

## **Re: LaPDA Action Committee Meeting**

### **Rapides Public Defender, Sponsor**

### **Rapides Parish Police Jury Conference Room**

**August 27th, 2007**

**Present:** Michael A Mitchell, 19th JD (East BR); Carey Ellis, 5th JD (W. Carroll, Richland, Franklin); Jim Miller, 5th JD; Bob Noel, 4th JD (Ouachita, Morehouse); J. Clay Carroll, 2nd JD (Jackson, Bienville, Claiborne); Vic Bradley, 29th (St. Charles); Tony Champagne, 32nd JD (Terrebonne); Ken Rodenbeck, 9th JD (Rapides); Craig Colwart, 16th (St. Mary, Iberia, St. Martin); Louis Champagne, 37th (Caldwell); Joe Kutch, 28th (LaSalle); G Paul Marx, Exec. Counsel (Lafayette); Raymond Cannon, 7th (Concordia)

**Purpose-** A volunteer Committee to narrow issues for discussion at the Fall Conference (Sept 17, 2007 at Cook Conference Center in Baton Rouge) including provisions of Act 307, its implications and policy recommendations for LPDB. To consider how the District Defenders and local offices can contribute to reform in an effective way.

**Formal Actions -** None. The meeting was a pre-meeting to review issues for the full board meeting of September 17th in Baton Rouge.

### **Items**

**Nature of the "District Public Defender"** The provisions of Act 307, particularly transitional provisions, were reviewed and discussed. It is noted that 39:1302 (1)(f) has been amended to provide that the District Public Defenders Office is a political subdivision of the State. Other provisions transfer all the legal authority of the local boards dissolved by Act 307 to the District Public Defender.

The consensus at this point is that the enactment provides all the legal authority necessary for the District Defender to operate the local Public Defender Office, and there is no further authority needed from the State Board. Property of the District is not owned by the State, but is property of the political subdivision, the "District Public Defenders Office". It was noted that local offices have been asked to inventory assets, and the committee sees no problem doing so in order to provide the State Board with comprehensive information. However, one district indicated the State Director has suggested holding off on a local maintenance project for the Monroe PD Office, because it "might revert to the State", and the committee's initial impression is that is not provided for by the Statute.

Regionalized offices (state takeover in Section 163) raise interesting issues on these points. The Act does not seem to render a District part of the State in terms of a political subdivision nor affect title to property.

**Provisions of Section 161 - "State Board shall contract or employ"** There is a split on this question. Since the Statute created and empowered the District Defender Office as a political subdivision, the District Public Defender is in place, and succeeds to all necessary powers to operate. The District is therefore has all necessary authority, and there is no need for a contract with the State Board except as provided by the Statute.

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Some consider the contract unnecessary. Others see provisions of Section 161 as mandating the contract or employment only for new Districts where a District Public Defender has not been installed by operation of law.

Discussion of this issue lead to a consensus that the provisions of Section 161 require some kind of regulatory relationship between the District Public Defender and the State Public Defender Board. The mode of enforcement of the State Board's Regulatory Authority is "contract or employ" the District Public Defender. This means that once the State Board has adopted regulations through the Administrative Procedures Act, the District Public Defender must enter in to an agreement to give effect to those regulations. If a District is Regionalized, the Board could "employ" the District Public Defender. (This would include requirements under State Law of Retirement and other full time benefits)

The Committee views the contract provision as an important accessory to accountability and regulation. But it would be premature for the staff to issue contracts prior to the formal adoption of regulations and standards. Those present who were involved in drafting thought the 2011 effective date for LPDB to complete its regulatory scheme was included because of the time needed to draft, publish, and adopt standards under the Administrative Procedures Act.

The Committee considers the contract provisions of Section 161 as an important regulatory tool that must be created as one of the first acts of the LPDB. However, any initial contracts would be quite limited in light of the fact that no valid regulations are in place, and so they would merely reflect the statutory provisions.

**Regions, Regionalization** The group discussed provisions on the two types of Region: "Service Region" and "Regionalized Districts". The difference being that the *Regionalization* is essentially a State Takeover of sub-standard or needy Districts and leads to the LPDB operating the actual delivery of client services. A *Region, aka "Service" Region*, is merely a resource center for an area of the State, which could provide special counsel for particular cases or otherwise supplement the District Public Defender Office in multiple districts.

There seem to be about six Judicial Districts without any operations. The Committee views these as a first priority for LPDB, since Section 161 (l) provides that the Board must determine whether to *Regionalize* districts there, employ a District Public Defender, or assign an neighboring District Public Defender to administer the adjacent district. Critical to client needs, this should be addressed as priority one, since it is not clear who, what or where the public defender offices in these areas are. This appears to be as close to an emergency as anything on the table at present.

Otherwise, the Committee views Regions as a potential for development and would recommend that LaPDA take the position they should be used as needed. Any attempt to establish all eleven authorized regions immediately would be senseless, as it is unclear where they are needed. In some areas there is actually a shortage of counsel willing to handle PD cases, and a regional office would

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unnecessarily drain prospects from direct client services.

The Committee suggests that LaPDA consider urging a criteria set on regions. Discussion should move from the following points and attempt to confect as many factors as possible:

### Service Regions should be created where

- there is a need to share resources, including experts, investigators
- conflicts counsel are needed
- rare cases need to be staffed: Capital, Special Juvenile, MR clients

### Regionalization - or LPDB takeover should occur

- for non compliance, 'for cause' as provided in the Statute; or
- where there are no local attorneys for PD work
- the number of attorneys is insufficient for PD work
- small areas that need more supervision or accountability
- the workload would be manageable over a larger area than a single district

The Committee also discussed an administrative framework for the LPDB to analyze the needs in a particular district. There remains a concern and objection to arbitrary, unilateral decision making. LaPDA remains committed to an open and consensus driven process, but the LPDB needs some device or mechanism for district review.

The committee very preliminarily considers the following kind of approach would be workable, would create a formal record of the basis for LPDB action, and would mandate that staff consult with other Criminal Justice entities on local needs, as the statute seems to require.

The Committee suggests that LaPDA urge the staff at LPDB to create something along the lines of the following as a framework for implementing the regulatory intent of Act 307. There should be some kind of formal structure and approach to the question of what the State Board intends to do about problems in a local office.

The Committee considers this a concept at this point and solicits the input of others on how such a procedure can be confected. However, the Committee considers it essential that such procedures be in place so that information is gathered, shared and considered in an organized way as LPDB effectuates its regulatory authority. The alternative is to open the regulatory process to political games and thereby lose track of the core values in the Public Defender Act of 2007: accountability, objective standards and enforcement.

## **“DISTRICT ANALYSIS REPORT**

***Staff conducting a review of District Defender Operations shall provide a comprehensive written report reciting problems and issues in the district, including the following elements:***

- 1. Site visit -***
- 2. Statistics on caseload and litigation in the district -***
- 3. Written Report from the District Public Defender***
- 4. Interviews with criminal justice stakeholders***
- 5. Needs analysis***
  - buildings/ offices***
  - equipment***
  - furniture***
  - attorneys, investigators and support staff***
- 6. Summary & Recommendations”***