

Kentucky Equal Justice Center

Board Minutes

October 5, 2018

Board Members Present: Jackie Arakaki, Hailey O’Hair (Client Members); Rick Clewett, Amanda Kool, John Rosenberg (Community Members); Joshua Crabtree, Robert Johns, Neva-Marie Polley Scott, Amanda Young (Program Directors); Brenda Combs, Angela Zeek (Staff Reps).

KEJC Staff: Miranda Brown, Beka Bruner, McKenzie Cantrell, Ben Carter, Maddy Clark, Jackeline Diaz Ortiz, Leah Engle, Michelle Haubner, Allison Hight, Rich Seckel, Cara Stewart, Marcie Timmerman.

Guests: Nan Hanley, Glenda Harrison (Access to Justice Commission).

Welcome and Introductions

A quorum being present, newly elected Chair Robert Johns called the meeting to order and invited members to introduce themselves.

KEJC Director Rich Seckel welcomed new board members Jackie Arakaki and Amanda Kool and new staff including Senior Counsel Ben Carter, AmeriCorps VISTA Beka Bruner, VOCA Immigration Fellow Allison Hight and Maxwell Street Legal Assistant Jacky Diaz Ortiz. Rich said Allison had started in May but had been taking the bar exam during the last meeting.

Highlights of Recent Activity

Rob recognized Rich to share highlights of recent activity and events. Rich said the big news was the simple fact that Medicaid expansion in Kentucky remained unchanged following:

- CMS approval of the troubling plan called Kentucky HEALTH
- a favorable court ruling vacating the approval
- a turbulent initial Kentucky administrative response
- a new public comment period that saw over 9,000 unduplicated comments, most of them critical of the plan

Rich said that Ben and Cara would discuss KEJC’s participation in the litigation challenging the plan later in the meeting.

Turning to his other highlights, Rich first thanked board and staff for their engagement in the hiring process for a successor to Anne Marie Regan as the program’s senior counsel.

He said Ben had come on board with a short period of overlap before Anne Marie's retirement September 30.

Rich said the recent KEJC Worker's Rights Task Force has started with a unique session: online streaming of Kentucky Supreme Court arguments in the case challenging the General Assembly's enactment of a "Right to Work" law. The well-attended meeting also saw Becki Smith of the National Employment Law Project attend by webinar to describe "gig economy" issues and related policy responses.

Rich said that the radio shows put together for Lexington Community Radio were unique and turned a usual sequence on its head. Until recently, all had been recorded only in Spanish, with the team now targeting some for translation into English. Shows addressed workers' rights, health care access and more. Rich said the shows could be streamed online from links on KEJC's web page. See: <http://www.kyequaljustice.org/ReclamaTusDerechos>

Finally, Rich said that the talented and energetic new Victims of Crime Act (VOCA) team at Maxwell Street was fully staffed up and ready to go full swing as it entered a second year. (Michelle Haubner noted that the team was already at full swing.) Rich complimented Maxwell Street staff for an almost incident-free move from one building to another near Maxwell Street Presbyterian Church. (The incident: Time Warner Cable went to a Lexington Ave. address in Ohio.)

Approval of Minutes

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

- Motion:** John Rosenberg moved to approve the minutes of the July 19, 2018, board meeting.
- Second:** Joshua Crabtree
- Action:** Approved unanimously

Financial Report and Development Update 3rd Quarter 2018

Rob next recognized Rich to give the Financial Report. Rich drew the board's attention to the handout for the 3rd Quarter. He said the report was based on the revised budget for 2018, as adopted at the last meeting. The revised budget incorporated Victims of Crime Act (VOCA) income and expense. The financial report cover sheet offered a summary as follows:

Profit and Loss Budget Overview FY 2018: anticipated a loss of \$8,673.

Profit and Loss through September 30: showed a gain of \$51,990 compared to the expected gain of \$7,197—a positive variance of

\$44,793.

Balance Sheet as of September 30: showed Total Current Assets of \$384,280, up from \$312,638 on June 30 and up 12.89% percent from \$340,410 on September 30, 2017.

Income and Expense Charts: 80.9% of spending was payroll. 70.5% of income came from grants.

Turning to the Profit and Loss statement, Rich said that income had come in at 103 percent of budget, with spending at 96 percent—definitely “right side up.” He noted, however, that Public Welfare Foundation in September had provided two full grant years of funding at \$80,000 each, for a period beginning July 1, 2018.

Given that KEJC had \$80,000 in income in advance for the following year, Rich said, the current year gains were not quite as impressive as they seemed. He said that special care should be taken care to preserve the extra funds for their intended use and timing.

Rich’s said his cover memo retained the predicted carryover into 2019 from the original budget (\$335,366). He said he would update it for the next report and that it would likely be higher, reflecting the extra Public Welfare Foundation funds.

Rich said that his tally of unrestricted assets had risen earlier in the year, to an estimated \$105,546 at the end of the first quarter. However, he said, unrestricted funds had declined by the current quarter to a modest figure of \$51,291. Rich said that a key variable in the management of unrestricted funds was the degree to which KEJC met its VOCA grant match through in-kind contributions like rent and volunteer time instead of cash out of pocket.

Turning to the budget versus actual details, Rich said that the narrative in the income block was easy to spot: where an entry appeared in the actuals column but the budget column was blank, KEJC had won new, unexpected income. So far, two items fit that description: a \$5,000 grant from Center for Responsible Lending and \$16,000 through the Shriver Center. Rich said those items offset the risk embodied in the \$49,500 line item for “Restricted” funds from new sources.

Rich said spending on contract labor appeared to be \$4,515 over budget, but that the figure was an artifact of cash flow. He said KEJC now worked with a new umbrella agency for AmeriCorps VISTA and had paid the entire VISTA stipend share at once, instead of in two installments as it had under the prior agency. Under Litigation Expense, he said, KEJC was spending money for immigration application fees in hardship cases from a pool of donated funds given especially for that purpose.

Rich said he estimated that unrestricted reserves would last only 0.68 months if they were the only funds available for operations. He said the figure had declined in part because the “denominator” of the equation rose to reflect the VOCA grant. He said overall

reserves had declined only slightly, to 5.13 months—a passable indication of financial health. The trends were illustrated in a chart.

Finally, Rich recapped the information in his table “KEJC Recent Fundraising Effort.” The table showed \$458,563 in income requested so far in the year, with \$359,627 awarded (78%), and one major grant still pending, the VOCA grant. Rich said that the online multi-nonprofit Good Giving Challenge and holiday letter were coming up, each giving KEJC a chance to replenish unrestricted funds.

Rob invited a motion on the Financial Report.

- Motion:** Rick Clewett moved to accept the Financial Report for the year through September 30.
- Second:** Amanda Kool
- Action:** Approved unanimously

Administration and Development: Matching Challenge

Rich said KEJC had been honored in an unusual way in Good Giving. He described a call with Lisa Adkins, the CEO of Blue Grass Community Foundation, the host organization for Good Giving. Ms. Adkins told him that an anonymous donor would match contributions to KEJC during Good Giving, 50 cents on the dollar, up to \$20,000.

“All we have to do is find one persons to give us \$40,000,” Rich said, “Or 200 to give \$200.” He said AmeriCorps VISTA Beka Bruner had prepared a nice pledge card to go out in the mail with the Maxwell Street newsletter, The Torch. Copies were attached to the agenda handout. (Note: By the time Good Giving ended December 3, KEJC had received over \$48,000 in donations, large and small.)

Administrative and Development: Audit and 990 Update

Rich said he had provided all requested materials to auditor Vickie Richardson and her staff. He said the 990 for FY 2017 would be ready by the November 15 deadline and that he would circulate it to the board before submission. He said the audit report would be compiled shortly thereafter and that he would organize a conference call for the Audit Committee to review the report with Vickie, absent himself as management, before the next board meeting. The Audit Committee would then report to the board.

Governance and Strategic Planning: Report of the Family Leave Committee

Board member Neva-Marie Polley Scott reported on behalf of the ad hoc committee on family leave. She said committee members included herself, Brenda Combs and Angela Zeek from the board and Michelle Haubner, McKenzie Cantrell and a new volunteer, Allison Hight, from staff. Neva said the committee looked at multiple program and employer policies, with the four federally funded civil legal aid programs in the state as a benchmark.

Neva said the group weighed potential costs and considered work load management during leave. In the end, the group agreed unanimously to raise KEJC’s paid family leave for full-time employees from the 10 days set out in the most recent addendum to the Personnel Policies to 20 days, the same as Legal Aid Society (Neva’s program). She said the committee recommended making the 20 days available regardless of gender. With respect to covering workloads during parental leave, Neva said the group had concluded that staff would gladly pitch in to keep projects and cases going.

Neva said that, in her experience, strong family leave policies help employers retain staff. She said that given KEJC’s advocacy on worker’s rights, the program should set a progressive example for other nonprofits.

- Motion:** Amanda Young moved to increase KEJC’s paid family leave for full-time employees from the current cap of 10 days to 20 days.
- Second:** Joshua Crabtree
- Action:** Approved unanimously

In further discussion, members considered various questions about the language and implementation of the 20 day policy. Brenda Combs said the committee had purposely left out a waiting period to qualify for the leave, so new employees could benefit equally with longer term employees. Ben Carter asked whether the days had to be used in a continuous sequence. Brenda replied that the committee assumed the days could be used flexibly. Ben said that adding an “expiration date” would encourage use of the days. Josh Crabtree suggested a year.

Other questions included what would count as triggering events: e.g., whether taking in a foster child would trigger parental leave. Board member Amanda Kool suggested making the definition of the triggering event broad. Chair Rob Johns asked the committee to meet and come up with policy language implementing the 20 days and responding to questions raised during discussion, for consideration at the next meeting. Josh Crabtree thanked committee members for their diligent work.

Governance and Strategic Planning: Legal Work Oversight Committee

Committee chair Chris Frost was unable to attend the board meeting because he was scheduled to present at a conference. As a result, the Legal Work Oversight Committee report was deferred until the next meeting. Most recently, the committee had provided input into the job description and salary scale for the Senior Litigation and Advocacy Counsel position.

Governance and Strategic Planning: Next Meeting Date

Rich said that under the schedule for the year, the next KEJC board meeting was set for Thursday, December 13, at 11:00 a.m. at a location in Lexington.

Big Picture: Access to Justice Commission

Legal Aid of the Bluegrass director Joshua Crabtree said that Access to Justice Commission director Glenda Harrison had been called to jury duty. He gave a brief report in her stead, noting that the programs were close to finalizing a date for the 2019 civil legal services Statewide Conference, most likely in the fall.

Josh noted that the prestigious American Bar Association (ABA) Equal Justice Conference would be held in Louisville in 2019, with the Kentucky Access to Justice Commission participating on the host committee. Josh said the conference would be held in May, the week after the Kentucky Derby.

John Rosenberg said that he served on the ABA's Standing Committee on Legal Aid and Indigent Defendants (SCLAID). He asked whether any of the Kentucky legal aid directors planned to attend the upcoming annual conference of the National Legal Aid and Defender Association. None planned to attend.

Big Picture: Alliance for Lawyers and Rural America

Chair Rob Johns invited newly elected Community Board Member Amanda Kool to introduce herself and describe her work. Amanda said she had been born and raised in Kentucky. She said she spent the last five years at Harvard Law School managing a [Community Enterprise Project](#) focused on transaction legal services. Under the project, she said, students worked to remove barriers to small business development.

Amanda said the transactional approach was holistic, helping community members work through challenges like starting a small business while on disability benefits. Populations served included immigrant entrepreneurs, veterans and members of worker co-ops.

Amanda said it was important to her to “flip the narrative” and think of a law degree as something more than simply an escalator to a position in a New York law firm. She said she was pleased to be back in Kentucky to foster legal services to help enterprise in rural settings.

Amanda said that she and several co-authors had published an [article](#) setting out a road map for change. See “Legal Deserts: a Multi-State Perspective on Rural Access to Justice.” As well, she was doing a legal needs assessment for entrepreneurs in rural areas.

Amanda said that she had co-founded a new group, Alliance for Lawyers and Rural America, to explore the intersection of “rural” and “law.” See www.aflara.org. She offered to forward the group's newsletter and links to related list serves to board members. She said “What can be done is really the engagement.”

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 presentations at the current meeting included:

- New Senior Counsel Ben Carter’s reflections on the possibilities of his new role
- A report from the VOCA team 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 October 5, heading at:

www.kyequaljustice.org/Board+Meetings

Among the highlights of Ben’s presentation:

- Ben said that his number one priority was to carry forward the litigation challenging federal approval of the Kentucky HEALTH Medicaid waiver. He said that Judge Boasberg’s June opinion offered a road map for what CMS would need to do to win approval from the court, but a map that Kentucky might not follow. Ben said, “Where they want to go is illegal.”
- Ben also discussed ongoing litigation brought by private firms to challenge University of Kentucky Hospital’s use of the Revenue Cabinet to collect medical bills. Ben said that the practice gave UK tools that other hospitals didn’t have. He said KEJC should consider filing an amicus brief in the case. He said the case was at the Court of Appeals with the state’s brief due the same day as the board meeting.
- Ben said that he wanted to visit all the civil legal aid programs represented on the board, in part to identify litigation opportunities in consumer law. He offered to co-counsel or otherwise help people in the programs try cases. He said he had reached out to KEJC staff and statewide task force chairs to establish a full year calendar of task force meetings for 2019.
- Ben said that he wanted to do a survey of legal issues and litigation possibilities similar to what Anne Marie did when she began in 2002, but “not starting from zero.”

Among the highlights of the VOCA presentation:

- Maxwell Street Program Director Leah Engle said that the program was moving on or around October 15 back to Blevins House, a big white house directly behind Maxwell Street Presbyterian Church. The program earlier had used the same

building for several years. Leah said DOJ Accredited Rep Nathalie Dietrich was heading up the move.

- VOCA Legal Assistant Maddy Clark said she handled most of the non-appointment client interaction under the new project. She said the project saw 33 new clients in the most recent quarter and 84 in the VOCA year to date. Maddy said she was coordinating presentations for staff and volunteers at the Court Appointed Special Advocates (CASA) program.
- Immigration Fellow Michelle Haubner said had been certified to practice as a DOJ Accredited Representative. Michelle said she recently had attended the Kentucky Victims Assistance Academy, where she forged lots of networking connections both within and beyond the Bluegrass Region. She said the program featured good presentations on trauma.
- Immigration Fellow Allison Hight described a case example of human trafficking. She said that a recurring new scheme saw traffickers lure boys into the country to play basketball at the high school level, with promises of big things ahead. Instead, the victims incurred debts to the traffickers.

Allison said that Maxwell Street was helping two boys apply for a T visa. Board member Hailey O'Hair said she had seen an example in high school, noting that "they were at my school for maybe three weeks." Amanda Kool asked whether the NCAA was taking note. Leah replied that so far, incidents were seen mostly at the high school level.

In discussion, staff and board members compared and contrasted potential remedies including applications for U and T visas and for Special Immigrant Juvenile Status.

Announcements and Adjournment

Board member Rick Clewett said the recently formed Community Response Coalition would soon meet again. Rick said the purpose of the coalition was to help families affected by ICE raids, including concrete, practical assistance when someone was removed from a household.

The agenda having been completed, Chair Rob Johns declared the meeting adjourned.

Reported by:

Richard J. Seckel, Director
December 8, 2018