

# Kentucky Equal Justice Center

## Board Minutes

December 13, 2018

**Board Members Present:** Jackie Arakaki (Client Member); Chris Frost, Amanda Kool, Mary O’Doherty, John Rosenberg (Community Members); Joshua Crabtree, Robert Johns, Neva-Marie Polley Scott (Program Directors); Brenda Combs, Nick Maraman (Staff Reps).

**KEJC Staff:** Miranda Brown, Beka Bruner, Ben Carter, Maddy Clark, Jackeline Diaz Ortiz, Nathalie Dietrich, Leah Engle, Michelle Haubner, Allison Hight, Rich Seckel

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

### Executive Session

Board members first held an executive session on the director’s salary and evaluation. Recommendations are reported below as part of the discussion of the FY 2019 budget.

### Welcome and Introductions

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

### Highlights of 2018

Rob recognized KEJC Director Rich Seckel to share highlights of 2018. Rich said he would offer five highlights and a heads up on two items on the horizon.

Rich’s highlights of the year:

**Medicaid protected:** Kentucky plaintiffs’ challenge to the troubling Kentucky HEALTH waiver had succeeded, though new federal approval of the plan would take KEJC and co-counsel back to court. The fall elections—with the resulting change in the Congressional House majority—meant the ACA was safe for now from repeal.

**VOCA project in full swing:** The year saw KEJC’s launch of the new VOCA-funded team at Maxwell Street to help immigrant victims of crime, now in full operation with second year funding approved earlier in the week of the board meeting.

**Ben on board:** Following a thorough search for a worthy successor to long-time Senior Attorney Anne Marie Regan, Ben Carter now was on board as Senior Litigation and

Advocacy Counsel, with a detailed report on ideas and activities on tap for later in the meeting.

**Good Giving challenge:** Blue Grass Community Foundation director Lisa Adkins had called with news: an anonymous donor would place up to \$20,000 in the KEJC endowment at BGCF, adding 50 cents for each dollar given online during the Good Giving Challenge. (KEJC met the challenge.)

**Best bad news ever:** The bad news: Public Welfare Foundation would phase out its workers' rights project (and shift to a new focus on juvenile and racial justice). The good news: the Foundation offered KEJC a flexible \$250,000 transition grant, to begin in 2020 when the current two-year grant ended.

Rich identified two items on the horizon:

**Food Justice Fellow:** The Mazon Foundation likely would invite KEJC—and perhaps other Kentucky groups—to submit a proposal for a three-year project focused on fighting hunger. Ben, Rich and Miranda had brainstormed ideas for a Food Justice Fellowship. (The invitation came in January.)

**Son of Payday Loans:** Rich predicted a reprise of the battle in the General Assembly over new high interest loan products. KEJC and allies had succeeded so far in stopping them. (Update: no Son of Payday Loans bills appeared in the 2019 Session.)

### **Approval of Minutes**

The Chair invited a motion on the minutes of the last meeting.

**Motion:** John Rosenberg moved to approve the minutes of the October 5, 2018, board meeting.  
**Second:** Mary O'Doherty  
**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 report for the year through November 30. The cover sheet offered a summary as follows:

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

**Profit and Loss through November 30:** showed a gain of \$30,255 compared to the expected loss of \$51,862—a positive variance of \$82,117.

**Balance Sheet as of November 30:** showed Total Current Assets of \$360,662, down from \$384,280 on September 30 and up 26.9% percent from \$284,155 on November 30, 2017.

**Income and Expense Charts:** 81.8% of spending was payroll. 69.0% of income was from grants.

Rich offered a new carryover prediction for the end of the year, starting with total current assets on November 30, adding projected December income and subtracting projected December expense to arrive at \$399,289.

Rich said he estimated unrestricted assets of \$77,099 on November 30, but noted that he couldn't resist including an estimated net gain from the Good Giving Challenge of \$48,883, even though the tally wasn't yet official.

Turning to Budget vs. Actual, Rich said that income was running at 107 percent of budget and expense at 96 percent—a great ratio, but one powered largely by the fact that Public Welfare Foundation had given its 2018 and 2019 grant awards together as a two-year \$160,000 grant in 2018.

Rich said the Public Welfare advance funding made the November 30 bottom line of positive \$82,117 “just about right.” He said the program should protect the 2019 Public Welfare allotment until the time came to use it for the workers' rights project, starting in July 2019.

Rich said that during 2018 KEJC had received three other unbudgeted “good news grants” totaling \$61,000, as follows:

- \$5,000 from the Center for Responsible Lending
- \$16,000 from Legal Impact Network to protect safety net programs
- \$40,000 through the National Health Law Program for Medicaid defense

Rich estimated that unrestricted reserves would last about a month (1.03 months) if they were the only funds available for operations. He said total reserves would last just under five months (4.81). Rich said the unrestricted figure had rallied a bit since the last report, buoyed by Good Giving.

Finally, Rich recapped the information in his table “KEJC Recent Fundraising Effort.” The table showed \$498,563 in income requested so far in 2018, with \$615,973 awarded, including the VOCA grant and 2019 Public Welfare funds—a ratio of 124 percent. Rich said the annual holiday letter soon would go out, giving KEJC a chance to boost unrestricted funds a little more.

John Rosenberg said KEJC's fund balances were large enough that it might be worth setting up a sweep account to draw higher interest on a portion of the funds.

### **Administration and Development: IRS 990 for 2017**

Rob invited Rich to report on submission of KEJC’s IRS 990 for 2017. Rich said the filing was prepared by auditor Vickie Richardson based on the audited financial report the board would consider in a moment. Rich said he emailed the 990 to the board for review on November 12, with a plan to file no later than the November 15 deadline. He said he was impressed that several board members reviewed the document within a day. Each gave the filing a thumbs up.

### **Administration and Development: Audit Committee Report**

Treasurer Mary O’Doherty reported for the Audit Committee. She said that committee members had met by conference call with auditor Vickie Richardson, absent Rich as management. The Audit Committee consisted of Mary and Bob Brown, with new chair Rob Johns participating ex officio.

Mary said the KEJC audit was very clean with no issues. She said the biggest difference from past years was inclusion of the Vanguard investment fund balance. (KEJC had invested the Mason Fund donation in several mutual funds.) She said travel expenses were up in 2017 but not to the degree that they were a cause of concern.

Mary said that the audit had identified one long term receivable—a \$2,000 invoice to Kentucky Voices for Health (KVH)—either to be pursued or written off. Rich said the amount was the final payment from a sub-grant under which he felt KEJC had been adequately paid already.

(Rich later checked with Emily Beauregard at Kentucky Voices for Health. Emily acknowledged the receivable. Rich and Emily worked out a plan under which KVH would pay half of the cost (\$1,250) of Mason Dixon poll questions in a joint polling project. In return, Rich said he would write off the receivable.)

Mary said that KEJC internal controls, typical for a small nonprofit, did not provide perfect separation of functions. However, she quoted Vickie as saying that KEJC had the best board oversight over the books of any nonprofit Vickie worked with.

Brenda Combs asked whether Rich had built administrative overhead into the new VOCA grant. He said that this year, following Brenda’s advice, he had built in Legal Assistant time as VOCA match, though perhaps not at the highest level possible.

- Motion:** Brenda Combs moved to accept the “Financial Statements and Independent Auditor’s Report for the Year ending December 31, 2017.”
- Second:** Chris Frost
- Action:** Approved unanimously

## **Administrative and Development: Proposed 2019 Budget**

Rich presented a proposed budget for FY 2019, using a projector to display the details. He said he had prepared it guided by the budget assumptions discussed at the last meeting and that he had held a budget briefing for staff by webinar earlier in the week.

Rich briefly reviewed the budget assumptions he had followed, including the goal of making a budget that could be paid for with known or predictable income while maintaining unrestricted reserves of 10 percent of budget. He said perhaps the biggest question for the board was whether the income set out was “predictable.”

Turning first to detail on salaries, Rich said the budget included increments of \$900 a year for full-time staff, with additional adjustments of (a) \$720 for himself and \$360 for the Senior Counsel to bring salary closer to comparability and (b) \$96 for the Health Law Fellow to bring the increase to 2%. He said all full-time staff would receive at least a 2% increment.

Rich said the budget included a 50 cent an hour increase for part-time hourly staff, effective on their anniversaries.

Chair Rob Johns reported on the results of the Executive Committee session on the director’s salary. He said that several years ago the board had set out to make the salary more nearly comparable with other directors—in part to “get salary in shape” for a potential successor to Rich.

Rob said that this year the board recommended a 5 percent increase, taking the salary to \$85,207.50, as a final step toward comparability. He said that comparability having been restored, increments in following years could track more closely to other staff increments.

Rich said that the figures for FICA, UI and fringe benefits in the budget were driven by known rates—including the new rate recently announced by the County Employees Retirement System. Rich said operating expenses were based on billing rates where available or trended across the last two years.

Rich said the income side of the budget also was trended, but featured \$64,000 in new grants to be sought from sources not yet identified. He said a portion of that could come from a renewed grant through National Health Law Program to help protect health coverage. The first NHELP grant had been for \$40,000.

Rich said the bottom line of the budget was -\$76,584, offset by the \$80,000 KEJC had received in advance for 2019 from Public Welfare Foundation, for an adjusted net positive of \$3,415. Chris Frost commented that the budget appeared to have less built-in risk than the year before.

- Motion:** Joshua Crabtree moved to approve the proposed budget for 2019 with the 5% increase in director’s salary recommended by the board.
- Second:** John Rosenberg
- Action:** Approved unanimously

## **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 Allison Hight from staff, plus Rich.

Neva said that the board at the last meeting had approved in principle the committee's recommendation to increase family leave from 10 to 20 days. It then had charged the committee to work out policy details and language.

Neva reviewed her memo summarizing the committee's deliberations. She traced KEJC's family leave allowance from 5 days in the OKLSP Personnel Policy adopted in 1984, through a 1986 amendment increasing leave to 10 days (in each case plus other accumulated leave).

Neva said the committee had talked through issues like whether leave must start with a triggering event like birth or adoption or could start earlier; whether it could be used flexibly over a period of time and whether that period should be limited to encourage use. She said the committee settled on a 365-day use period. Neva's memo included the committee's recommended language, as follows:

### **Parental Leave**

Full-time employees may take 20 days (160 hours) of paid parental leave for the birth or adoption of the employee's child. Part-time employees may take parental leave in proportion to the number of hours that they work in comparison to a 40-hour work week. For all employees, parental leave may also include time prior to the day of birth or adoption. Parental leave must be taken with the prior approval of the Director.

Employees may take parental leave in conjunction with other accrued leave (including sick leave, annual leave, and/or compensatory time). Employees may also take unpaid parental leave. Total paid and unpaid leave may not exceed 6 months. Parental leave may be taken in time increments of no less than 30 minutes.

Parental leave may not be used more than 365 days after the birth or adoption of the employee's child.

In discussion, board members considered whether a six-month limit would better encourage use. Board member Amanda Kool suggesting using a broader phrase than "adoption" as a triggering event, perhaps "placement with intent of adoption." Neva said that the "time prior" concept would help achieve the same result. Amanda said "I think it does."

**Motion:** Brenda Combs moved to adopt the committee's recommended language updating KEJC's family leave policy, to supersede prior policy.  
**Second:** Josh Crabtree  
**Action:** Approved unanimously

Employment Law Attorney McKenzie Cantrell said Neva had done an amazing job guiding the discussion and bringing home the new wording. Chair Rob Johns thanked the committee for its work. Rob suggested that the remainder of the 30-year old policy might benefit from similar review, discussion and update—a new charge for the committee.

Josh Crabtree suggested hiring outside counsel as part of the review process. He gave the example of an \$800 fee from the Dinsmore firm to review policies and make sure they were both up to date and compliant with relevant law. Brenda Combs said it was a great idea to update the policies as a whole. She said that funders might find the current document too ancient.

McKenzie said that it might take a year of committee work to review and revise the policy. Neva offered to reconvene the committee to get started on a review, with potential use of outside resources later. She named the Louisville-based Center for Non-Profit Excellence and the national Management Information Exchange as sources of expertise.

Chair Rob Johns said he might wish to participate in the committee.

### **Governance and Strategic Planning: Conflict of Interest Forms**

Rich said that a year had passed since he collected Conflict of Interest forms. He said the purpose of the form was to identify and disclose interests that might differ or diverge from KEJC interests. The form had been included in the board package, with additional copies available at the meeting. A number of board members and staff completed the forms and turned them in during the meeting or at its end.

### **Governance and Strategic Planning: Proposed Meeting Dates 2019**

Rich passed around a schedule of proposed meeting dates for 2019, with the first date to fall after the end of the General Assembly. Several people had schedule conflicts with the first date. Following discussion, the schedule was revised to include the following dates:

April 23	Tuesday	Board Meeting
July 11	Thursday	Board Meeting
September 27	Friday	Board Meeting
December 12	Thursday	Annual Meeting

### **Governance and Strategic Planning: Legal Work Committee**

Chris Frost said KEJC had changed a lot since he joined the board, when the staff was just Rich and Anne Marie. He described the purpose of the Legal Work Committee as making sure that legal work supervision and systems kept up with the program's growth. He said the committee's role was not to make case acceptance decisions but to identify and implement good systems and best practices for legal work management and supervision.

Chris said that now that Ben was on board as new Senior Counsel, it was a good time to pick up the discussions. He said that John, Rob and Amanda also had stepped forward to participate on

behalf of the board, plus Ben and Rich from staff. Chris asked the legal aid program directors present to send along any relevant policies to help inform committee discussion.

### **Big Picture: Access to Justice Commission**

Glenda Harrison said that the big story of 2018 was that both the Commission and state legal services funding had survived another year. Looking forward, Glenda said a new grant from the National Center for State Courts would fund a “legal inventory” to identify gaps in the justice system and foster planning to fill them. She said activities would involve multiple stakeholders over an 18 month period, to kick off early in 2019.

Glenda said that the Commission was working with Kentucky Supreme Court justices on alternative dispute resolution (ADR) models, a special interest of Chief Justice Minton. As well, a Kentucky Bar Association committee on court rules would soon take up the topic of new rules of professional responsibility for limited scope representation.

Nan Hanley reported on Commission events and training, noting first that the national American Bar Association Equal Justice Conference would take place in Louisville in 2019, just after the Derby, May 9-11. Nan said that she and Glenda would chair a host committee for a welcoming reception at the Muhammad Ali Museum, with 700 to 800 people expected to attend.

Turning to trial skills training, Nan said she would meet soon with long-time trainer Pat Moloney on a plan for an event with a reduced registration fee of \$150 (free for legal aid). She said the target date was September 13-14, with trainers to come from two academies: the Trial Lawyers and Appellate Attorneys. Rob said “my folks loved the training in September.”

Nan said that the Kentucky Legal Services Statewide Conference would take place September 18-20 at the 4-H Leadership Center in Faubush near Lake Cumberland.

### **Staff Reports Summaries**

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

- New Senior Counsel Ben Carter’s update on impact litigation and advocacy
- A look at “KEJC Online:” Website and Radio

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:

<https://www.kyequaljustice.org/copy-of-consumer-and-housing>

Among the highlights of Ben’s presentation:

- Judge Boasberg had established a briefing schedule in the Kentucky HEALTH litigation with the goal of reaching a decision before the new implementation date of April 1, 2019. Ben noted that the new approval came on the slow news day just before Thanksgiving, while the target implementation date was April Fools Day. He said that Cara and Miranda had spent lots of time on declarations for the amended complaint.
- Southern Poverty Law Center had written the appeals court brief for KEJC in the long-running Open Records case that started when Anne Marie had sought correspondence between Kentucky and the federal agency during the period leading up to the first Kentucky HEALTH approval.
- Among the areas of opportunity, Ben he saw two high priorities: environmental justice and “the civil side of criminal litigation.” He said that KEJC was “the statewide law firm” for low income people and it made sense to engage on a spectrum of issues affecting them. He gave the example of a challenge to the cash bail system, noting that Louisville was one of the homes of the Bail Project.
- Ben said that he had signed on as co-counsel in the felon disenfranchisement case he had described at the last meeting. He said attorney Jon Sherman from the Fair Elections Center had reached out after a former felon had copied pleadings from a successful Florida case and filed pro se in the Eastern District of Kentucky.

Ben said the General Assembly would be new to him and it was therefore unclear what it would demand. John Crabtree said “There is definitely PTSD” afterward. Mary O’Doherty expressed interest in legislation to address felon disenfranchisement and the related issue of expungement. She praised efforts by former Rep. Darryl Owens, but noted that the expungement fee of \$500 was very high.

John Rosenberg commented on expungement fees, saying “I think they’re going to try to fix it again” through legislation. Meanwhile, many judges were granting motions to proceed in forma pauperis, with fees waived. Josh Crabtree and Nick Maraman described a troublesome \$40 administrative fee.

For the “KEJC Online” presentation, VISTA Beka Bruner did a quick “show and tell” of KEJC’s new website in progress. She displayed multiple pages, including the one triggered by the top menu item “Reclama Tus Derechos.” The link led to an active listing of KEJC radio shows for streaming, mostly in Spanish, on workers’ rights, health access and more.

## **Announcements**

Director Acena Beck of the Children’s Law Center said she was working with Glenda and Nan at the Access to Justice Commission to plan a training event on education law, mostly likely to be held in the spring.

## **Adjournment**

**Motion:** Neva-Marie Polley Scott moved to adjourn the meeting.

**Second:** Nick Maraman

**Action:** Approved by acclamation

## **Reported by:**

Richard J. Seckel, Director

April 18, 2019