

Kentucky Equal Justice Center

Board Minutes

April 23, 2019

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

KEJC Staff: Miranda Brown, Beka Bruner, Ben Carter, Maddy Clark, Allison Crawford, Leah Engle, Michelle Haubner, Allison Hight, Adam Kuhn, Rich Seckel.

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

Executive Session

Board members first held a brief executive session on board officers and personnel.

Welcome and Introductions

In the absence of 2018-2019 officers Robert Johns and Mary O’Doherty, a quorum being present, chair emeritus Chris Frost called the meeting to order.

Highlights of Recent Activity: New Staff and General Assembly

Chris recognized KEJC Director Rich Seckel to share highlights of recent activity. Rich said he would focus on the General Assembly, but first said that he was pleased with two staff transitions. First, Rich welcomed Allison Crawford to the meeting. Allison had succeeded Marcie Timmerman as KEJC’s part-time Communications Coordinator, a position now with a multi-issue beat.

Second, Rich said, Betsy Davis Stone would join KEJC on May 16 as the program’s new Health Law Fellow. Betsy would join KEJC following three years at AppalRed Legal Aid in Richmond and earlier judicial clerkships. Leah Engle added a welcome for new Maxwell Street Legal Assistant Adam Kuhn. See staff bios [here](#).

Turning to the General Assembly, Rich said that, as in past years, he had created a one-sheet summary of activity and results. The summary listed fifteen bills on which KEJC staff had spent more than minimal time. For each bill, it indicated the poverty law topic, KEJC’s position and a key activity like testimony, alerting allies or meeting with sponsors.

Rich said he gave each bill a score based on 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 the overall score was a positive 6.

Rich 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 (a negative result). He said green rows outnumbered pink but not so much because good bills passed as because bad ones stalled. Rich said the amber color signaled “wait and see.” Key measures:

Green An omnibus set of public assistance barriers was set aside (HB 3)
“Slippery slope” wording on interest rates was cut from a lending bill (HB 285)
UI benefit cuts never made it to the House floor (HB 317)
A bill to require accommodations for pregnant workers passed (SB 18)
A floor amendment to pave the way for Medicaid un-expansion stalled (SB 167)

Red A bill to allow arbitration clauses as a condition of employment passed (SB 7)

Amber Lawmakers separated licensing for payday lending and check cashing (SB 145)

Rich said that the Medicaid “un-expansion” amendment illustrated the value of close monitoring. During routine review of legislative action, he had found a House floor amendment to a Senate bill. The amendment would have reworked the statute that Governor Beshear relied upon to expand Medicaid by removing the policy preference for taking advantage of federal funds for health.

Rich said that, within a day, the sponsor of the amendment heard from multiple parties, including hospitals, and, to her credit, decided not to call the amendment for a vote. Notably, the Cabinet sought approval the very week that the District Court in DC was scheduled to hear oral arguments on KEJC’s case challenging the Kentucky HEALTH Medicaid waiver.

Special Guest: Blue Grass Community Foundation

Scott Fitzpatrick, Vice President for Advancement of Blue Grass Community Foundation (BGCF), congratulated KEJC for its success during the 2018 Good Giving Challenge.

Scott described the \$20,000 challenge made to KEJC by an anonymous donor—50 cents on the dollar—and said KEJC had more than met it. He displayed a magnified check of the resulting match award: \$22,357.34 to be placed in KEJC’s endowment fund at BGCF.

Scott explained BGCF’s mission and activities, saying “we want our citizens to be very engaged in the community.” He said BGCF was a 501(c)(3) nonprofit, established in 1967, that worked with both businesses and individuals, in the latter case hosting endowment funds for charitable giving. Scott said “we’re here to assist you and donors.”

Scott said that endowments provide a “perpetual source of support” for nonprofits, with the corpus remaining intact but with income potentially available for spending. One of his handouts

showed the current balance in KEJC's endowment was \$41,941.45, including the new funds from the Good Giving match donor.

Scott went on to explain Endow Kentucky tax credits, which provide up to a \$2,000 Kentucky income tax credit on a \$10,000 endowment donation. He said that the 2019 pool would open up soon for applications, with a maximum of \$1 million available.

Bob Brown asked what happened if applications for the credit totaled more than \$1 million. Scott explained a process of proration and a 30-day time period for donors to act on the credit available. He then posed for pictures with Rich, other board members and the big check.

Approval of Minutes

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

- Motion:** John Rosenberg moved to approve the minutes of the December 13, 2018 board meeting.
- Second:** Bob Brown
- Action:** Approved unanimously

Administration and Development: Financial Report for FY 2018

Chris next recognized Rich to give the Financial Report. Rich first drew the board's attention to the handout for FY 2018. The cover sheet offered a summary as follows:

Profit and Loss Budget Overview: the budget for 2017 anticipated a loss for the year of -\$8,673.

Profit and Loss through December 31: showed a gain of \$32,558 compared to the expected loss of -\$8,673—a positive variance of \$41,232.

Balance Sheet as of December 31: showed Total Current Assets of \$362,671, up 9.11% over the previous year.

Income and Expense Charts: 80.97% of spending was payroll. 64.5% of income was grants.

Recapping discussion in earlier meetings, Rich said that Public Welfare Foundation had awarded a full two-year grant all at once in August 2018—\$80,000 more than expected. Rich said the unexpected \$80,000 might raise a question: why wasn't the 2018 positive variance at least \$80,000? He said the answer was that half of the funding for the Health Law Fellowship, \$45,000, had been delayed. He said it was paid in 2019 rather than 2018 when it was budgeted.

Rich said KEJC's carryover was well above the original \$325,060 projection for the year. At \$362,671, it was somewhat below his projection of \$399,671 at the last board meeting—again explained by cash flow for the Health Law Fellowship.

Rich said he estimated unrestricted assets at the end of the year at \$69,964—an indication that the Good Giving Challenge helped, but only so far. The amount was below the audited figure of \$101,516 for December 31, 2017.

Rich then commented on a handful of other details in the FY 2018 report. He noted first that the December 31, 2018, balance sheet did not yet include depreciation figures for the year. As well, new depreciable equipment showed up in the FY 2018 report as an expense but would be recoded as an asset when the depreciation figures were entered.

On overall Budget vs. Actual for the year, Rich said that income had come in at 102% of budget and expense at 97%—a “nice combination.” He said that if the “missing in action” \$45,000 for the Health Law Fellowship were added in, the net would rise from \$41,232 to well over the \$80,000 extra from Public Welfare Foundation, so the second part of the two-year grant was protected.

Rich said that total reserves at the end of the year would last just under 5 months if no new income came in, while unrestricted reserves would cover about a month. Meanwhile, fundraising for the year saw KEJC seek or apply for \$558,563 and pull in \$674,862, driven by three factors:

- The Public Welfare second year funds
- The strong Good Giving performance
- A grant “add on” to the Health Law Fellowship for social media to protect Medicaid

Administration and Development: Financial Report for First Quarter 2019

Turning to FY 2019, Rich reviewed the cover sheet for the first quarter report, as follows:

Profit and Loss Budget Overview FY 2019: the budget adopted by the board anticipated a loss of -\$59,389, offset by \$80,000 in advance Public Welfare funds.

Profit and Loss through March 31: showed a loss of -\$39,233 compared to the expected loss of -\$43,915—a positive variance of \$4,681.

Balance Sheet as of March 31: showed Total Current Assets of \$323,395—down from \$362,671 on December 31 but up 3.7% percent from \$311,797 a year earlier.

Income and Expense Charts: 81.6% of spending was payroll. 50.9% of income was grants.

Rich said it was too early in the year to revise the original end-of-year carryover forecast of \$303,282. He said the forecast was based on Total Current Assets as of December 31, minus the budgeted loss for the year. Rich said he estimated unrestricted assets had fallen a bit, from \$69,964 at the end of the last year to \$51,003 at the end of the first quarter.

On the budget versus actual report, Rich said income was running at 92.3% of budget and expense at 89.3%—“right side up.” He said the low spending figure was driven mainly by the temporary vacancy in the Health Law Fellow position. Turning to the balance sheet, he noted again that 2018 figures for new equipment and depreciation hadn’t yet been entered.

Rich said unrestricted reserves had fallen to a value of 0.69 months of operation, while total reserves would last for 4.35 months. The figures were set out in a spreadsheet and the trends illustrated in a chart.

Rich’s handout on “KEJC Recent Fundraising Effort” showed \$374,383 requested so far in the year, with \$125,000 awarded (33%) and most grants still pending. Rich said several fundraising initiatives were coming up. He described:

- a modest projection for online giving on Kentucky Gives Day (\$3,000)
- an estimated \$205,000 federal share of the 2019-2020 VOCA grant
- a plan by VISTA Beka Bruner to seek follow-up funds from the BGCF “On the Table” evening (\$2,000)

Rich said that Beka was working with local activist Dan Wu and with Marilyn Daniel to apply for \$2,000 in funds for immigrant-friendly signs for posting by local business. The grant application took the form of a short video.

Legal Aid of the Bluegrass director Josh Crabtree asked why the income line for the VOCA grant had come in \$18,275 below budget for the year-to-date. Rich said he wasn’t sure, but that he would check it out and report back to Josh. Rich said it was possible that he hadn’t yet entered the monthly bill to the Justice Cabinet as a receivable for March.

(Rich later reported to Josh as follows: “I researched your question on the VOCA income for Q1. It turns out I had not yet entered the amount of our March invoice into the system. The amount was \$16,379.59, accounting for most of the difference of -\$18,275.35 in the quarterly report. If I enter the invoice with a March 31 date, our Q1 bottom line improves accordingly: P&L -\$22,853.77 but \$21,060.98 ahead of budget.”)

Administration and Development: Audit and 990 FY 2018

Rich said that he would soon reach out to Auditor Vickie Richardson to begin the audit and 990 process for FY 2018. He said the 2018 audit would be the third under the three-year bid that the Audit Committee had accepted from Ms. Richardson.

Governance and Strategic Planning: Nomination Process for Officers and Members

Chris next recognized Rich to describe upcoming governance tasks for the board. Rich said that the two-year Community Member terms of Bob Brown, Rick Clewett and Chris Frost were coming to an end. As well, a Community Member vacancy had been created mid-term when Treasurer Mary O’Doherty departed for a job directing the Ohio domestic violence coalition.

Rich said that Hailey O’Hair’s two-year term as a Client Member was coming to an end, too. Meanwhile, client member Sandra Martinez had four absences, though it had not been determined whether they were excused or unexcused. Rich noted that Client Member Jackie Arakaki had come on board a year earlier and was now in the middle of her term.

Rich said that KEJC officers served a year at a time and that normally new officers would be nominated and elected at the next meeting. He said the Nominating Committee usually consisted of a member from each segment of the board: a Program Director, Community Member, Client Member and Staff Rep.

Rich said the current Nominating Committee members were Neva-Marie Polley Scott (Program Director), Bob Brown (Community Member), and Angela Zeek (Staff Rep), with a vacancy since Client Member Rosa Martin had moved on a year earlier. He suggested that longer-serving Client Member Hailey O’Hair might step into Rosa’s shoes, with Jackie Arakaki as a backup.

Rich suggested that he could reach out to members with expiring terms to see whether they wished to continue and to Hailey to see whether she could serve on the Nominating Committee.

- Motion:** Brenda Combs moved to approve the current Nominating Committee and to direct Rich to reach out to Hailey O’Hair to serve as a member, followed by Jackie Arakaki if Hailey was unable to serve.
- Second:** Rick Clewett
- Action:** Approved unanimously

Governance and Strategic Planning: Report of the Personnel Policy Committee

Chair Neva Polley Scott reported for the Personnel Committee, which the previous year had proposed improvements in parental leave policy. This year, the committee was charged with a more general review and update of the policies. Neva said the committee had met once in 2019 and was “working our way through” the current policies with an eye for missing pieces.

Neva said the group had shared several policies from other programs as examples and touchstones, including programs similar to KEJC in South Carolina and Tennessee. She said the committee would regroup soon. She said it was a combination of staff and board members. (Board members included Neva, Brenda Combs and Angela Zeek. Staff members included McKenzie Cantrell, Allison Hight and Michelle Haubner.)

Governance and Strategic Planning: Report of the Legal Work Oversight Committee

Committee Chair Chris Frost reported that the membership of the Legal Work Oversight Committee consisted of himself, board members Robert Johns, John Rosenberg and Amanda Young and Ben and Rich from KEJC. Chris said the scope of the committee’s discussion was practice-oriented rather than substantive, touching on case acceptance policy, practice management and supervision.

Chris said that given Leah’s supervisory role at Maxwell Street, he hoped to include her in committee discussions. He said that Rob had forwarded AppalRed’s case acceptance policy for review by the group. While the document would need some recrafting to fit KEJC, Chris said, he recommended that Ben, Leah and Rich take a look at it.

(Note: Since the last meeting, Ben also convened KEJC’s internal Legal Work Committee, consisting of project managers, case handlers and supervisors: Ben, Betsy, Leah, McKenzie, Miranda, plus Rich ex officio. The scope of the discussion included procedures for conflict checks, case management training needs and a review of KEJC’s case acceptance policy. The group agreed to meet quarterly.)

Governance and Strategic Planning

Rich said that board meeting dates for the rest of the year were posted with the board meeting materials. Remaining dates for 2019 were

July 11	Thursday	Board Meeting
September 27	Friday	Board Meeting
December 12	Thursday	Annual Meeting

Big Picture: Access to Justice Commission

Director Glenda Harrison of the Kentucky Supreme Court Access to Justice Commission began by describing activity under the Commission’s “Justice for All” grant from the National Center for State Courts. Glenda said the project had hosted an energetic kickoff event in February with over 120 attendees from diverse sectors.

Glenda said the project was now in a data gathering phase, with focus groups and meetings scheduled at multiple locations across the state including Mayfield, Northern Kentucky (at the Life Learning Center), Owingsville and Hazard. Glenda said data gathering would yield a full picture of legal services across the state and a create basis for planning.

Glenda said the Commission was seeking a new grant to publish a pamphlet on “Legal Advice vs. Legal Info: A Guide for Circuit Clerks.” The purpose was to let clerks know the difference and encourage them to provide information. Glenda said the Commission was also working to promote a presence by volunteer attorneys at public libraries in Lexington. She said the Fayette County judges were very interested in the library project.

Glenda noted that the annual national Equal Justice Conference would this year be held in Louisville, May 9-11, with the Commission to host a welcoming reception. She said that KEJC and the LSC-funded programs represented on the board would be co-sponsors of the event.

KEJC Senior Counsel Ben Carter asked whether Circuit Clerks were too cautious or conservative about offering information to the public. Glenda said “yes” and suggested that there was more information non-lawyers could share than often was offered. Along the same lines, Glenda said

the Commission was working with the private bar on guidance for limited scope representation, so a volunteer attorney could help with a specified, limited client issue. (See previous minutes.)

Access to Justice training coordinator Nan Hanley described upcoming events including a July 18 training on education law, being planned jointly with the Children’s Law Center, and a July 26 Appellate training to be led by experienced appellate attorneys.

Nan said the appellate event was limited to 25 private and 25 public interest attorneys, with the fee for legal aid attorneys to be limited to \$25. She said that the Kentucky legal services Statewide Conference was scheduled for September 18-20 at Nancy (“formerly Faubush”), KY, at the 4-H Leadership Center.

Big Picture: Access to Justice Commission

John Rosenberg led off the discussion of Legal Services Corporation (LSC) funding, saying that both LSC and the ABA were trying to go from \$465 million to \$683 million. Josh Crabtree commented that the figure was based on a 2017 “justice gap” report. Josh said that he expected a larger figure would come out of the House than the Senate. John encouraged program directors to participate in the ABA effort.

John said that the ABA had received correspondence from some members challenging how dues were spent, including objections to lobbying. Glenda said that objections were sometimes filed in “mandatory bar” states, but that the Kentucky Bar Association charter was very specific about how dues would be spent. She said that in her experience the KBA leadership always measured requests for spending against the charter.

John noted that there had been no motions on the floor in Congress in 2018 to defund LSC. He described an ABA reception attended by judges Kagan, Hecht and Thapar. He said Judge Thapar talked about domestic violence cases and the importance of civil legal representation.

Staff Reports Summaries

KEJC staff reported on activities, issues, projects and successes. The reports followed the new format begun in 2018, featuring fewer but longer reports and allowing more time for board discussion. The topics at the current meeting included:

- Senior Counsel Ben Carter’s update on impact advocacy and the 1115 waiver case
- Leah Engle on immigration law-related activities at Maxwell Street Legal Clinic

Because no board action was required in response, only highlights are included in these minutes. For more detail, see written staff reports—including reports from other staff—on the KEJC board web page under the April 23, 2019, heading at:

<https://www.kyequaljustice.org/board-meetings>

Ben presented a PowerPoint “unpacking” arguments and Judge Boasberg’s decision in the challenge to CMS approval of the Kentucky HEALTH Medicaid waiver. He said the DC Circuit Court of Appeals had established a briefing schedule stretching into the summer, with oral argument possible by September and a decision before Election Day.

Ben said it was important to communicate the value of Medicaid expansion, quoting the phrase “Remember the Maine.” The significance: Maine’s new governor had rescinded an earlier plan for Medicaid work requirements. Ben noted that the Kentucky case—now combined with Arkansas—was the first ever review of a proposed Medicaid waiver program with substantial coverage losses. “We defend Medicaid everywhere, always,” he said.

In discussion, Bob Brown asked whether national co-counsel would help should Governor Bevin carry through on his threat to “un-expand” Medicaid if courts struck down provisions of the Kentucky HEALTH waiver. Ben said, “Absolutely.”

Maxwell Street Program Director Leah Engle described activity under KEJC’s Victim of Crime Act grant, saying the VOCA team had worked on 91 cases in the first two quarters of the new grant year. She said that VOCA case handlers Michelle Haubner and Allison Hight had gone recently to the Migrant Ed program in Pulaski County and soon would present at the Attorney General’s victims’ advocacy conference, all as part of expanded project outreach.

Leah said several Maxwell Street staff also had appeared on Lexington Community Radio, including Michelle and Allison on VOCA and Leah and Nathalie on DACA.

Leah said outreach extended to a growing network of community partners, including Lexington’s Family Care Center, DCBS and Kentucky Refugee Ministries. She said DCBS now more often referred unaccompanied minors for help to file Special Immigrant Juvenile Status applications.

Leah said that Maxwell Street’s 2018-2019 Kentucky Bar Foundation grant focused on naturalization, including ESL tutoring and coaching of volunteer attorneys to handle applications. She said six attorneys from Bingham, Greenbaum and Doll had taken on cases.

In staff news, Leah welcomed new Maxwell Street Legal Assistant Adam Kuhn. She said that DOJ Accredited Rep Nathalie Dietrich now had achieved full accreditation, allowing her to represent clients in removal cases before immigration court. Leah said that one VOCA client was in removal proceedings, with Leah taking the lead on the case.

Adjournment

Motion: Brenda Combs moved to adjourn the meeting.
Action: Approved by acclamation

Reported by:

Richard J. Seckel, Director
June 30, 2019