clients since the last meeting, including a U visa applicant who had moved from Tennessee to escape exploitation and who was being helped by a Kentucky farmer. Miranda said dealing the state's new online portal for public benefits, benefind, had been a struggle, requiring lots of calls to customer service. Miranda said she had joined Cara, Anne Marie and Rich in meetings with DCBS and Medicaid officials, offering examples of ongoing client problems backed up by screen shots and examples of problematic notices.

**Maxwell Street Legal Clinic:** Immigration Attorney Guion Johnstone said Maxwell Street Legal Clinic had seen 276 new clients since the last board meeting. She said the cases included new types: a Haitian family and the program's first same-sex spousal petition. Guion thanked Fellow Sarah Adkins for appearing on a KET Kentucky Tonight

panel discussion on immigration reform. Bob Brown said Sarah put in a “very impressive performance.” Guion said she was disappointed that the U.S. Supreme Court had deadlocked on President Obama’s “DAPA” initiative, leaving it stalled under the 5<sup>th</sup> Circuit’s negative ruling. DAPA would have allowed parents of U.S. citizen children to apply for deferred action status similar to the original DACA provisions for youth.

Guion noted that the Kentucky Bar Association had approved a grant focused on family-based immigration. She said the grant project had a unique structure that funneled people through information and orientation sessions. She passed out flyers inviting community members to attend the sessions. She said the Lexington police had contacted Maxwell Street to help an immigrant victim of rape seek a U visa. Chris noted that the police-initiated contacted represented “a big change in police policy.”

See the online Staff Reports for additional matters and details.

### **Adjournment**

The agenda being completed, the meeting was adjourned by acclamation.

**Reported by:** Richard J. Seckel, Director

September 19, 2016