

Kentucky Equal Justice Center

Board Minutes

April 21, 2020

Board Members Present: Hailey O’Hair (Client Member); Bob Brown, Rick Clewett, Chris Frost, Lisa Gabbard, Amanda Kool, John Rosenberg (Community Members); Joshua Crabtree, Robert Johns, Neva Scott (Program Directors); Kristin Brooks, Colt Sells, Jacob Taulbee (Staff Reps)

KEJC Staff: Miranda Brown, McKenzie Cantrell, Ben Carter, Nathalie Dietrich, Leah Engle, Allison Hight, Tyler Offerman, Betsy Stone, Rich Seckel.

Welcome and Introductions

As the group signed on to Zoom, Director Rich Seckel invited those present to introduce themselves. In the absence of chair Bob Brown, Josh Crabtree moved that past chair Chris Frost convene the meeting and preside until Bob arrived.

Motion: Joshua Crabtree moved that Chris Frost convene the meeting and act as chair until Bob Brown arrived.
Second: John Rosenberg
Action: Approved unanimously

Chris welcomed the group and invited Rich to resume introductions. Just as he did so, Chair Bob Brown signed into the Zoom meeting. Bob reported trouble using the Zoom link he had received. He inquired whether a quorum was present. Rich said there was a quorum and more.

Bob convened the meeting and turned to Rich to officially welcome newly elected Staff Representatives from the Legal Services Corporation-funded programs in the state.

Welcome and Introductions: New Staff Reps

Rich thanked Kristin Brooks from AppalRed (Paralegal Staff Rep), Colt Sells from Legal Aid Society (Attorney Staff Rep) and Jacob Taulbee (Support Staff Rep) for their willingness to serve. He said it was good to have three of the four LSC-funded programs formally represented on KEJC’s board by Staff Reps.

Rich said he hoped to circle back and do a formal board orientation with the new members, perhaps including next most recent member Lisa Gabbard as a resource. Rich said he and Lisa had gone through the basics of KEJC mission, history, and governance when she came on the board.

Welcome and Introductions: New Executive Committee

Chair Bob Brown noted that the board had authorized him through a motion at the previous meeting to form a new Executive Committee of up to five members. He said he had reached out to form a committee consisting of the officers and three additional members.

Bob said the invitation process resulted in an Executive Committee consisting of Chair Bob Brown, Treasurer Hailey O’Hair, plus past Chair Chris Frost, Community Members Rick Clewett and John Rosenberg and Program Director Neva Scott.

Bob said that, as it turned out, the Executive Committee had one more member than authorized by the original motion, but that there were several ways to resolve the discrepancy as the group went forward.

Welcome and Introductions: Approval of Minutes

Bob invited a motion on the minutes of the previous board meeting.

Motion:	John Rosenberg moved to approve the minutes of the December 12, 2019, board meeting.
Second:	Chris Frost
Action:	Approved unanimously

Highlights of Recent Activity: Remote Work

Rich said it was hard to believe that the General Assembly had adjourned just six days before the board meeting. He said KEJC had kept up vigorous advocacy and intensive monitoring, with the published version of its bill tracking chart being distributed by Kentucky Voices for Health and Kentucky Forward.

In the last days of the General Assembly, Rich said, it was a relief that neither HB 1 nor SB 1 passed. HB 1 would have imposed barriers to public assistance reminiscent of Governor Bevin’s Medicaid plan. SB 1 was the immigrant “anti-sanctuary” bill. Both bills passed their chamber of origin only to stall in the opposite chamber.

Rich said that KEJC had gone to remote work by close of business on March 16. He said he had worked with Leah to ensure that Legal Assistants stayed on board with a mix of activities, including training.

Rich said that Tyler had taken the training to be a Certified Application Counselor with access to benefind—a ‘superpower,’ as Rich put it, that he shared with Miranda and Betsy.

Rich said that although the courts were closed to most new filings, deadlines for immigration cases like DACA renewals had not changed. He said he was impressed at the body of work reflected in the staff reports for the meeting.

Highlights of Recent Activity: Paycheck Protection Program

Rich described key features of the Paycheck Protection Program created by Congress. He said it allowed a business to apply for a forgivable loan equal to two and a half times its average payroll for the previous year. He said forgivable expenditures were limited to what the business spent on payroll, rent and utilities in an eight-week period. Non-payroll items were limited to 25 percent of forgivable expense.

Rich said that the Executive Committee had authorized him to apply for a loan representing the non-grant funded portion of KEJC's eligible expenses. He said he applied through Chase Bank, KEJC's bank, using an online process. Rich said the online process was clunky and seemed to permit only an application for a full loan. He said he had uploaded a memo explaining that the pro-rated loan for non-grant funded expenses would be welcome, too.

Bob Brown asked Rich the amounts of the full loan and pro-rated loan. Rich said the full loan was a little under \$150,000 ("which would be nice") and the pro-rated amount to avoid double-dipping was a little under \$50,000 ("which would be nice, too"). (**Note:** KEJC later was approved for the full loan amount, \$142, 452. Program rules were changed by Congress to allow expenditures over a twenty-four-week period.)

Highlights of Recent Activity: Networking in Kentucky and Nationally

Rich said Ben had implemented a creative and well-attended "Lunch and Learn" discussion via Zoom for legal services staff statewide. He said he found it a relief to go a meeting structured as a conversation after a series of webinars that imparted a flood of one-way information.

Rich said the discussion surfaced two areas of potential high demand for legal help: Unemployment Insurance appeals and evictions. Ben said that he wanted to do more events with a similar format. He noted that legal aid advocates in some states had recast statewide task forces into crisis teams to deal with legal needs during the coronavirus pandemic.

Rich said he had joined a national discussion hosted by the Legal Impact Network (LIN) based at the Shriver Center in Chicago. He said LIN was the association of programs like KEJC: statewide, non-LSC funded, impact oriented. Rich said he found the discussion sobering. Even programs with admirable fundraising track records, like Mississippi Justice Center, had expressed concern about their budgets during the pandemic.

Rich said that John Nethercut from Maryland had described an interesting strategy to work around the double dipping dilemma in PPP: convince grantors to relabel their grants as open-ended general support, allowing incoming funds to be considered “all one pot.”

In discussion, members revisited the PPP program, including reports that loans were going mostly to bigger business and were about to run out. Amanda Kool said “banks were the big variable,” with some banks better oriented to the needs of small business than others. Josh Crabtree of Legal Aid of the Bluegrass said his program had applied through Huntington Bank, which had a good reputation for handling small business loans.

Administration and Development: Financial Report FY 2019

Bob next recognized Rich to give the financial report. Rich said that he would report first on how FY 2019 ended up and then on the first quarter of 2020. He began with a walk-through of the cover sheet on the report for 2019 in the board package, as follows:

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

Profit and Loss through December 31: showed a loss of -\$1,845 compared to the expected loss of -\$59,389—a positive variance of \$57,544.

Balance Sheet as of December 31: showed Total Current Assets of \$358,237, up from \$338,245 on November 30 but down 0.66% percent from \$360,671 on December 31, 2018.

Income and Expense Charts: 81.84% of spending was payroll. 60.55% of income was from grants.

Reflecting on the dynamics of the year, Rich said that the relatively stable balance sheet compared to the previous year showed stability rather than “endless growth.” He said that the significant negative budget figure was partly an artifact of cash flow: KEJC had received \$80,000 from Public Welfare Foundation for the workers’ rights project in 2018 for a grant year starting in mid-2019.

Rich said the small negative of -\$1,845 income over expense for the year was especially good given the non-renewal (or delayed renewal) of a \$40,000 grant through National Health Law Program for Medicaid defense. He said that stellar results in the online Good Giving Challenge and new funding to launch the Food Justice Fellowship helped bring up the bottom line.

Rich said that he had not calculated months of reserves or unrestricted funds. He said the Executive Committee had suggested he keep it simple and stick with reports that could be elicited from QuickBooks without further calculations and processing. Overall, he said, FY 2019 has seen income come in at 101% of budget and expenses at 97%, a favorable ratio.

Note: End of year figures for 2019 could change slightly when capital additions are reclassified from expense to asset and depreciation for 2019 is entered.

Administration and Development: Financial Report and Outlook Q1 2020

Rich next recapped the cover sheet for the first quarter report, as follows:

Profit and Loss Budget Overview FY 2020: anticipated a gain of \$44 counting only \$80,000 of potential \$250,000 Public Welfare Foundation funds.

Profit and Loss through March 31: showed a loss of -\$128,603 compared to the expected loss of -\$94,718—a negative variance of \$33,885 including Vanguard brokerage losses.

Balance Sheet as of March 31: showed Total Current Assets of \$230,929, down from \$358,237, on December 31, 2019, and down 31.63% percent from \$337,743 on March 31, 2019.

Income and Expense Charts: 81.43% of spending was payroll. 45.71% of income was from grants.

Rich said the negative P&L and declining balance were “sobering.” He said the National Health Law program grant was still MIA and might reflect a dynamic under which grants for defensive advocacy go elsewhere when battles are won. Rich said that KEJC and co-counsel had won decisively in Medicaid defense, both in federal court and by executive action when Governor Beshear withdrew his predecessor’s plan for Medicaid.

Meanwhile, Rich said, the coronavirus crisis had increased uncertainty for foundations and other funders. He said the most concrete manifestation for KEJC came when United Way of the Bluegrass suspended its application process for a new three-year funding cycle.

On the positive side, Rich said, the budget for the year included only a continuation amount of \$80,000 from Public Welfare Foundation for the workers’ rights project, rather than the full \$250,000 of a potential transition grant. Rich said he expected the transition grant to come through.

Rich noted that a good portion of the loss during the first quarter came not from revenue or expense but from assets: a big decline in the Mason Fund investment at Vanguard. All told, he suggested that the Executive Committee begin to consider an “uncertainty factor” in the budget and begin discussion of scenarios like a 5% or 10% loss of projected revenue.

Chair Bob Brown asked whether Rich was suggesting a revised budget for the second half of 2020. Rich said, yes, it would be good to begin a discussion. Bob said contingency plans were a good idea.

Administration and Development: Public Welfare Foundation Transition Grant

Rich said that from the very first discussion about the workers' rights transition grant—with grant officer Bob Shull and the new PWF president—he had floated the idea of using transition funds to fortify development efforts by using part of the funds to create a new position. He said the response was good.

Rich said that the Public Welfare transition package included consultation with highly regarded fundraising group Beth Grupp Associates. He described a training that he and Miranda had attended in DC led by Beth Grupp herself. Rich said the training was unusual in that it went beyond “first level” information: rather than focusing on the “ask,” it focused on building relationships first.

Governance: Tasks for 2020

Rich said that two-year terms of several Community and Client Members of the board were coming to an end with the next meeting. He said he would reach out to members with expiring terms to see whether they wished to continue serving and would let the Nominating Committee know their wishes.

Rich said that the Nominating Committee in turn would decide whether to issue a call for nominations. Chair Bob Brown noted that the one-year terms of officers also were coming to an end, so that the Nominating Committee should nominate a slate for the coming year.

Governance: Strategic Planning RFP and Next Steps

Rich said the plan remained the same as it had been before the General Assembly. He said he would reach out to two recommended planners with a simple Request for Proposals before the next meeting. The two were Marian Guinn, a well-known Lexington nonprofit leader, and Gordon Garner, who came recommended by Tom FitzGerald and Joe Childers for his work with Kentucky Resources Council. Rich said the Executive Committee could review the proposals and make a recommendation at the next Board meeting.

Governance: Personnel Committee

Rich said that consultant Kathleen Carnes had begun preparing a draft update to the personnel policies. He said that he had expected her to start with a markup of the current policies. Instead, Kathleen had started from scratch. He said the work product so far was a preliminary rough draft.

Rich said that he and Neva had held a call with Kathleen during which they reaffirmed the goals of the process: to modernize the policies and ensure compliance with current requirements rather than to change (or diminish) employee benefits.

Rich said that the discussion with Kathleen on “termination at will” was fun because KEJC simply didn't fit the mold of most employers. (McKenzie in her legislative role had proposed

doing away with the doctrine.) Rich said that he envisioned a follow-up conversation with Kathleen to get the document in shape as a first draft to share with the full Personnel Committee and the Executive Committee.

Neva said affirmed the goals of the process. She said it had been slowed down by the General Assembly and COVID-19, but now could ramp up again. She noted that some elements of the current policies were obsolete, including references to Legal Services Corporation rules that no longer applied to KEJC.

Rich said that one potential enhanced benefit would be an “up front” allocation of sick or personal leave, so that new employees were not at a disadvantage. He said that former board member Brenda Combs made the suggestion. He gave the example of a new Legal Assistant at Maxwell Street who might incur a negative leave balance that should be forgiven.

Josh Crabtree pointed out that for now negative leave shouldn’t occur because Congress had mandated up to 12 weeks additional FMLA leave during the pandemic. Neva said she would share her program’s policy, which was updated to reflect the new provisions. She said the legislation had provided a tiered approach with two thirds pay available for people who took leave to care for children.

Governance: Meeting Dates 2020

Remaining dates for the year, as listed in the board package, were:

- July 16 Thursday Board Meeting
- September 25 Friday Board Meeting
- December 10 Thursday Annual Meeting

Big Picture: Legal Aid Funding

Josh Crabtree said that funding for legal aid had stayed in the state budget but at a reduced level of \$500,000 instead of the previous \$750,000. He said that the Legal Services Corporation had received a \$50 million supplemental appropriation, to be distributed under a new formula that was favorable to Kentucky. He said the funds were about to arrive.

Josh reminded the group that the big cut in funding for Kentucky programs had come not as a result of budget cuts but in 2011 in response to the new Census poverty figures that drove LSC allocations. Looking ahead, Josh said that Victim of Crime Act funds would likely diminish over the next couple of year as the trust fund for the program was drawn down.

John Rosenberg reported on a panel discussion of state chief justices hosted by the Legal Services Corporation board. He said that the panel showed interest in increased use of hotline services. John added that ABA Days would be conducted digitally over the next few days, including visits with Congressional representatives and their staff. He encouraged participation by legal services program directors.

Staff Reports

Rich provided highlights for each project and invited staff to add detail and “color commentary.” No board action was required in response to the reports. For more detail on recent work, see written staff reports on the KEJC Board we page under the April 21, 2020, heading at:

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

Adjournment

Motion: Rick Clewett moved to adjourn the meeting.
Second: John Rosenberg
Action: Approved unanimously

Reported by:

Richard J. Seckel, Director
July 12, 2020