

Kentucky Equal Justice Center

Board Minutes

September 23, 2016

Board Members Present: Bob Brown, Mary O’Doherty, John Rosenberg (Community Members); Joshua Crabtree (Program Directors); Brenda Combs (Staff Representative).

KEJC Staff: McKenzie Cantrell, Nathalie Dietrich, Guion Johnstone, Anne Marie Regan, Rich Seckel, Marcie Timmerman.

Guests: Acena Beck (Children’s Law Center), Nan Hanley (Access to Justice Foundation).

Welcome and Introductions

In the absence of Chair Chris Frost, Treasurer Mary O’Doherty served as chair. A quorum not being present, the topics on the agenda were reviewed for the information of members. Motions made during the meeting later were circulated and were approved by unanimous written vote of the Board via email, as permitted under the Bylaws. Director Rich Seckel retained the records of the votes.

Highlights of Recent Activity

Mary invited Rich to share highlights of recent activity. Rich’s highlights included several topics, as follows:

The six percent solution: Rich said that newly released American Community Survey Census figures showed that Kentucky had reduced its uninsured rate to just six percent, below the national average. Rich said KEJC had lived the changes first hand across a spectrum of activities from outreach to enrollment, to consumer assistance and policy advocacy. He said, that enrollment assistance “made us better policy advocates,” because it had given KEJC firsthand knowledge of the consumer experience. As an example, he said that in meetings with DCBS and Medicaid officials, Health Outreach Coordinator Miranda Brown had been able to present screenshots and notices illustrating problems.

Feds do the job the way we would: Rich said that Anne Marie had led the charge on work activities in SNAP under the rules for ABAWDs (Able-Bodied Adults without Dependents). He said Anne Marie reviewed proposed Kentucky regs, forms and manual sections and compared them with best practices; consulted with national partners; made Open Records requests; circulated a screening tool for exemptions; and spearheaded a meeting with key DCBS officials. At the time of the meeting, the federal agency, FNS, had just visited Kentucky. Rich said that, almost point for point, FNS had raised the same

issues and made the same recommendations as KEJC. Thanks to Anne Marie, Rich said, KEJC left the meeting with DCBS with results and credibility.

Earnings on investment: Rich thanked Maxwell Street attorney Guion Johnstone for researching potential investment managers for the Mason Fund donation to KEJC for Maxwell Street Legal Clinic. He said he was proud that he was a super cautious investor—the funds had remained safe in KEJC’s savings account for two years—but the funds deserved better returns. Rich said that later in the meeting he and Guion would present two suggested finalists for the role of investment broker for the funds.

Approval of Minutes

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

- Motion:** Bob Brown moved to approve the minutes of the July 21, 2016, board meeting.
- Second:** John Rosenberg
- Action:** Approved unanimously, following the meeting, by all board members by email vote.

Administration: Financial Report through Second Quarter

Mary next invited Rich to review the financial report through August. 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, for a total of \$42,760.

Profit and Loss through August 31: showed a loss of \$61,923 compared to the expected loss of \$53,981—a negative variance of \$7,942.

Balance Sheet as of August 31: showed Total Current Assets of \$310,847, up from \$284,755 on June 30 and down 10.5% percent from \$345,416 on August 31, 2015.

Income and Expense Charts: 79.4% of spending was payroll. 59% of income was grants.

Rich estimated carryover at the end of 2016 at \$316,625, down from \$361,976 at the beginning of the year. He said the figure was based on the budgeted loss for the year, plus further expense of about \$2,500 to extend Harvard Fellow Sarah Adkin’s tenure on a part-time basis in September before her judicial clerkship started.

Rich said he estimated unrestricted reserves at \$53,402 on August 31, down from \$82,925 at the beginning of the year. Rich said the drop in unrestricted reserves was due mostly to a delay in renewal of the grant from Public Welfare Foundation for the workers' rights project. (See the previous minutes for detail.)

Rich said the previous year's grant Public Welfare grant had ended May 14. He said KEJC had paid from its own pocket for the period until the new grant started, on July 1—a three paycheck gap, plus expenses.

Rich said he had worked with Public Welfare staff to make sure the new grant would start as early as possible, including a retroactive starting date. As it turned out, he said, under Public Welfare rules the grant officer could only go back one month from the decision date when setting a start date. Rich said the “gap cost” was \$13,740 of unrestricted reserves.

Rich 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. As a result, he had held off on new expenditures. He said he would try to work up the nerve to spend 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, Rich said that income had come in a little higher than budget at 102% percent of budget. He said that expenses had slightly overtaken the gain: they logged in at just over 103% for the year to date, “upside down” from ideal but not by a large amount. On the details of Budget vs. Actual, Rich said that:

- KEJC had just received a new “Rapid Response” grant of \$10,000 from the Foundation for a Healthy Kentucky to extend health communications and story gathering to the end of the year.
- Maxwell Street was having its strongest year ever for client fees, now running well over \$1,000 per month.
- The Consultant line appeared to be over budget, but the spending was covered by new grants for health communications. (The extra consultant funds went to videographer Ryan Morris, who had produced multiple stories for social media distribution.)
- The equipment rental line was over budget, based on his decision to lease a higher-end networked printer for Maxwell Street Legal Clinic, drawing in part on funds from KEJC's 2014 award from Consumer Reports.

On months of reserves, Rich pointed to a downward trend during the year. He said Total Current Assets as of August 31 would last about 5 months and unrestricted reserves just under one month under the hypothetical scenario that no new funds would come in—in

each case a shorter period than at the beginning of the year, but still healthy. (At the beginning of the year, the figures were 7.3 and 1.7 months.)

Rich said the decline in the Total Current Assets was expected: during the year, KEJC had planned to spend down remaining funds for the one-year Harvard Fellowship.

Board member Brenda Combs asked what was behind the Accounts Receivable total of \$95,476 on the balance sheet. Rich said the largest amount was the \$80,000 grant from Public Welfare Foundation, which had been awarded in August but not paid until September. (The next biggest portion was \$13,500 in funds from a third year grant from United Way of the Bluegrass, which would be paid in monthly installments.)

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 a total of \$235,238 of \$255,669 sought, or 92 percent, including the Public Welfare Foundation grant as awarded.

Rich said that he had worked with Guion to prepare proposals for American Immigration Lawyers Mid-South (\$6,369) and the Fayette County Bar Foundation (\$6,900).

Rich said that KEJC’s 40th anniversary was coming up in November. As discussed at the last meeting, he said it made sense to move the anniversary event later, to March or April, to separate it from the holiday season Good Giving campaign and fundraising letter.

Rich said the goal for Good Giving was to raise \$18,000 in donations, not counting any prizes. He said the goal for the holiday letter was \$10,000. Rich said each figure was in line with the previous year’s results. However, he cautioned that it would be hard to repeat the stellar 2015 Good Giving performance. The reason: it had been aided by personal fundraisers launched from the KEJC page by Loree Stark and Courtney Ham.

Board member Josh Crabtree pointed out that two grants in 2015 showed a status of “Pending” even though the “Awarded” column showed an amount awarded. Rich said the grants were awarded. He said he would correct the description of the status.

Anne Marie Regan asked why some figures on the 2016 table were grayed out. Rich said the black and white printer had failed to pick up two different colors for two different things. He said red text represented disappointments: grants that were not awarded. He

said green text represented pleasant surprises: successful grants that were not known about as the year began.

Rich said that so far there were no disappointments in red yet for 2016. He said the pleasant surprises for the year were a Kentucky Bar Foundation grant (\$10,000) and the Foundation for a Healthy Kentucky Rapid Response grant (\$10,000) for health communications. He said he had marked Kentucky Gives Day donations green, since the program did better than expected, raising \$3,038 in a single day.

Administration: Audit and 990 Update

Rich said that he had provided auditor Vickie Richardson with the materials she requested for both the KEJC audit and the IRS 990 for 2015. He said that next steps would include:

- Circulation of the 990 to the board prior to submission
- An Audit Committee conference call with Vickie to review the draft audit report

Following the Audit Committee call, Rich said, the Committee would report to the board at the next meeting and make a recommendation on the audit.

Administration: Budget Assumptions for 2017

Mary next invited Rich to address plans for the 2017 budget. Rich said he had included a one page sheet of “KEJC Proposed Budget Assumptions for 2017” in the board package. He said he wanted to review the assumptions with the Board before using them as guidelines to prepare a budget for the coming year.

The first assumption stated that the “goal is to make a budget than can be paid for with known or predictable income while maintaining unrestricted reserves of about 10 percent of budget.” Additional assumptions:

- Identified a core staff of Director, Senior Staff Attorney and Maxwell Street attorney who could be paid for by grants, unrestricted income or reserves above the target
- Specified that workers’ rights, Fellowships and health outreach and communications positions were grant funded
- Proposed that, to the extent permitted, new grant proposals would include funding for communications
- Called for numerical goals for both fundraising and reserves

Rich said the main new item on the list of budget assumptions was the statement that KEJC would generate and pursue a sustainability plan for the CLINIC Fellowship. He said he was working with Guion and Nathalie to produce a plan based on a CLINIC template. Rich said full-time salary increments would take into account findings of the 2013 board committee on salary comparability, with \$900 increments rounded upward where needed to ensure at least a 2 percent increase for full-time employees. Rich said he would likely

propose a 50 cent an hour increase for each part-time employee, effective on anniversary dates. He said the part-time increments would be higher than 2 percent.

Josh Crabtree asked how Rich's salary would be determined. Rich recalled that the previous year, the Board had specified a five percent increase for both 2016 and 2017. (He said he had negotiated the first year downward.) He said he would implement the second year increase.

Rich said that KEJC paid health insurance premiums up to \$725 for employees and higher, if needed, to ensure that KEJC employees would pay no more than state employees for family coverage. He said that if 2017 premiums for individual coverage were just above the \$725 employer contribution limit, he might propose raising the contribution. The reason: it wasn't worth doing the extra bookkeeping for employee contributions of just a few dollars.

Brenda Combs said that she had reviewed the premiums in the new health plan booklet and they hadn't gone up. As a result, raising the cap of \$725 would not be necessary.

Administration: Mason Fund Options

Rich said that he and Guion had done an "RFP lite" to find an investment manager for the Mason Fund, comparing fees, investment advice services, investment vehicles offered, KEJC control and customer service for multiple entities.

Rich said banks had fallen out of consideration out since they were not known to be nimble or creative in managing investments. He said Blue Grass Community Foundation was an attractive choice but had a 1 percent fee and required that the funds be contributed to them for management—at least a formal loss of control.

Rich said he and Guion had selected two "finalists:"

- Vanguard, the large brokerage house, which had low fees, robust website guidance for nonprofits and so far responsive customer service
- Salomon, a local firm which charged a 1 percent management fee and served several local nonprofits

Rich said the key difference between the two finalists was whether they would advise actively about the mix of investments. In the case of Vanguard, it appeared KEJC might get help making initial investment selections but no ongoing advice. With Salomon, there would be ongoing advice. Bob Brown pointed out, however, that Salomon's 1% management fee would equal at least \$500 a year and might wipe out any gains.

Following further discussion:

Motion: Bob Brown moved to establish an Investment Committee of the KEJC board, with initial membership to consist of Treasurer Mary O'Doherty, board members Brenda Combs and John Rosenberg and volunteer Marilyn Daniel if available and willing, with a charge to:

- decide where to invest the donation from the Mason Foundation
- recommend to the Board an Investment Policy to guide this and future investments and related spending
- exercise oversight over investment funds

Second: Brenda Combs seconded the motion.

Action: Approved unanimously, following the meeting, by all board members by email vote.

Administration: Family Leave Policy

KEJC Employment Law Attorney McKenzie Cantrell had volunteered to organize a conference call of board volunteers on the proposed policy. She said scheduling had proved difficult and the call had not yet taken place. McKenzie said she had reached out to KEJC's long term disability carrier for details but had not yet heard back. Rich volunteered to assist, either by finding policy materials on file or by contacting the carrier.

Big Picture, Joint Concerns and Joint Projects

Looking ahead to the funding picture under a new administration in Washington, Bob Brown recalled that Hillary Clinton had been chair of the Legal Services Corporation board and so was well acquainted with what legal services programs do. John Rosenberg remembered her attending a Southeast Project Directors Association meeting.

Immigration Attorney Guion Johnstone said that that John recently had received a humanitarian award from the Muhammad Ali Center in Louisville. John said he was surprised and honored by the award. He said that fellow awardees, including actor Louis Gossett, Jr., turned out to be warm, interesting and down-to-earth people.

On Congressional funding for legal services programs through the Legal Services Corporation (LSC), board member Josh Crabtree said Congress was headed toward a Continuing Resolution rather than a new budget. He said both House and Senate had approved budget bills with increases for LSC, but at different levels.

Josh said that in recent years a large portion of any proposed increase for LSC had been earmarked for the Office of Inspector General (OIG) but that this year the OIG earmark was not specified in the budget bills. As a result, more money might go to field programs.

Josh updated the group on plans to distribute Bank of America settlement funds to legal aid programs. He said that each state's Interest on Lawyers' Trust Accounts (IOLTA) board

would make decisions about how to allocate funds for two types of activities: individual legal assistance with housing and community development initiatives.

Josh said that the settlement provided about \$6 million to be allocated in Kentucky. He said the Kentucky IOLTA program soon would make recommendations on the details to the Kentucky Supreme Court. Josh said the current plan envisioned distribution over a five year period, with allocation by formula among the LSC-funded legal services programs. (KEJC is not an LSC-funded program.)

Bob Brown asked whether settlements from other banks might be in the pipeline. Josh said “who knows?” on the recent Wells Fargo scandal over creation of fake accounts to charge fees to consumers.

Josh said the BOA settlement funds were especially welcome because general funding from IOLTA to the LSC-funded Kentucky programs had declined, from \$500,000 last year to \$330,000 in the current year.

John Rosenberg asked what qualified as community development activity under the BOA settlement. Josh said the language put forward by the Kentucky IOLTA board was not as expansive as the programs had hoped. For example, he said, it might not cover bankruptcies to preserve homeownership.

In other program news, Josh noted that Scott Crocker had announced his retirement as director of Legal Aid of the Bluegrass in Western Kentucky. He said that Nan Hanley had returned to Access to Justice Foundation. Nan added that “AJF is back,” with a focus on its founding functions: she would work on a full-year poverty law training schedule and on resource development.

John Rosenberg asked Nan about Supreme Court Justice Keller’s approach to the Court’s (separate) Access to Justice Commission. Nan said Justice Keller had attended the Access to Justice Foundation board meeting and indicated that she wanted to broaden membership of the court’s Commission.

Josh added that the current vision for the Commission was a full-time attorney as director, with an office in Frankfort. He said funds for the position would come in part from donated legal services money at the Kentucky Bar Association. Nan said that the Access to Justice Foundation budget would include a donation to the court Commission.

Strategic Planning and Governance: Summary of Governance Discussion

Rich thanked the members for engaging in a discussion on governance at the last meeting. He said he had compiled the scoresheets filled out during the discussion, ranking sample governance ideas by total score and compiling write-in entries on the best, second best and “forget about it” ideas. He said high ranking items included:

- Adding a special purpose committee, with a membership of young professionals and a purpose of supporting KEJC's 40th anniversary
- Supporting client board member participation
- Adopting a formal set of board member expectations
- Rotating staff reports so that only one or two staff would report on projects at each meeting, allowing more in depth presentation and discussion

Rich said that low-ranking items included revisiting KEJC's mission and vision, spending on consultants and trying new times and places for meetings.

Strategic Planning and Governance: Ideas for New Member Orientation

Rich said that he had hoped to do two things: have a general orientation luncheon with new members and a session on reading financial statements. Bob Brown suggested follow-up with absent members to help ensure that a quorum was present at future meetings. John noted that AppalRed had set a quorum of five board members to help ensure that its board could do business. (KEJC's quorum is seven members.)

Josh said that Brenda Combs did a good training session for new members of his board on nonprofit financial statements. He said perhaps Brenda could do this for KEJC's new Client Members. (Brenda is a new Staff Rep on the KEJC board. She had mentioned the training at the last meeting.) Josh said he valued the perspective of client board members on his board at Legal Aid of the Bluegrass.

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 September 23, 2016, heading at:

www.kyequaljustice.org/Board+Meetings.

Highlights:

Maxwell Street Legal Clinic: Immigration Attorney Guion Johnstone said Maxwell Street Legal Clinic had worked on 136 cases since the last meeting and 705 in the last year. Recent cases included Temporary Protected Status, citizenship, U and T visas, family petitions and more. Under a new initiative funded by the Kentucky Bar Foundation, Guion said, Maxwell Street now hosted twice-monthly orientation sessions on family-based immigration, with some families moving on to case services. Guion said she had participated in an interview with National Geographic on unaccompanied minors. On grants, she said that she had worked with Nathalie to file a grant report for the CLINIC Fellowship and with Rich on the United Way report. Guion said that Maxwell Street had a new Legal Assistant, former UK volunteer intern Sofia Calleja.

John Rosenberg asked whether Guion saw any possibility of funding from the city of Lexington. Josh commented he didn't think it was worth applying, but noted that he had met with new city Social Services Commissioner Chris Ford about adult and tenant services. Rich said that KEJC staff would attend the orientation on the next city funding cycle to find out more.

Impact Advocacy: Senior Attorney Anne Marie Regan said KEJC had referred multiple cases to the DCBS "Rapid Response Team" in an effort to fix individual consumer problems and systems issues with the new multi-benefit platform, benefind. She said "a lot have been fixed," but that several complex types of cases still had glitches, including long term care applications and Medicare Savings Plan subsidies. On SNAP, Anne Marie said that FNS had completed four evaluations of Kentucky in the last year, leading to several changes KEJC recommended. One was to make clear that any medical professional, not just a physician, could find that a person should be exempt from SNAP "ABAWD" work activities for medical reasons. Anne Marie also described activities to protect the Consumer Financial Protection Bureau and to support—and improve—its rules.

Health Advocacy and Communications: Health Communications Coordinator Marcie Timmerman reported for the health advocacy team in the absence of Cara Stewart and Miranda Brown. She said KEJC staff had filed multiple comments on Governor Bevin's proposed Medicaid waiver, including comments by Miranda offering detailed client stories. Turning to social media, Marcie said that a Labor Day post recognizing unions had proved to be the most popular KEJC post to date, with a video of Dr. Eli Pendleton speaking about the Governor's waiver coming in second. Marcie said she had begun to provide social media support for both consumer and workers' rights issues, including Twitter memes on "zombie debt" (old debts sold to third parties). Marcie said Kentucky Voices for Health was hosting forums around the state on the Governor's Medicaid proposal, with active support and participation by KEJC.

Workers' Rights: Employment Law Attorney McKenzie Cantrell passed around a handout summarizing activity in each functional area of her project: community education, coalition building, policy advocacy and litigation. She said the KEJC's Workers' Rights Task Force would meet after the election to assess prospects for the 2017 General Assembly. McKenzie said a new legislative task force on Worker's Compensation had begun meeting, starting with a "30,000 foot view" on how Kentucky compared with other states and moving on to hear from practitioners representing workers and employers plus a retired Administrative Law judge. McKenzie said that she and Rich had written a Labor Day op-ed that was published in the Lexington Herald-Leader. The op-ed focused on worker-friendly bills in the General Assembly, including proposals on misclassification, paid sick leave and accommodations for pregnant women.

McKenzie said outreach had slowed down since the end of AmeriCorps member Spencer Mancillas' term. Josh Crabtree said he was happy his program had hired Spencer to work as a staff attorney in its Ashland office.

Anne Marie noted that the Labor Day op-ed had included McKenzie's pointed phrase on the need for paid sick leave: "burger with a side of flu." Mary said that she was very excited about McKenzie's campaign for the state House. (McKenzie later won the race.) See the online Staff Reports for additional matters and details.

Miscellaneous

Josh Crabtree asked what had happened in the wake of the missing client fees at Maxwell Street Legal Clinic. Rich said that KEJC had not been able to prove theft of fees but for other reasons the person who had had the most responsibility for collecting and protecting the fees had been dismissed.

John Rosenberg described a controversy over where to locate a new veterans' nursing home in Kentucky. He said that there were about 180,000 aging vets living west of I-75, served by 3 homes, while in Eastern Kentucky there was one home for about 160,000 vets. He said Magoffin County was making a big pitch for a home in Eastern Kentucky, while Bowling Green, west of I-75, was pressing for a home as well.

Mary O'Doherty asked how the homes were funded. John said it was mostly federal money. Anne Marie asked what the advantage was to being in a home designated for veterans. Bob Brown said he thought the quality of care was higher. John said that, in his experience with the Veterans Administration, care was good across the board.

Adjournment

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

Reported by:

Richard J. Seckel, Director
December 4, 2016