MINUTES

In Attendance

Celia Cangelosi, Vice Chair
Jarrett Ambeau, Indigent Defense Board, 23rd JDC
James Boren, Attorney at Law
Anthony Champagne, Indigent Defender Board
Jean Faria, LA State Public Defender
Joe Oelkers, Acadiana Legal Services Corporation
Charles Raymond, Taggart Morton LLC

Guests:
Sandy Mason, Orleans Public Defender
Rebecca Bers, Orleans Public Defender

LSBA Staff:
Monte Mollere
Jonathan Rhodes

By Phone

Hon. Milton Moore, Chair
Derwyn Del Bunton, Orleans Public Defenders
Lara Jensen, Clement, Gates & May, LLC
Frank Neuner, Laborde & Neuner

I. Welcome and Introductions

II. Approval of the August 27, 2009 Meeting Minutes

With the request that abbreviated names be completely written out in the minutes, a motion to approve the August 27, 2009 meeting minutes was made by Charles Raymond, seconded by Jean Faria and approved unanimously.

III. Information Items

None
IV. RTC Committee Study of Reclassification of Offenses

Jean Faria introduced the topic with discussion regarding recent studies including the ABA study of reclassification of offenses, as well as an update on national efforts to reclassify offenses from George Mason University. The ABA Standing Committee on Legal Aid and Criminal Defense (SCLAID) is reviewing the document to determine whether it will support the recommendations. Jean Faria agreed that this study could serve to provide information to the Board of Governors, but she would like the input and support of Louisiana DAs. Jean Faria will work with Pam Metzger to put together a report on reclassification in Louisiana in advance of the next Right to Counsel meeting in January, 2010.

Judge Moore agreed that the DAs and other interested parties should be involved because of the effect on funding that may result from reclassification. Jean explained that the purpose of the reclassification is to remove the right to counsel from the cases, which will lessen the caseload burden on public defenders. However, the fines from these cases fund the system, and unless certain action is taken, the public defenders stand to lose considerable money from the reclassification.

The Committee discussed the example of lost revenue from traffic tickets given by traffic cameras. Charles Raymond suggested that we work with local governmental bodies to ensure this revenue stream. Derwyn Bunton discussed work with the New Orleans City Council to approve a $5/ticket fee dedicated to the public defender system. Though approved in March, no revenue has received yet. Jean Faria explained that this represents a $30 reduction in revenue per ticket, and that it is important to address funding issues when we are dealing with reclassification. Charles Raymond and Judge Moore agreed to contact DA’s regarding the issue.

Monte reminded the committee resolutions to the LSBA House of Delegates must be submitted about one month in advance of the January 22, 2009. It was later determined that the actual deadline for submission of resolutions is December 16, 2009.

Jim Boren suggested that having studied the issue, we should complete the report and we would then need to introduce to the House of Delegates the crimes that we wish to be reclassified.

Judge Moore asked that Pam and Jean involve Lara Jensen in preparing the reclassification report, and to bring in legislative stakeholders. Jean agreed to complete the study on reclassification for the Right to Counsel Committee’s submission to the Board of Governors and House of Delegates.

Jim Boren suggested we should discuss how to move the Resolution forward rather than restudy the issue. Charles Raymond offered to introduce the Resolution. LSBA Staff will circulate the Resolution for review.

The Committee agreed that the funding issue, as relates to reclassification should be brought to the LSBA House in a separate resolution which states that the Bar Association opposes any
resulting decrease in funding and wishes to ensure that all stakeholders receive the revenue they need to operate.

Jim asked Monte to draft the Resolution on funding and pass it to the committee.

Monte was asked to send information about local delegation members to the Committee so members can identify and garner support for the resolution.

V. Developing Uniform Interpreter Standards

Jean introduced guest participants Sandy Mayson and Rebecca Bers, from the Orleans Public Defender Office, who are working on language access issues and interpreter standards for the courts.

Sandy Mayson provided an overview of the issue, explaining that the lack of training and uniform standards for court interpreters has been a big justice problem in the criminal courts. To address this issue, stakeholders have formed a Language Access Coalition. As part of their work, the Coalition has drafted model rules for Interpreter Certification Training and Standards. The draft was passed around to the Committee for review during the meeting.

Rebecca Bers and Jean Faria explained that there are ethical issues and conflicts involved in relying on defense attorneys who happen to speak Spanish to serve as impromptu interpreters. For example, a defense attorney interpreting for her client can’t simultaneously protect that client’s Fifth Amendment rights. Initial conversations with the Court indicate their support for the concept of establishing court rules on the issue.

Tony Champagne raised the issue of needing interpreters out of court, and Jean Faria explained that the cost of out of court interpreters must be borne by the attorney, just like paying for an expert witness.

Monte suggested that we expand the language access coalition to include civil and criminal stakeholders. Several members of the Access to Justice Committee have exhibited and interest in the issue - Judge Sheral Kellar, Luz Molina, and Sachida Raman. The committee discussed formation of a group to deal with language access issues - either a subcommittee of the Right to Counsel Committee or a separate ad hoc committee.

VI. Improving Criminal Hearings in Rural Communities

Jim Boren explained that rural parishes where criminal court is held infrequently create problems with the 72-hour rule for hearings. For example, if a person is arrested on the day after criminal court hearings, that person will have to wait 30 days for the next criminal court day for their bond reduction hearing. In many jurisdictions, a public defender does not get appointed until the
state has filed a bill of information, which could be many months. Members questioned how pervasive this situation is.

Tony Champagne explained that this is likely a statewide problem. Jean Faria agreed, and explained that in some jurisdictions that have few judges, there is also a reduction of jury days. This results in excess hearings on jury days which obviously get pushed back until the next jury day, and often even further.

**Judge Moore suggested that the Committee conduct an analysis of case loads and hearing schedules to find out where the problems are and what needs to be fixed.**

Jim Boren suggested that we first gather facts about the issue before developing or asking for a court rule, such as conducting a brief survey to the Chief Judges, Chief Public Defenders, and LSPDA etc to gather information on the issue. The survey would include questions such as: (1) how often do you meet in criminal court; and (2) if you don’t meet often, how do you address bond reduction?

Jean Faria raised another issue: if the facility can’t house defendants/women between hearings, then the defendant will have to be shipped off to another facility, often increasing time delay for defendants and costs for sheriffs.

Jim Boren suggested that we also ask the district judges association to do the survey themselves.

Monte suggested that we first ask the public defenders what the issues are, and then ask the judges what their procedure/schedule is to deal with those issues.

**Jonathan Rhodes agreed to draft a survey through the Louisiana State Bar Association’s survey tools, with input from the Committee, which can be used to gather data.** Jean suggested that Jonathan work with her, Heather Hall, and their IT people to get info about what data they’ve already collected.

### VII. Recommended Capital Defense Guidelines for Louisiana

Jim Boren provided an overview of the Capital Defense Guidelines. Part I of the guidelines provides a structural process for when a person gets appointed counsel in a capital case. Part II sets out requirements for attorneys who are appointed on a capital case. Jean explained that there will be a public hearing on the guidelines.

There was concern that the DAs will likely oppose the part of the guidelines that deals with process for appointing counsel. Frank suggested we should either footnote the guidelines or do a discussion paper with information about case law so that it better explains the guidelines.

Tony Campagne and Frank Neuner suggested that we invite DAs into the discussion and try to hold a meeting on the guidelines at their office so that they feel more involved. It was suggested that we again try to ensure representation of DA’s on the committee and several individuals were
suggested as members. They include: Charlie Little, Hillar Moore, Billy Coenan, Jerry Jones, Charles Scott, Charlie Riddle, Cloyd Benjamin, Karelia Stewart, and Richard Z. Johnson. Judge Moore will ask Kim Boyle to ask them/appoint these people to serve on the committee.

VIII. Committee Business – Judge Milton Moore, Celia Cangelosi

a. Schedule of meetings
   i. Jan 22, 2010 (New Orleans, during LSBA Mid-Year Meeting)
   ii. April 16, 2010 (Lafayette, during Spring Judges Conference)

IX. Other Business

None

X. Adjourn

Move to adjourn made by Charles Raymond; motion seconded by Jim Boren. Committee Adjourned by Vice-Chair Celia Cangelosi.