

Minutes for the Indigent Legal Services Board Meeting

April 8, 2022

11 A.M.

In person at the New York City Bar Association and virtual meeting on WebEx

Board Members Present: Chief Judge Janet DiFiore, Judge Carmen Ciparick, Judge Sheila DiTullio, Joe Mareane, Lenny Noisette, Suzette Melendez, Vince Doyle

ILS Office presenters: Patricia Warth, Burton Phillips, Cynthia Feathers, Melissa Mackey

Minutes taken by: Mindy Jeng

I. Approval of Minutes of December 3, 2021 Meeting

A board member moved to approve the minutes, and the motion was seconded. A vote was taken, and the minutes were approved unanimously.

II. State Fiscal Year 2022-23 Budget Update

Patricia Warth stated that the final State Fiscal Year 2022-23 budget has not yet been enacted, and that Burton Phillips, ILS Counsel, has been monitoring that status of budget negotiations. The budget documents and bills are in the process of being written and being approved by the Legislature.

Burton Phillips gave an update about the budget so far. The documents that Patricia circulated prior to the meeting compare proposed ILS funding in the Executive, Senate, and Assembly budget proposals. Those constitute the universe of possibilities for ILS. Governor Hochul's proposal is the floor. The Senate/Assembly bill proposals are the ceiling. He safely expects ILS to receive \$6.9 million for State Operations, which is an increase of about \$500,000 over last year. With that funding, ILS will be able to continue building the Grants Unit, to hire two new staff members to support the work to improve the quality of Parental Representation, and to hire an Assistant IT Manager.

Burton also stated that he expected the final enacted budget to have \$81 million to support ILS distribution grants and \$23.8 million for the implementation of *Hurrell-Harring* settlement. The Executive, Senate, and Assembly budget proposals all included an increase of \$50 million for a total of \$250 million for implementation of the *Hurrell-Harring* settlement reforms statewide, and we expect to see the full \$250 million in the final enacted budget.

In last year's final budget, the Legislature added \$2.5 million for the representation of parents in Family Court matters. To disburse that funding, ILS issued an RFP; we received 25 proposals in response to the RFP, but we were able to issue only five grant awards. This year, ILS requested \$9 million to improve the quality of parental representation. The Executive budget included only \$2.5 million for improved quality parental representation. While less than the \$9 million requested, it was the first time in ILS history that the Executive budget included funding solely for the purpose of improving parental representation. The \$2.5 million in the Executive

budget matched the \$2.5 million that the Legislature added to last year's budget, essentially baking it into ILS' budget. For this year's budget, the Senate's proposal includes the full \$9 million; the Assembly's proposal includes \$5 million.

ILS has consistently stated that the assigned counsel hourly rates must be increased, and that the State should pay for the increase. Both the Senate and Assembly budget proposals included increased rates, with the State funding for the rate increase to flow through ILS. At this point in the budget discussions, it is unclear whether the rate increases will be included in the final budget. ILS stands ready and willing to assist if the rate increases go through.

Burton stated that he anticipates that the budget process will be resolved by the end of the weekend or possibly today.

Patricia said that while ILS is glad to know that the \$2.5 million for parental representation is baked in the budget, we are still hoping that the final budget includes more than \$2.5 million. No matter the amount of funding, ILS will use it effectively. ILS will also leverage the funding/grant making to gather more detailed information about the quality of parental representation which can be used as leverage for increased funding.

Regarding the assigned counsel rates, Patricia said we don't know what more can possibly be said, and no one disagrees that the rates need to be doubled. ILS is hoping to see this issue resolved in the final enacted budget, but if it's not, ILS will continue to work hard for a rate increase, as increased rates are a quality improvement imperative. ILS appreciates the support of the Chief Judge and the Board.

A Board member said the last time assigned counsel rates were increased, the funding provided was brought about by an increase in traffic fines and an increase in attorney registration fees. Has there been any discussion on how the rate increases would be funded?

Patricia said that when the rates increased by legislation in 2003/2004, at the same time, the State established the Indigent Legal Services Fund via State Finance Law 98-B. The Fund draws from vehicle registration and traffic fees, license restoration costs, attorney registration fees, and OCA criminal history record search fees. It wasn't necessarily tied to assigned counsel fees but was the State's efforts to provide some funding to the counties for the increase in mandated representation costs.

A Board member asked whether the Governor is open to additional funding for parental representation. Patricia said she has had more engagement with the Governor's office on parental representation compared with other budget years. This has been a building year, and next year should provide more opportunities to push for increased funding. A Board member said she would be willing to brainstorm with ILS on how to effectively advocate for increased parental representation funding in future budget years.

III. Tenth Annual Report of the Board (vote)

The Chief Judge stated that the 10th Annual Report was well done, and the Director's Summary was terrific. A vote will be taken at the end because the Report will be presented to the Legislature.

Cindy Feathers summarized the Report, noting that as stated in the Director's Summary, the Report is dedicated to Bill Leahy. The Director's Summary also provides a snapshot of ILS' achievements over the past ten years and identifies as unfinished business increased funding for parental representation and increased assigned counsel rates. The criminal defense efforts of ILS are reflected in the *Hurrell-Harring* settlement implementation section and the statewide expansion section. Cindy said that the parental representation section describes the many steps ILS took in 2021 towards improved quality parental representation, including issuing caseload standards and eligibility standards as per the recommendation of the Advisory Committee on Parental Representation. Regarding appellate representation, highlights included the Appellate Defender Council, which continued to meet and deliver innovative CLE programs.

The Report also discusses the work of the ILS Research Unit to obtain complete and accurate data from counties and providers about mandated representation. Toward this end, and after a long pandemic-related delay, ILS brought on two new Research Unit staff members. The Grants Unit was also able to bring on new staff, and despite being at about 50% staffing level, the Grants Unit increased efficiency. On the administrative side, ILS has taken steps to enhance Diversity, Equity, and Inclusion efforts internally and externally.

Patricia said she had the honor of writing the Director's Summary for the first time. It was an opportunity to both look back and to look forward, and in so doing, to discuss the enormous contributions of Bill Leahy. In this regard, two attributes emerged about Bill. First was Bill's uncanny ability to always see and seize opportunities. He is mission driven and focused, yet still able to see what is happening in the periphery, including unexpected opportunities. The second attribute that emerged was Bill's humility and his belief that as an agency, ILS needs to exercise humility and collaborate meaningfully with providers on the ground delivering direct representation, with the county officials, and sister defense organizations in New York. Bill established an ethos of collaboration. As we move forward, we do with those attitudes entrenched in our organization. Bill's legacy is a path forward for ILS.

A Board member said Bill Leahy is a model for the transition from warrior advocate to a leader.

A Board member commented that ILS is a remarkable agency emerging from nothing. There is also cultural legacy. Part of the humility is also Patricia's, and it is a culture of partnership with counties. In ILS' early years, counties were skeptical about whether the partnership was permanent. All the counties in New York are very different places, and ILS could adapt to the different environments. Bill could work within the goal to bridge differences. The culture will be part of the permanent legacy of ILS. The report was a great reminder of how far we have come.

A motion was made to approve the Report and seconded. The Annual Report was unanimously approved.

IV. Parental Representation: Data Collection Initiatives (attachment)

Melissa Mackey gave an overview of ILS' first initiative to start collecting data systematically from parental representation providers, particularly the two offices that are hosting the model parental representation offices and the five counties that received awards from the \$2.5 million RFP issued last year. In so doing, Melissa described the collaboration between ILS and the Legal Services of the Hudson Valley (LSHV), which is the subcontract agency for the model family office grant awarded to Westchester County. She discussed the data ILS is collecting from LSHV about the model office and its impact. The second upstate office on parental representation will be in Monroe County, and ILS has connected Monroe County with the LSHV for advice and guidance.

Melissa said that once ILS got the \$2.5 million in funding for improved quality parental representation, ILS issued an RFP, and from this, five counties received awards – Cortland, Erie, Monroe, Steuben, and Suffolk. Four of these grantees will be doing pre-petition work, and ILS will work with the grantees to obtain data about this work and its impact. ILS will also be working with the grantees to look at other metrics, such as use of a social worker and the impact on case outcomes. Finally, ILS will also be collecting data on how increased staffing impacts caseloads. Melissa said ILS does not want to make their data collecting obligations too onerous, so the discussions around data collection were collaborative, and ILS asked the providers what data they also wanted to collect. From this emerged some interesting data collection points.

A Board member stated that it is a great opportunity for the providers to use their own data to bolster their own projects. Another Board member asked how ILS is thinking about data collection from the offices in New York City? Is there a way to think about that collection to bolster the case for more funding? Melissa said that Angela and Lucy looked at data from the NYC offices. They did share that data with ILS.

A Board member said she loved the way that Melissa translates data. It is good to have the narrative. It is interesting to see how ILS can use that quantitative data that is collected. The Board member wondered whether that data will be also used on the criminal side (in conjunction with *Hurrell-Harring* work).

Melissa said that they need to get the foundational information first. Once the model offices are more established, they may begin to collect data in other areas.

V. Updates: WNY Regional Support Center and Statewide Appellate Support Center

Cindy said the Statewide Appellate Support Center will be composed of eight staff: five attorneys and three support staff. ILS is hiring in stages, with the first person being the senior appellate attorney, who will have a leadership role. Then three mid-level attorney, then more junior attorney, and the paralegal and support staff.

Cindy said the Center will focus on three main practice areas. The first is assisting attorney on post-conviction matters including applications based on innocence, other collateral attacks, resentencing, and other matters. They are also focusing on training. There has not been sufficient

training in upstate counties regarding how to undertake 440 applications, etc. The second matter will be assisting attorneys assigned on direct appeals. The third is assisting trial counsel with complex legal matters and preserving issues for appeal.

Cindy said ILS has started interviewing for the senior appellate attorney and has received stellar applications. Many people are also interested in the mid-level job. Cindy said that the talent they have seen is heartwarming. There is a mix of downstate people and upstate folks. It is anticipated that space for the Center will be in the Alfred E. Smith building (where ILS is currently housed), and available in June or July.

Patricia said that regarding the Western New York Regional Support Center, ILS is close to securing space. Once space is secured, ILS can begin hiring. She noted that for these two support centers, one is regional, and one is topical. These two different models will help show how ILS can use the support centers to effectively improve the quality of mandated representation.

VI. The Impact of Discovery Reform Implementation in New York: Report of a Defense Attorney Survey (attachment)

Patricia said ILS issued a joint report about the impact of discovery reform in collaboration with New York State Defender Association, Chief Defender Association of New York, and the New York State Association of Criminal Defense Lawyers. She noted that research is at the core of ILS' mission to monitor and study and improve the quality of mandated representation, and therefore ILS welcomed the opportunity to work with these three defender organizations to craft probing questions about the impact of discovery reform and to disseminate the resulting survey to attorneys across the State. Over 500 attorneys representing every county in the State responded to the survey. The survey is something that ILS could not have done on its own.

An overwhelming majority of survey respondents said that discovery reform has improved the quality of representation and improved the fairness of the criminal justice process. Respondents took full advantage of the survey's open-ended questions, resulting in 69 pages of comments. Attorneys gave compelling statements of how important the discovery reforms have been to enhancing their ability to provide quality representation. Defense attorneys are now able to fully advise their clients to the wisdom of taking a plea offer, to make strategic decisions on how to handle the case, and to engage in effective motion practice, etc. Patricia thanked the defender organizations for collaborating with ILS and all the work that they did. We hope to have more opportunities like this in the future.

A Board member asked if the budget bill will include some changes to the new discovery statute. Patricia and Burton said they do not know yet what the affect will be on the discovery reforms in the budget bill.

A Board member asked about what is being done with the results of the report. There are pragmatic suggestions on how to improve the process. Will this be shared with the DA associations? Patricia said the partner associations put it out publicly. There was a New York Law

Journal article about it. ILS and the defender organizations are still thinking about what will happen next and next steps with data.

A Board member said that in Western New York, there are more pre-trial dispositions/pleas as a result of discovery reform. They also have a lot of speedy trial motions if law enforcement does not provide the discovery they should. Discovery has helped tremendously in resolving cases. A Board member also said that it helps a prosecutor focus plea offers.

VII. Announcements About Next Board Meeting, June 3rd

Patricia said that some of the Board members need JCOPE training by the end of the year. We will present the training at the June board meeting so that Board members can be up to date with their JCOPE training requirements.

She also previewed an agenda item for the June Board meeting. Every year, the September meeting is used for two budgetary decisions: 1) the Board approval of the current year's ILS Aid to Localities allocation; and 2) the Board approval for the ILS budget request for the next fiscal year. Patricia, Burton, and the Chief Judge discussed and agreed that this year, the June meeting will be used to discuss the allocation for the current fiscal year ILS Aid to Localities appropriation. It will allow ILS to issue RFPs and solicitations to disburse this funding earlier in the fiscal year so the funding can be disbursed sooner and more efficiently. It will also be less confusing, because September meeting will be devoted to the budget about the next fiscal year.

A motion was made to adjourn the meeting and seconded. The meeting adjourned at 12:11 pm.