

Minutes for the Indigent Legal Services Board Meeting

December 8, 2023

11 A.M.

In person at the New York City Bar Association

Board Members Present: Chief Judge Rowan Wilson, Diane Atkins, Hon. Carmen Ciparick, Hon. Sheila DiTullio, Vince Doyle (WebEx), Suzette Meléndez, Jill Paperno

ILS Office presenters: Patricia Warth, Burton Phillips

Guest presenters: Thomas Angell (Dutchess County Public Defender), Thomas DeBose (Albany County Assigned Counsel Plan Administrator), Shawn Sauro (Steuben County Public Defender)

Minutes taken by: Mindy Jeng

I. Approval of Minutes of September 22, 2023 Board Meeting (vote) (attachment)

Judge Ciparick moved to approve the minutes. Ms. Meléndez seconded the motion. The board unanimously approved the September 22, 2023 minutes.

II. Introduction to Jill Paperno, Newly Appointed ILS Board Member

ILS Director Patricia Warth introduced new Board member, Jill Paperno. Director Warth first met Ms. Paperno when Director Warth interned at the Monroe County Public Defender's office as a law student. Ms. Paperno is accomplished in the field of public defense. She conducts high quality trainings, has written extensively about public defense, and has provided high quality mentorship to many attorneys. She has seen the work of ILS from the perspective of several different counties (Schuyler County, Monroe County, etc.). When there was an opening on the Board, Director Warth thought about Ms. Paperno right away. Ms. Paperno was ILS' recommendation to the Governor's office, and Director Warth said they were thrilled that the Governor approved.

Ms. Paperno introduced herself and said that public defense has been her heart and her passion. She has worked for the Monroe Public Defenders Office and Prisoners' Legal Services. She looks forward to participating on the board.

III. Statewide Implementation of the *Hurrell-Harring* Settlement Reforms: Providers' Perspectives (special guests Thomas Angell, Dutchess County Public Defender, Thomas DeBose, Albany County Assigned Counsel Plan Administrator, and Shawn Sauro, Steuben County Public Defender).

Thomas Angell, Dutchess County Public Defender

Mr. Angell, the Dutchess County Public Defender, gave a presentation to the Board about improvements that have been made with ILS' funding and support and discussed challenges that his office continues to face. He began by recounting the story of a client that he represented early in his career who was charged with felony murder. He was successful at trial. The young man came back to the office a short time afterwards, and he was charged with murder. The grand jury no-billed him. Mr. Angell subsequently learned that his client got in further trouble and is now in prison serving a life sentence. Mr. Angell said he was doing great defense work, but he did not know what was going in his client's life. The client had experienced much trauma and had a lot of anger. Mr. Angell said since then, they have hired five social workers in the office, who are of great value to the office. The social workers are like hidden jewels. They provide mitigation reports that judges appreciate receiving. They identify issues that would have been missed. The Public Defender's office now has 70 staff members, an increase from 30 staff. The difference was ILS funding that they received.

Mr. Angell said that ILS encouraged his office to get involved with Gideon's Promise. It is a program that encourages public defense leaders to change the culture of public defender's offices. They have two new offices in Dutchess County, thanks to ILS funding. Mr. Angell passed around pictures of the waiting room, which is designed as a welcoming and professional area for clients. ILS funding helped to fund the initial cost paying down the bond on the building.

Mr. Angell also shared that the breadth of services his office offers increased with ILS funding. Family Court representation increased. Many clients with criminal cases also have cases with Family Court. Now the staff can work together to solve the client's full problems. They have also expanded into handling parole violations. Lots of client have parole cases. The office has also become the conflict defender for Ulster County. They have good services available for conflict cases, and they have more resources than an assigned counsel program. ILS has assisted with every one of those initiatives.

Mr. Angell discussed three challenges he sees going forward. First, the fundamental issue that stands between the office today and full implementation of ILS standards adopted is independence from County government. Defense counsel must be independent. Mr. Angell said that both Director Warth and Mr. Phillips are a tremendous resource when they run into conflicts. There needs to be further independence from County government. Mr. Angell gave examples of some of the issues he confronted. There was an insistence by the County that a uniformed sheriff's deputy patrolled the office with a dog. He recognized and appreciated the need for security, but he thought there were other ways this could be accomplished that are more consistent with a client-centered environment.

There were also disagreements with the County over pre-petition representation in Family Court matters. There was tremendous pushback from County administration with regard to getting involved in that. ILS awarded an initial parental representation grant to improve services. Dutchess County turned it down. Mr. Doyle asked if the County provided a reason for

refusing the grant. Mr. Angell said that the agency that runs Child Protective Services is part of the same county government as the public defender. The County saw that any increased representation of parents trying to keep their children, as in conflict with their mission. Mr. Angell said that fortunately, they were able to get a more recent grant from ILS that allowed their office to hire two new attorneys.

Another challenge that their office faces is the scope of services that they can provide. NYSDA and ILS advised them that if there is an ERPO (Extreme Risk Protection Order) case that is involved in the same set of facts, it is a quality improvement initiative to represent the client in the ERPO proceeding. The representation is to protect the client from making statements that would affect the criminal and/or Family Court case. Mr. Angell was told by the County that if he provided representation in the ERPO proceeding, that he would be fired.

In order for public defenders (County employees) to work effectively, there has to be some independence from the County. Mr. Angell proposes that there should be a statutory change or a contractual framework that provides for some independence from the County. In the social services arena, the New York State Office of Children & Family Services issues directives. If public defender offices are to be truly independent, they would need some more protection that they currently don't have. Mr. Angell stated that public defenders have been fired for reasons that are inappropriate.

Mr. Angell said another area in need of change is to have institutional providers determine eligibility standards in parent representation cases. He said that they don't have the ability to screen someone applying for services. They come into the office, and the public defender determines if there is a conflict. The screening is done by the judges, and there are many cases that the public defender does not get assigned to. In the pre-petition phase in Family Court, there is no mechanism for someone in Family Court to get appointed at that stage. Mr. Angell proposes that if there is an institutional provider that provides defense services, the institutional defender should be allowed to determine eligibility standards. There would be a clear mechanism for people to get pre-petition representation.

Mr. Angell also said that many public defenders are having a hard time hiring attorney staff. Their office has multiple openings. Years ago, they would not hire anyone who wasn't an admitted attorney. Then they began hiring people who have passed the bar exam. Now they hire applicants who have graduated from law school and even those who are still in law school. It takes a long time for people to get admitted. Even with the additional funding provided, the number of lawyers doing work in the office has decreased. Those attorneys who are at retirement age or beyond are leaving. Mr. Angell said a lot of lawyers will be leaving due to retirement, and it will be difficult to replace them, in part due to salaries that the office can offer. Mr. Angell said that they are tied to the County salary structure. His argument is that they are different, and they should be able to have a higher salary.

Chief Judge Wilson asked whether, if there was more State funding for salaries, the public defender would be able to use it because of the County salary structure? Mr. Angell said

that there has to be a contractual agreement to raise salaries. Ms. Paperno added that in some counties, there is a fear that the Public Defender's office will become more powerful than the District Attorney's office. The County will try to suppress the expansion of the Public Defender's office. Mr. Sauro stated that any time they try to close the gap with prosecution on salaries, the County will immediately say that there is interdepartmental poaching. Anytime the Public Defender's office advances in salary, the prosecutor office's salaries must advance.

Director Warth stated that Mr. Angell highlighted how difficult it is for public defender offices to be independent. The struggle is that ILS is a statewide agency, but the public defense system is a County-based system. Director Warth said they must have an ongoing discussion, internally, externally, and with the ILS Board to address these issues.

Ms. Paperno asked whether the court was preventing the Public Defender's office from participating in the ERPO proceeding. Mr. Angell said that the judges like lawyers to be in the courtroom. The issue was that the County was preventing their office from representing clients in ERPO cases. County Law Article 18-b says that it is up to the public defender to make a decision about related matters. Mr. Angell said that they are not representing clients in foreclosure or bankruptcy matters, but a pending ERPO matter may affect a criminal case and is discretionary.

Mr. Angell reiterated that the staff at ILS is phenomenal. He has gotten timely and thoughtful responses whenever he has had an issue.

Thomas DeBose, Albany County Assigned Counsel Plan Administrator

Mr. DeBose stated that before the *Hurrell-Harring* case, the assigned counsel plan (ACP) in Albany County was an expense line on the County budget, but that was it. The courts oversaw the system, which meant that it was not sufficiently independent.

When Mr. DeBose took over as the plan administrator, his first task was to see where the problems were and to take care of the panelist's issues. One of the first things his office did was ask for funding for space. They needed a space where panelists come together and talk. Using ILS funding, they created an ACP headquarters. The next thing they did was to universalize the panel attorney list. The old lists of assigned counsel were passed down from judge to judge – they passed it along to their successor after a judge retired. The ACP was able to streamline the list, and now has a list with a higher number of attorneys. The efforts to increase the assigned counsel hourly rates have helped to swell the ranks of assigned counsel. Unlike institutional providers, there was not a lot of training or services for defense attorneys prior to Mr. DeBose becoming Administrator. By cultivating the panel list and creating a list-serv and Sharepoint site, the attorneys on the panel can now come to the website and see all the tools. Mr. DeBose was inspired by Kathy Dougherty from Onondaga County.

The panel members loved these changes and the ability to share resources. Mr. DeBose said that the access to investigators and experts are what he is most proud of. Previously, the

ACP was never able to pay for the expert if a private attorney was appointed as assigned counsel. The ACP can now approve requests using ILS funding much faster than before. The changes have impacted the cases, and it has improved outcomes.

Mr. DeBose has worked with other counties to improve operations. He said that assigned counsel plans need to look around itself to see what is going on. Sometimes, panel attorneys participate in panels in other counties. Mr. DeBose worked with other counties to create a group, including Schenectady, Warren, and Albany Counties. They share information to see what issues the assigned counsel attorneys have. They hope that Rensselaer County and others will join the group as well.

Mr. DeBose said that assigned counsel expenses are very obvious. When County government operators look at budgets, they see a growing number. Mr. DeBose said he was happy that they had raised the rate for representation. But from a perspective from inside the operation, it makes public defense expenses an easy target. Their office conducted a small analysis. There may be \$400,000 growth in costs per year because of the assigned counsel rate increase. At the local level, the amount of increase in budget will raise eyebrows. The State is only paying for half the increase of the assigned counsel rate. The more expensive assigned counsel programs get, the more of a target that they will be.

Mr. DeBose also echoed the concerns that Mr. Angell had when it comes to interactions with the County. Mr. DeBose said that there is an assumption in family representation cases that since it is a civil process, lawyers do not need to be involved. Indigent defense providers are sometimes shut down by social services agencies. County Law Article 18-B places a significant amount of responsibility on the Counties.

Mr. DeBose also pointed out that there can be an institutional reluctance to share information or data. In the ILS parent representation feasibility study, Mr. DeBose said there is only one place to go to get the necessary information: the Family Court. Mr. DeBose said the Family Court did not want to give out the data. They said, internally, we don't think this is an appropriate use of our time. Mr. DeBose said that a State agency was operating to frustrate the purposes of another statewide agency. He said that there should be a statewide obligation to provide data. He also found Director Warth and Mr. Phillips to be invaluable resources.

Director Warth said that she appreciated that Mr. DeBose said that the State should pay for the full increase of the assigned counsel rate. She said she sees the need for independence as a theme. It is a challenge to ILS to see how they can support the different offices.

Mr. Doyle said that he hopes that one day assigned counsel and institutional providers will have the same number of resources. Are there resources that institutional providers have that assigned counsel do not have? Mr. DeBose said they are not resourced enough to have a full-time social worker. It is impossible financially.

There was further discussion about collecting information and data from the courts. Mr. DeBose said that their office did receive push back when the Family Court petition information was requested. He said that the data should be generated quickly since it is entered into a Case Management System. The courts told him, why doesn't ILS ask us for this?

The board also engaged in further discussion regarding how attorneys are assigned cases.

Shawn Sauro, Steuben County Public Defender

Director Warth introduced Shawn Sauro, the Steuben County Public Defender. He has worked with ILS and gone above and beyond. The work that they have done has transformed their office.

Mr. Sauro began by saying that the Steuben County Public Defender's Office was always listed at the very bottom of his county's government building directory. That was where they were positioned figuratively and literally. This picture has changed since ILS funding has come into play. Prior to receiving ILS funding, they had a very small staff. Their staff was effectively landlocked because of the large geographic area of the county they were covering. It was an impossible job in terms of the quality of services provided. They had on average 1,500 criminal cases per year.

When they evaluated their office after the *Hurrell-Harring* settlement, they first looked at caseloads. The original formula was 6.5 attorneys handling 200+ cases per year each. Due to the changes that have come with statewide implementation, they have added seven full-time attorneys and five support staff. This has allowed them to reduce caseloads and given his office the ability to make further adjustments. Mr. Sauro keeps a map of the county with color-coded push pins in it. His is able to adjust where his attorneys are assigned on a periodic basis to help manage their individual caseloads. As a result, the entire office is under caseloads. They monitor these numbers on a bi-monthly basis. One of the primary goals after the HH settlement was to reduce caseloads.

Prior to ILS funding, his office was not able to fully provide counsel at arraignment. As of February 2019, though, there is a centralized arraignment plan in his county. Now, 99.9% of clients have representation at arraignment. It is a direct function of the work of ILS and NYSDA that unlocked this piece of the puzzle. The outsized leverage of the District Attorney's office has decreased greatly. Discovery practices have changed. The clients are now at liberty when they are preparing the case. Also gone are the days when they were handed a stack of information at the beginning of a trial. The number of dismissals achieved has gone through the roof. Mr. Sauro said that they have an increased number of trials. The office can stand strong and say they are taking things to trial. Last year for the first time, Mr. Sauro published in the County's annual report the number of dismissals and trials. They are trying to change the concept and culture of the public defender's office. The District Attorney's office was upset and resistant. Mr. Sauro said that the public defender offices need to speak up. The public defenders need to

demonstrate the positive effects that *Hurrell-Harring* has achieved. In 2020, there were 31 top count dismissals. In 2021, they had 87 top count dismissals, and in 2022 there were 144 top count dismissals.

Mr. Sauro said that they have had many tangible positive results. This is a path they need to continue down. They have zealously defended their position. Mr. Sauro said that their office's success led them to receive an award from NYSDA. That would have never happened before he started.

Mr. Sauro shared that he participated in some important training that helped to develop leadership skills. He hopes to send young attorneys to the training as well. They are creating an environment in their office that is not hostile to clients. There used to be a security guard with a magnetometer (mag) unit at the entrance. He told the County to get rid of the security guard and mag unit. Outside the office, there were two posts and no sign. Folks were confused about where they should go. They were able to have a sign of the office. Everything has gotten immensely better.

Mr. Sauro stated that initially, *Hurrell-Harring* implementation was challenging. There was difficulty with clarity in terms of expectations. There were changing and mixed messages. Mr. Sauro said he is certain that they have worked through these issues now. The other issue is the timing of the contracts. In the first five years after the statewide expansion of the *Hurrell-Harring* settlement reforms, the budget cycles did not match. It created a lot of chaos. Mr. Sauro said he had to create a county budget before the *Hurrell-Harring* budget was approved. There was a lot of speculation and guesswork. They were trying not to run afoul of either the County or ILS.

Once they did have the *Hurrell-Harring* statewide contracts, it would take a long time to make modifications. For example, they wanted to add one attorney and one staff person to their office. They had to go through two to three county legislative committees and the full county legislature in order to make modifications to the budget. In order to hire attorneys, they have to get through the county legislative budget. If it's a position that the county didn't have to begin with, the office must develop a job description and go through a civil service analysis. It takes a whole year to get a position approved. The fact that the County is not spending all the money that is available to them is not an issue of neglect. There is a practical reality of the processes at play. The County has processes that create delay.

Mr. Sauro also shared that in order to get positions created, they needed to get a waiver to hire outside standard personnel rules. In terms of recruitment, Mr. Sauro said that he frequently visits high schools. They live in a large rural county. He hopes to make connections with young people. Internship and externship programs help to recruit individuals. For college students, many of them still come home for the summer to work.

Mr. Sauro said that when he first started as the chief public defender, he had no idea what he was getting himself into. He was fortunate to begin work at a time when ILS and NYSDA stepped in. He said that he loves his job, and he has seen the infrastructure get built.

IV. Statewide Appellate Support Center, First Year of Operation Report (attachment) (Patricia Warth)

Director Warth said that they will adjourn this item to the next meeting.

V. *Hurrell-Harring* Settlement Enforcement Action Update (Patricia Warth)

Director Warth said that other agenda items would be adjourned to the next meeting. She shared about the *Hurrell-Harring* settlement enforcement action. The settlement was extended to March 2024. ILS is working internally on how best to report the impact of the assigned counsel rate increase in that short time. The idea of the extension of the settlement is to see the impact of the assigned counsel rate increase. Director Warth will have more information at the next board meeting.

Director Warth stated that she is appreciative of everyone at ILS. The sharing that the Board heard today showed that the staff at ILS are responsive and thoughtful. Director Warth wanted the Board to appreciate what a strong staff ILS has. There is a strong thoughtfulness and commitment to the work.

VI. ILS Office Updates (Burton Phillips)

Director Warth said the topic of ILS office updates is adjourned to the next board meeting.

VII. Adjourn

ILS Board meeting schedule for 2024:

- April 5, 2024
- June 7, 2024
- September 20, 2024
- December 13, 2024

Judge DiTullio moved to adjourn the meeting. Ms. Meléndez seconded. The meeting was adjourned at 12:45 pm.