

Kentucky Equal Justice Center

Board Minutes

July 11, 2019

Board Members Present: Jackie Arakaki, Hailey O’Hair (Client Members); 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, Angela Zeek (Staff Reps).

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

Guests: Chloe Atwater (UK Law student); Sheriffer Chisanga (Berea College student); Nan Hanley, Glenda Harrison (Access to Justice Commission); Amanda Bear, Acena Beck (Children’s Law Center).

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 reported on the following:

Food Justice Fellow: Right in the middle of the Appalachian Citizens Law Center event on the Martin County water crisis, Rich said, he had gotten word by email: KEJC’s proposal to launch a Food Justice Fellow had been approved by the MAZON Foundation. Rich said the Fellow would help build coalition activity focused on ending hunger. He said MAZON was not shy about advocacy for public benefits.

Task Force season finale: Rich said the General Assembly had been followed by “task force season,” with well-attended events on public benefits, consumer and housing and workers’ rights leading up to the largest meeting of all, a Family Law Task Force session in Louisville with close to 40 attendees. The Family Law event featured KEJC board member Nick Maraman presenting on the interaction of tax law and family law.

VOCA “submit:” Rich said that he had been pleased to press the “submit” button for this year’s Victim of Crime Act grant one day before the deadline. He thanked board member Brenda Combs for stepping in as the grant’s financial officer in the absence of a Treasurer. He said Brenda’s thumbs up on the budget gave him confidence that the proposal was solid all around. He thanked the VOCA team for its work on the grant narrative.

Facebook 2000: Rich said that KEJC had just reached over 2,000 “likes” on Facebook, thanks to a push by new Communications Coordinator Allison Crawford. He said that KEJC social media efforts had begun with defense of Medicaid expansion, but Allison now juggled multiple poverty law issues, from “public charge” to “shark week” on payday loans.

Welcome Fellow: Rich welcomed new Health Law Fellow Betsy Davis Stone. He said Betsy would work from the office at 201 West Short Street. He said it was nice to consolidate the program with more project staff in one place. Rich said he was about to improve the phone system accordingly, with a modern cloud-based system offered through Windstream. (The company later dragged its feet on installation.)

HB 3 good news bad news: Rich said that a bill with multiple troubling public assistance provisions, HB 3, had been set aside during the 2019 General Assembly. Now, he said, the Legislative Research Commission had approved a task force to review topics that tracked the framework and approach of the bill. The good news: KEJC had been invited to testify.

Rich said that KEJC had a long history of both defensive and pro-active work on public benefits programs, including successful work to preserve parents’ access to post-secondary education as a “work activity” in K-TAP.

Approval of Minutes

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

- Motion:** John Rosenberg moved to approve the minutes of the April 23, 2019, board meeting.
- Second:** Hailey O’Hair
- Action:** Approved unanimously

Administration and Development: Financial Report through 2nd Quarter 2019

Rich reviewed the cover sheet for the financial 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 for the workers’ rights project.

Profit and Loss through June 30: showed a gain of \$67,677 compared to the expected loss of -\$13,652—a positive variance of \$81,329.

Balance Sheet as of June 30: showed Total Current Assets of \$430,146—up from \$323,395 on March 31 and up 37.6% percent from \$312,608 on June 30, 2018.

Income and Expense Charts: 81.65% of spending was payroll. 70.03% of income was grants.

Rich said that he had revised his end-of-year carryover forecast upward to \$343,971 to take into account projected year-end balances of \$40,689 in new grants that hadn't been in the base budget (see below). Rich said estimated unrestricted assets had bounced back slightly from \$51,003 on March 31 to \$54,011 at the end of June.

For several years, Rich said, the plan had been to build unrestricted assets above 10 percent of budget and then invest the excess above 10 percent in development and a deeper administrative bench. He said the 10 percent goal had proven elusive as the KEJC budget had grown. Rich said that KEJC might need a new strategy to invest in new things, including a more aggressive approach to building operations into grants.

Turning to the Budget vs. Actual report, Rich said income was running at 108% of budget and expense at 91%—a very favorable ratio. He said the low spending figure was brought about mainly by the temporary vacancy in the Health Law Fellowship. He said cash flow also contributed. Example: he paid the bill for the Legal Files case management system in July rather than June.

The good news on income, Rich said, came from a series of new grants that had not been in the base budget. Rich said the grants were easy to spot among the income lines on the Budget vs. Actual page because they had a zero budget amount but a positive actual. New grants since the last meeting included:

- A CLASP Protecting Immigrant Families grant to work on public charge \$10,000
- A Solidarity Giving sub-grant through KCEP to protect public benefits \$25,000
- A Kentucky Civic Engagement Table grant to test workers' rights messaging \$ 2,670
- The MAZON Food Justice Fellowship grant \$64,712

Rich thanked staff for working on the grants, including Ben on the MAZON proposal, Miranda on public charge and Allison Crawford on worker's rights messaging.

Turning to the balance sheet, Rich said that it now included the value of equipment purchases made in 2018. He said unrestricted reserves had risen slightly since March, to a value of 0.73 months of operation, while total reserves would last a healthy 5.79 months. The figures were set out in a spreadsheet, with the trends illustrated in a chart.

Rich's handout on "KEJC Recent Fundraising Effort" showed \$578,809 requested so far in 2019, with \$316,709 awarded (55%) and two large grants still pending: the VOCA grant (\$215,426) and the "Boots on the Ground" grant through the Foundation for a Healthy Kentucky (\$50,000).

Rich said several fundraising initiatives were coming up soon, including a potential 20th anniversary event for Maxwell Street Legal Clinic. He said the Clinic had opened its doors as an all-volunteer operation in October 1999. Rich noted that events were labor intensive but that

KEJC had pulled off a nice event with multiple food stations and a short program for the 10th anniversary.

Administration and Development: Audit and 990 FY 2018

Rich reported that he had reached out to Auditor Vickie Richardson to begin the audit and 990 process for FY 2018 and would soon begin to compile materials for her.

Administration and Development: Salary Scales and Comparability

Rich said that KEJC had last conducted a salary comparability review in 2013. At the time, the program had set a salary scale for staff attorneys, which in practice also operated as a touchstone for other positions. Rich said the 2013 scale just slightly exceeded the average of Kentucky field programs but now it appeared to have fallen behind.

Rich proposed that over the next year, KEJC should revisit comparability, including salaries for non-attorneys that would reflect job deliverables and responsibilities. He said that as a first step, he would begin gathering scales from Kentucky programs and peer state support programs.

Governance and Strategic Planning: Report of the Nominating Committee

Nominating Committee member Bob Brown reported on the actions of the committee. Bob said the group had met by conference call on July 2 to consider nominations of current members willing to continue, a new member to fill a Community Member vacancy and officers for the coming year.

Bob said the members of the committee were himself, Hailey O’Hair, Neva Polley Scott and Angela Zeek. He said that members recused themselves when their own nominations were considered. Bob said the committee had combined nominations into a slate for consideration by the board. The slate and committee minutes had been included in the Board package.

Motion: John Rosenberg moved to approve the slate of nominees put forward by the Nominating Committee, as follows:

Officers (One Year Terms)

Bob Brown, Chair
Hailey O’Hair, Treasurer

Members (Two Year Terms)

Hailey O’Hair, Client Member
Bob Brown, Community Member
Rick Clewett, Community Member
Chris Frost, Community Member

Member (To Fill Vacancy in Two Year term)

Lisa Gabbard

Second: Nick Maraman
Action: Approved unanimously

Lisa Gabbard had been nominated to fill out the unexpired term of former Community Member Mary O’Doherty. Several members commented that it was good to continue the tradition of having a board member from Kentucky Coalition Against Domestic Violence.

Newly elected Chair Bob Brown chaired the meeting from this point forward.

Governance and Strategic Planning: Report of the Personnel Committee

In the absence of committee chair Neva Polley Scott, there was no report of the Personnel Committee, which had met once since the beginning of the year to begin a “top to bottom” review and update of the policies. The previous year, the committee had developed and the board had adopted an improved parental leave policy.

Board member Josh Crabtree recommended that KEJC hire expert outside counsel to assist the committee. He said that his program, Legal Aid of the Bluegrass, had engaged an attorney from Dinsmore to review its policies and make recommendations for updates, at a cost of just \$800.

Motion: Josh Crabtree moved to authorize Rich to engage outside counsel to assist the Personnel Committee.
Second: Rick Clewett
Action: Approved unanimously

In further discussion, committee members Michelle Haubner, McKenzie Cantrell and Brenda Combs said they were comfortable with the idea of working with counsel. Brenda noted that it took a long time to review the policy details, with the last meeting devoted to just getting started.

McKenzie commented that the board should acknowledge Neva for her work. Josh said that Neva had just emailed him and expressed approval of the idea of engaging counsel.

On the theme of getting assistance where needed, John Rosenberg suggested that Rich engage an event planner to help with the Maxwell Street 20th anniversary fundraiser. Rich said that there was precedent: for KEJC’s 30th anniversary, he had worked with a planner recommended by KEJC’s first director, Rona Roberts. He said the planner helped keep everything on track.

Motion: John Rosenberg moved to authorize Rich to engage an event planner to help with the Maxwell Street 20th anniversary, with a budget of up to \$2,500.
Second: Josh Crabtree
Action: Approved unanimously

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. He said he would also invite program director Leah Engle from Maxwell Street Legal Clinic to participate.

Chris said the committee had tasked Rich and Ben with a review of KEJC case acceptance policies. He said Rob Johns had made available AppalRed Legal Aid's policies as an example. Bob Brown asked what form Rob's suggestions took. Chris said that the Appalred policies, perhaps driven by Legal Services Corporation requirements, were "more granular" than KEJC's on the steps of the case acceptance process and supervisory review.

Ben said that he had convened KEJC's internal Legal Work Committee for discussion of case acceptance policies and other elements of practice management, including a look at practice-related provisions of the program's professional liability coverage. Ben said the internal group was also looking at time keeping options. Ben said he'd begun work on an update to KEJC's case acceptance policy.

Board members discussed the interaction between the procedural aspect of case acceptance policies and substantive case priorities. Josh Crabtree noted that the Legal Services Corporation required LSC-funded program to conduct a case priority-setting process every five years. He said that rather than prescribing priorities, he wanted to acknowledge Ben's role in guiding practice.

Ben noted that his predecessor, Anne Marie Regan, had written a legal needs study. He said that in the current environment, environmental and criminal justice might be emerging areas or frames for new work.

In further discussion, Rich noted that KEJC's 2009-2011 strategic plan set out both structural and substantive areas for work. He said the plan had led to the launch of both the health law fellowship and the workers' rights project. He said the plan was very vivid to him, but that he'd realized recently that only he and Chris of the current board and staff had participated in the planning process.

In further discussion, Rich said that after five years, KEJC's original planner had recommended planning "lite," rather than a full update. He said that starting in 2014, the board had held several input sessions on matters like communications and development. Rich said the "Transparency" page on KEJC's website included key documents on the 2009 plan and 2014 update discussions.

Bob Brown commented that a "decade is long enough" and that it might be time for a full planning process. Amanda Young, director of Kentucky Legal Aid, said that her program's legal needs study offered a clue about current legal needs. She said in the study results, health came in first and consumer law second as legal needs.

In further discussion of planning, Rick Clewett suggested that the board could do some of the facilitation itself. Another board member said that former LABG director Dick Cullison now helped programs with strategic planning.

Rich said that he had run into the facilitator of the 2009-2011 plan at the Martin County Water event. He said he would reach out to her for ideas for process and facilitation. Rich said he could envision a process that unfolded mostly after the 2020 General Assembly.

Governance and Strategic Planning: Policy Priorities Process

Rich said that in the distant past, KEJC had done a legislative issues survey with legal services staff to help determine priorities for the General Assembly. He said that even with survey results in hand, KEJC staff had to make multi-dimensional judgments about what issues to pursue. He said that KEJC took a less formal approach after the restrictions imposed on LSC-funded programs in 1996, so that programs would not appear to direct lobbying.

Rich said that in current practice touchstones for legislative priorities included emerging issues identified in task force discussions, grant deliverables, and guidance from trusted national groups—all combined with judgments about capacity and assessment of the roles and division of labor among community partners.

Rich said that the world was changing, with new issues emerging, including matters at the interface of civil and criminal law. He gave the example of the criminal record expungement services offered by many of the programs and the related policy debates in Frankfort. He noted that Ben had identified cash bail as an emerging issue.

Rich proposed that before the Session, staff describe for the board their judgements and choices about policy priorities.

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

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 described activities under the Commission grant from the National Conference of State Courts. She said that eight months in, the grant team had finished the data-gathering phase of the project.

Glenda said that the listening sessions held around the state were “remarkably informative.” She said focus group discussions had revealed widely held respect for the LSC-funded programs and KEJC and that each was to be applauded for it.

During the next stage of the project, Glenda said, stakeholders would offer and sort through ideas for systemic improvement. She noted that the project team also had surveyed judges. She offered the observation that Kentucky was not far along compared with other states in accommodating pro se litigants.

Glenda applauded the Kentucky Bar Foundation for its grant to print an information piece on “Legal Advice versus Legal Information.” She said the piece was intended to encourage court clerks that they could do more for parties without violating the rules on unauthorized practice of law.

Access to Justice Commission Training Director Nan Hanley said that forty-two people were signed up for the education law training set for the week after the board meeting, an event offered in partnership with the Children’s Law Center. Nan said the next up would be 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 limited to a nominal \$25.

Nan said that the Kentucky legal services Statewide Conference was scheduled for September 18-20 at the 4-H Leadership Center in Nancy. She said she had met with LSC program directors and advocacy directors the previous week to work on the Statewide agenda. She said the agenda would offer tracks for different audiences. Later in the year, Nan said, she might offer a basic trial skills training.

Josh Crabtree complimented Nan and the Commission on the trainings offered during the year.

Big Picture: Association of Lawyers for Rural America

Board member Amanda Kool said that during her teaching days in Boston, it had become clear that law and rurality operated in different silos. She said it appeared that if she were to pursue a career in a firm, she would have no opportunity to go back to her rural roots.

Amanda said there were not enough lawyers in rural areas. To encourage new thinking and activity, she therefore had written an article with other academics and “we just kind of threw up a tent” and a website on the theme of lawyers for rural America.

Amanda said the intention was for the group to grow organically, even if that meant slowly. One encouraging sign: the article had been picked up by the Washington Post. Amanda said the group was looking at how best to use digital platforms to build a network. She invited ideas and input.

Big Picture: Legal Services Funding

Josh Crabtree reported that the House of Representatives had approved an increase of \$125 million in funding for the Legal Services Corporation. He said the increase would amount to somewhere between \$800,000 and \$1,000,000 for each of the four LSC-funded programs in Kentucky. Josh said the final budget figure negotiated between House and Senate would likely be a smaller number.

Josh described several encouraging developments on national funding. He said that the head of the Freedom Caucus has signed off on an increase for LSC, as had 50 Senators. He said the Heritage Foundation had eliminated its concerns about LSC from its website, except for minor issues.

Josh said that the terms of over half the current LSC board had expired. He said the program did not seem to be on the White House “radar screen.” John Rosenberg commented that three recent nominees were “all pretty good.”

Josh added that Republican Senators from rural states had proved to be a voice of support for LSC. He said that on the state level, the hope was to have level funding included in the Governor’s budget.

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. Topics at the current meeting included reports from the Health Advocacy and Workers’ Rights teams—including a first report from new Health Law Fellow Betsy Davis Stone.

Because no board action was required in response to the reports, 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 July 11, 2019, heading at:

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

Among the highlights of the reports:

- Betsy said that before coming to KEJC she had been the “third iteration” of Addison Parker at AppalRed, with a focus on consumer law practice. She and Ben had attended oral arguments before the Kentucky Supreme Court in *Moore*, the case challenging UK’s use of the Department of Revenue to collect medical debt.
- Betsy and Ben had also worked over the summer with law student Chloe Atwater to consolidate Kentucky hospital charity care policies in a single spreadsheet, complete with links to the hospitals’ websites. Ben said that helping people claim the charity care hospitals promised could prevent “debt collection that shouldn’t be happening.”

- Betsy said she had written comments on OMB’s plan to use a less robust inflation rate for updating the federal poverty line. She said she planned to comment on proposed Consumer Financial Protection Bureau regulations on the Fair Debt Collections Practices Act and to keep track of proposals to address “surprise” medical bills.
- Miranda said that she had enrolled fifteen people since the last meeting; helped with a healthcare.gov appeal of an unfavorable tax credit decision; and worked with Ben on a denial that could have been prevented through proper application of the “gap filling rule.”
- VISTA Beka Schwartz said that she had developed a postcard for workers to send back to let KEJC know whether self-help wage claim efforts had worked. She said she was working on three new radio show episodes, one each on action by the General Assembly, the Family Medicaid Leave Act and black lung. Beka said recent outreach include tabling at the Dia de las Madres and a presentation for teens at the Fayette County Detention Center.

Board members also discussed updates on the unpaid Black Jewell miners, the recent 6th Circuit win over the Social Security Administration in the Eric Conn benefit cutoffs case and the Bail Project. On cash bail reform, Senior Counsel Ben Carter said “our voice ought to be in the mix.”

Josh Crabtree said that John Rosenberg had been presented with a special award for pro bono service at the recent Equal Justice Conference. New chair Bob Brown praised Chris Frost for his many years of service as KEJC board chair, saying “it’s not often that a law professor gets out into the community.”

Adjournment

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

Reported by:

Richard J. Seckel, Director
 September 17, 2019