

Kentucky Equal Justice Center

Board Minutes

May 1, 2018

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

KEJC Staff: Miranda Brown, McKenzie Cantrell, Cassie Chambers, 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).

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 welcomed new Victim of Crime Act (VOCA) project staff Maddy Clark and Michelle Haubner.

Rich said that Maxwell Street Legal Clinic Attorney Leah Engle has passed the bar, would miss the early part of the meeting to attend her swearing in ceremony but would come later in the day to report on the Clinic’s activities. (When Leah arrived later, she got a round of applause.)

Rich said that Cassie Chambers also would be late, in her case because she had a prior commitment to speak to a class. Rich said that he felt like “one and done” John Calipari with respect to Cassie: she had been offered a book deal by Random House and would end her Skadden Fellowship early, at the end of May, to free up time to work on the book.

Highlights of Recent Activity

Chris recognized Rich to share highlights of recent activity and events. Rich said the General Assembly had just ended. He described several scenes that had stayed in his mind, as follows:

Teachers at the Capitol: Rich said that he had stopped in to visit Glenda and Nan several times at the Access to Justice Commission office on the second floor of the Capitol. One visit occurred on a day when teachers in large numbers came to Frankfort to express concern about pension changes and to press for adequate funding for education. Rich said he was inspired to look out the window and see so many regular people at the Capitol.

Provisions not amusing: Rich said one of the Session’s odd moments found him seated at the witness table next to a co-owner of Kentucky Kingdom amusement park, Ed Hart. The bill up for discussion, SB 35, would have eliminated minimum wage and overtime protections for seasonal recreational workers. Rich said his own testimony—prepared with help from volunteer Geri Grigsby—was as simple as any he had ever given: the bill would make it harder for people to put food on the table, pay rent or pay college tuition.

Rich said that not all responses to bills were predictably partisan. He said that Republican Senator Jimmy Higdon later filed a floor amendment to keep minimum wage protections for recreational workers. The amendment was adopted on the Senate floor. The bill later stalled in the House.

Report help: Rich said that several grant reports had piled up during and immediately after the Session. He thanked Miranda Brown for writing most of the “Boots on the Ground” year-end grant report (the grant was renewed) and VOCA staff for helping tackle the program’s very first VOCA quarterly report.

New energy: Rich said new Michigan law grad Allison Hight would join Maxwell Street at the end of the month, completing the VOCA team. He said the team had both ability and energy for the project. On a similar note, he said he enjoyed working with new Family Law Task Force co-chairs Sarah Hayes and Katina Miner from Kentucky Legal Aid.

“Oh, and we challenged the Medicaid waiver,” Rich said. Rich added that Senior Attorney Anne Marie Regan and Health Law Fellow Cara Stewart would give a detailed update later in the meeting, as part of a new board meeting format featuring fewer but longer staff reports.

General Assembly Highlights

Rich next drew the board’s attention to a color-coded spreadsheet entitled “Quick Guide to 2018 Legislative Advocacy.” The spreadsheet listed eighteen bills on which KEJC staff had spent more than minimal time. For each bill, the sheet 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 4.

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** Funding for civil legal aid programs was approved in the budget
- A “Son of Payday Loans” bill failed
- A UI benefit freeze and tiered weeks of benefits were set aside

7-day notice of eviction in non-URLTA jurisdictions stalled

Red A “heartbreaker” workers comp bill would make black lung claims harder
Hospitals no longer would be barred from billing the uninsured below
poverty

Amber Lawmakers approved a presumption in favor of joint custody and equally-
shared parenting time.

Legal Aid of the Bluegrass director Josh Crabtree said that he and fellow director Amanda Young were asked by the sponsor to comment on the eviction notice bill.

Approval of Minutes

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

Motion: Robert Johns moved to approve the minutes of the December 14,
2017, board meeting.

Second: John Rosenberg

Action: Approved unanimously

Administration and Development: Financial Report for FY 2017

Chris next recognized Rich to give the Financial Report. Rich first drew the board’s attention to the handout for FY 2017. The cover sheet offered a summary as follows:

Profit and Loss Budget Overview: the budget for 2017 anticipated a loss for the year of \$16,273.

Profit and Loss through December 31: showed a gain of \$28,546 compared to the expected loss of \$16,273—a positive variance of \$44,819.

Balance Sheet as of December 31: showed Total Current Assets of \$333,733, up from \$285,501 on November 30 and up 11.1% from \$300,417 on December 31, 2016.

Income and Expense Charts: 76.9% of spending was payroll. 56.9% of income was grants.

Turning to the Profit and Loss Budget vs. Actual handout, Rich said that income had come in at 108.5 percent of budget, with spending at 101.87 percent, a nice ratio.

Rich said the positive results were driven by new, unexpected grants totaling \$73,500 from the Legal Impact Network (\$16,000), National Health Law Program (\$40,000) and Kentucky Center for Economic Policy (\$17,500). The latter two grants focused on defending the safety net, especially Medicaid.

Rich said that unrestricted reserves had declined during the year from an audited amount of \$103,392 at the end of 2016 to an estimated \$61,287 at the end of the year. The good news: unrestricted reserves had recovered from a mid-year dip to \$39,551, buoyed in part by holiday season donations.

Rich said that total current assets as of December 31 would last about six months (5.96 months) and unrestricted reserves just under one month (0.98 months) under the hypothetical scenario that no new funds would come in. Rich said the figures were very close to his financial stability goal of 6 months and 1 month.

Rich quickly summarized his handout on “KEJC Recent Fundraising.” It showed the new grants described above and the end-of-year award of \$202,173 in federal VOCA funds—which would require match—plus other grants and fundraising efforts like the Good Giving Challenge (slightly less successful than the year before).

Altogether, funds had come in at 108 percent of what had been requested or sought—again a nice ratio. Rich said that while the VOCA grant had been approved in December, it had to be billed each month to be claimed.

Chris Frost noted that donations for the year had exceeded budget. (The amount was \$19,077). Rich said the positive figure was driven in part by generous donations toward emergency preparedness services for immigrant families through a new Community Response Coalition, an effort fostered in part by KEJC board member Rick Clewett.

Administration and Development: Financial Report for First Quarter 2018

Turning to FY 2018, Rich reviewed the coversheet for the first quarter report, as follows:

Profit and Loss Budget Overview FY 2018: the budget adopted by the board in December anticipated a gain of \$1,633.

Profit and Loss through March 31: showed a loss of \$21,525 compared to the expected loss of \$81,322—a positive variance of \$57,978.

Balance Sheet as of March 31: showed Total Current Assets of \$313,143—down from \$333,733 on December 31 but up 50.9 percent from \$207,579 a year earlier on March 31, 2017.

Income and Expense Charts: 81.9% of spending was payroll. 53.6% of income was grants.

Rich said it was too early in the year to revise the original end-of-year carryover forecast of \$335,366. He said the forecast was based on Total Current Assets as of December 31, plus the budgeted surplus for the year.

Turning to the first quarter report, Rich noted that estimated unrestricted assets had risen considerably, from \$61,278 at the end of the last year to \$105,546 at the end of the first quarter. He said the new grants from the previous year might have helped, along with Good Giving and holiday donations.

Rich said if the unrestricted funds figure held up, it might be time to invest in key priorities: sustaining the second legal assistant at Maxwell Street and investing in development assistance and bookkeeping.

On the budget versus actual report, Rich said income was running at 154.79% of budget, but largely due to cash flow: the “Boots on the Ground” grant from the Foundation for a Healthy Kentucky had been awarded and paid earlier than expected.

Spending was almost dead on budget at 99.37% of the projected amount.

Rich said unrestricted reserves had risen to a value of 1.75 months of operation. He said overall reserves didn’t match the upward trend: they declined slightly from 5.96 to 5.20 months, due in part to a larger monthly budget in the denominator. The trends were illustrated in a chart.

Rich’s table on “KEJC Recent Fundraising Effort” showed \$106,766 requested so far in the year, with \$83,000 awarded (78%) and several grants still pending. Rich said most of the action was coming up: a variety of efforts including a modest projection for Kentucky Gives Day (\$3,000) plus the Public Welfare Foundation grant to continue the workers’ rights project (\$80,000). The total coming up: \$330,000.

Administration and Development: Next Steps on the Budget (Incorporating VOCA)

Rich said it would soon be time to incorporate a detailed budget for the VOCA grant into the overall KEJC budget. He said VOCA agency staff had advised KEJC to operate for several months to see whether any grant budget modifications were in order. Rich said he would work his way through the VOCA grant award and any VOCA budget modifications and present a revised KEJC budget for the year for consideration at the July meeting.

Administration and Development: Senior Staff Attorney Transition

Not long before the board meeting, Senior Staff Attorney Anne Marie Regan had written to board members saying that she planned to retire later in the year, with a target date of September. Rich said that he would like to start the search soon for a successor, including development of a job description and salary range. He said he would convene a hiring committee to review and interview candidates.

Community Member Rick Clewett said that the optimal plan, should funds permit, would be to create a period of overlap, with both Anne Marie and her successor serving together during the transition.

Governance and Strategic Planning: Legal Work Oversight

Chair Chris Frost explained the idea of a board Legal Work Oversight Committee. He said it would be an ad hoc, temporary committee, with a charge to review the supervisory structure of legal work, perhaps especially timely in light of Anne Marie's departure. Chris said he would call for volunteers and convene the group by conference call.

Anne Marie affirmed the value of the idea. She said that when she began at KEJC there were no other attorneys. As the program grew, she said, it became a challenge to full supervise new lawyers. She said it should be "part of the thought process" both in crafting a job description and envisioning the supervisory role and tasks of her successor.

Chris noted that supervision challenges for KEJC were both geographic and substantive: geographic because KEJC had offices in both Lexington and Louisville; substantive because KEJC projects often addressed specialized areas of law, especially immigration law at Maxwell Street Legal Clinic.

Governance and Strategic Planning: Nomination Process

Chair Chris Frost took the privilege of explaining his thoughts on continuing as Chair. He said he had served on the board since around 2001 and seen KEJC grow from a two-person shop to a much larger multi-faceted agency. He said he felt it was time to step aside and make room for new leadership but pledged to serve in other ways.

Chris next recognized Rich to describe upcoming governance tasks for the board.

Rich said that the Community Member terms of Anthony Everett, John Rosenberg and Mary O'Doherty were coming to an end. He said Rev. Everett had been reassigned by his denomination to a church in Cleveland, so there was at least one board slot with no member to continue. He said he would reach out to John and Mary about their interest in remaining on the Board.

Rich noted that last time the board acted on a slate of nominations, they had identified an alternate Community Member, Katherine Blair, to serve in case of a vacancy. Nathalie Dietrich said that Ms. Blair had moved out of state to take a new job.

Rich said the Client Member terms of Rosa Martin and Sandra Martinez also were coming to an end. He said he also would reach out to Rosa and Sandra regarding their wishes to continue.

Rich said he would put out a call for nominations to board members, both for officers and any vacant slots. He said the Nominating Committee consisted of a member from each segment of the board: a Client Member (Rosa Martin), Community Member (Bob Brown), Program Director (Neva Polley Scott) and a Staff Rep (Angela Zeek).

Big Picture: Access to Justice Commission

Glenda Harrison, Director of the Kentucky Supreme Court's Access to Justice Commission staff began her remarks by saying "we survived the legislative session." Glenda said access to justice funds for the LSC-funded legal aid programs were restored in the final budget, though "not quite to the full level." (The funds were cut at the same level as most non-exempt agencies in the Governor's budget.)

Among the lessons Glenda said she drew from the Session: the executive branch must be educated about the value of civil legal aid. She said she often found misconceptions about what the programs do, including confusion of civil legal aid with public defenders.

Glenda said that concerns were raised about representing undocumented people or challenging abortion restrictions, even though LSC-funded programs were barred from related cases (except for helping immigrant victims of crime or domestic violence).

Glenda made a case for compiling and showcasing data on the impact of civil legal aid on individuals, families and communities, but she acknowledged that client stories are still the most effective way to convey the difference programs make.

Glenda also acknowledged the central role of "champions" in the budget process, saying Rep. Jason Nemes had done a wonderful job in his role as chair of the House Budget Review Subcommittee on Justice, Public Safety and the Judiciary.

Glenda praised the members of the Supreme Court. She said all the justices and all the legal aid directors had attended the subcommittee hearing at which funding first was considered. Justice Michelle Keller and Legal Aid of the Bluegrass director Josh Crabtree had addressed the panel.

Glenda said now that the Session was over, the Commission would continue with projects, including development of a website and a survey of judges. On the survey, Glenda said she expected to hear a lot about self-represented litigants.

Glenda said that both Justice Keller and Legal Services Corporation Jim Sandman would participate on a panel at the Kentucky Bar Association convention in June.

Glenda invited Nan Hanley of the Commission to describe upcoming training events. Nan said the civil legal services Statewide Conference was set for May 30 through June 1, 2018, at the Kentucky Leadership Center in Faubush. She said a trial skills training was set for September 7-8, 2018. She said the trial skills event would feature trainers from the American College of Trial Lawyers, 16 trainees and mock trials.

Also in development, Nan said, was a skills training on handling of custody cases.

Big Picture: Legal Services Funding

John Rosenberg described ABA Days, April 11-12, 2018, in Washington, DC. He said a Kentucky delegation “saw literally the entire delegation” of Kentucky Congressional representatives.

John said the Kentucky bar delegation included himself plus Buzz English (past president of the Kentucky Bar Association), Judy Boggs, Robert Brown, John Webber, Gene Vance (Chair of the Litigation Section for the KBA) and Doug Farnsley.

John said that in their meeting with him, Rep. Rogers had mentioned the “Conn cases,” in which Appalred and attorney volunteers helped ensure that disability claimants with cases under review by the Social Security Administration had representation.

John encouraged the group to think ahead to the next year, noting that the ABA always seeks a higher mark for Legal Services Corporation funding than the agency itself. He noted that Rep. John Yarmuth from Louisville could become head of the budget committee should the majority in the House shift.

John described “Lawyers without Rights,” a traveling exhibit on the fate and stories of Jewish lawyers in Europe during the Nazi era. John said the exhibit would appear at the Kentucky Bar Convention, June 13-15, 2018, and then at the Fayette County Circuit Courthouse for several weeks, July 2 through July 20, 2018, before moving on to other cities. KEJC co-sponsored the exhibit during its Lexington installations.

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 were advocacy to challenge Kentucky’s 1115 Medicaid waiver and Maxwell Street’s rollout of the VOCA grant to serve immigrant victims of crime.

Because no board action was required in response, only brief summaries are reported here. Written staff reports were available on the KEJC board web page under the December 14, 2017, heading at: www.kyequaljustice.org/Board+Meetings.

On the Medicaid waiver, Anne Marie described:

- elements of the Kentucky proposal including work requirements and the related “medically frail” exception; premiums, lockouts and elimination of both retroactive coverage for new enrollees and non-emergency transportation for many adults;
- legal claims centering around whether the waiver plan demonstrated new ways to carry out the purpose of the Medicaid program and whether public comments—numbering around 3,000—were considered by CMS

- the litigation team, including attorneys from KEJC, National Health Law Program and Southern Poverty Law Center, plus counsel for NHeLP from the firm Jenner and Block (including Tom Perrelli, former general counsel of CMS, the agency that reviews waiver proposals);
- KEJC’s “interview blitz” with Medicaid consumers around the state, with over 50 interviews leading to 16 plaintiffs with diverse stories who chose to challenge the waiver;
- the current status of the case, with an expedited briefing schedule, cross-motions for summary judgement already filed and an indication by Judge Boasberg of the DC federal district court that he would hold oral arguments in June and rule before the July 1 start-up of the program; and
- the Governor’s case filed in the Eastern District of Kentucky, with the 16 Medicaid consumers as defendants, an effort to move consideration of the legality of the waiver from the DC court to Kentucky.

Anne Marie said a sheriff had gone to serve one of the 16 defendants in the Governor’s “counter case,” had listened to her story and gave her a thumbs up as he left.

Program Director Leah Engle of Maxwell Street Legal Clinic got a round of applause to recognize her swearing in earlier in the day as a member of the Kentucky bar. Leah described Maxwell Street’s response to difficult times for immigrant families and then focused on the program’s new VOCA grant. Leah said that:

- Over the last year, Maxwell Street Legal Clinic had focused on emergency preparedness for immigrant families with children, “know your rights” outreach and keeping up with DACA cases under changing rules and deadlines.
- Maxwell Street’s efforts had come to the attention of state Justice Cabinet grant staff, who encouraged an application for VOCA funding and “worked with us every step of the way.”
- The newly awarded VOCA grant would support creation of a team to help immigrant victims of crime, with two full-time case handlers and a full-time Legal Assistant.

Leah said that Maxwell Street had filled all three new positions. She introduced VOCA Legal Assistant Maddy Clark, a 2016 college graduate with a BA in Spanish. Leah said Maddy had developed her language skill starting at an early age at Maxwell Street elementary school in Lexington, a Spanish immersion program.

Leah also introduced Michelle Haubner, a 2012 Morehead University grad who had taught school in Mexico for several years. Michelle had taken the full-time VOCA position after serving part-time as a Legal Assistant at Maxwell Street since the previous August.

Leah said the final member of the team, Allison Hight, would start work at the end of May. Allison was a 2018 University of Michigan Law grad who had worked during law school at the Michigan Immigrant Rights Center and the Human Trafficking Clinic at the law school.

Rick Clewett stressed the importance of getting accurate information to immigrant individuals and families. He described the newly formed Community Response Coalition, which had set up five specific committees with a focus on helping communities that might feel threatened by the current administration.

Bob Brown said the work of KEJC was very gratifying. He recalled that at least half a dozen attorneys had left federally-funded legal aid programs in the 1980s in response to restrictions on legal aid work. KEJC does not receive Legal Services Corporation funds.

Adjournment

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

Reported by:

Richard J. Seckel, Director
July 12, 2018