

INDIGENT LEGAL SERVICES BOARD

AGENDA

March 14, 2012

Association of the Bar of the City of New York

- I. Opening Remarks by the Chief Judge**
- II. Approval of Minutes from November 9, 2011 Board Meeting**
- III. Status Reports**
 - SFY 2012-2013 Budget
 - Distributions and Grants Authorized by the Board
 - Appointments and Recruitment
- IV. Authorization to Seek Statutory Amendment to County Law Article 18-B**
 - § 722-f Annual Reports (see Attachment A)
- V. Briefing on ILS Outreach**
 - NYSAC Winter Conference
 - Sheriffs Association Meeting
 - Justice Task Force Connection
 - Cardozo Law School Symposium
 - County Attorneys Conference
- VI. Development of Conflict Defender Standards**
 - Executive Law Article 30 § 832(3)(d) (see Attachment B)
- VII. Preparation of First Annual Report**
 - Executive Law Article 30 § 833(7)(d) (see Attachment C)
- VIII. Schedule of Remaining 2012 Board Meetings**
 - Friday, June 8
 - **Reschedule September 26 Meeting**
 - Friday, November 9
- IX. Concluding Remarks**

Minutes for ILS Board Meeting

November 9, 2011

11:00 A.M.

Association of the Bar of the City of New York

Board Members Present: Chief Judge Lippman, Michael Breslin, John Dunne, Gail Gray, Joe Mareane and Sue Sovie

Absent: Sheila DiTullio, Susan John and Lenny Noisette

ILS Office Attendees: Bill Leahy and Joe Wierschem

I. Opening Remarks by the Chief Judge

The Chief Judge welcomed and thanked everyone for attending.

II. Approval of Minutes from September 27, 2011 Board Meeting

The Chief Judge inquired whether the board members present had received a copy of the minutes from the prior meeting. The board members present acknowledged that they had in fact received the minutes. The Chief asked the Board to vote to approve the minutes.

Sue Sovie moved to approve the minutes; her motion was seconded by John Dunne and unanimously approved.

III. Briefing on ILS Outreach and Meetings

The Chief Judge invited Director Bill Leahy to brief the board on his recent outreach and meetings.

Bill reported on his meeting with the Governor's Counsel, Mylan Denerstein and Assembly Speaker Silver's Counsel, Jim Yates. The purpose of the meeting was twofold: to address the appointment of new employees to the ILS Office and to discuss the allocation of funds by the Board. Counsel Denerstein agreed to speak with the Appointments Office to effectuate the Director's appointments in a more timely fashion and Counsel Yates will intervene with OSC on the allocation issue. In addition, both expressed approval of the work of the Office and the Board and a willingness to work with Bill to garner support in the upcoming budget process.

Bill also reported on his meetings with Senators Saland and Bonacic, organized by board member John Dunne. Both senators were open minded and expressed their

general support for the work of the ILS Office. Both are practicing lawyers and Bill noted their appreciation for the issues the Office is trying to remedy. Senator Saland still voiced concern about the burden on the counties. Bill acknowledged his concern.

Bill noted that he will be meeting with Senator DeFrancisco after the Thanksgiving holiday. That meeting is being organized by board member Joe Mareane.

The Chief Judge announced that there is a new Chief Administrative Judge A. Gail Prudenti. Bill noted that he met with Judge Prudenti and she had an interest in the work of the Office.

Bill also reported on a meeting he had in New York City with Lauren Shapiro and Sue Jacobs regarding Family Court practice. He noted that both counsels were very involved with statewide training and are willing to assist less-resourced counties.

Bill reported on his meeting with Peter Kehoe, president of the Sheriff's Association. He wanted to quell the fears of the Association regarding more unsustainable and unfunded burdens. Bill said the meeting was very positive.

On October 13, Bill attended a bar association meeting in Dutchess County. Present at the meeting were many judges, public defenders and county officials. And, he also participated on a panel with Jonathan Gradess and Norm Effman in Warren County.

Bill reported that he is working with Jonathan Gradess and his office (NYSDA) regarding the counsel at arraignment issue. NYSDA is also interested in follow-up representation. They want to make sure defendants are not abandoned after arraignment.

The upcoming meetings, speaking engagements and outreach on Bills schedule include: Tim Donaher (Monroe County), Steve Banks and Seymour James, Mylan Denerstein and Larry Schwartz.

The ILS Office will shortly be posting for 4 new positions. The Governor's Appointments Secretary (Judge) Leach is supportive.

Finally, Bill reported on a good conversation with Judge Coccoma, the Deputy Chief Administrative Judge for Courts outside NYC. Bill explained the counsel at arraignment issue in the City Courts. Judge Coccoma offered his support and told Bill the issue is on the agenda for the upcoming Administrative Judge's Meeting.

IV. Appropriation Request for Fiscal Year 2012-2013

The Board previously approved a request for an \$83 million appropriation plus \$1.8 for the ILS Office. Following the Director's meeting with Counsels Denerstein and Yates, Bill suggests increasing the requested budget for the Office to the original \$3 million appropriation as opposed to the \$1.8 million that was previously presented and approved by the Board.

Board member Sue Sovie noted that much more improvement can be accomplished with the additional staff. John Dunne also noted that a meeting with the Chair of the Senate Finance Committee is critical. Having expanded staff will permit travel to localities to assist with applications and ideas for funding opportunities.

Board member Mike Breslin explained that from a county's perspective there is a history of getting grants for 1-2 years then pulling support. This leads to layoffs. Also, in Albany County, even though the number of public and conflict defenders was increased, 18B costs still went up. Sue Sovie added that the counties can't sustain the costs. She said that in her geographic area only Oneida County has a real reporting system.

Bill noted that Erie County has a good assigned counsel model but it takes years to build. In response, Bill proposed that grants be for 3 years and that we press for the entire ILS Fund as board member Joe Mareane previously suggested and the legislature intended.

The Chief Judge noted that the revised request is \$86 million (\$83 million in disbursements plus \$3 million for the Office). Following the discussion, the Chief asked the Board to vote on the Director's revised budget request.

John Dunne moved to approve the proposed \$86 million FY 2012-2013 budget request; it was seconded by Gayle Gray and unanimously approved.

V. Other Activities of the Office

A general discussion of ILS Office staffing and personnel issues required the Board to go into Executive Session. After discussion, no action was taken.

With respect to the status of distribution of funds to the counties, Bill reported that contracts are pending from Putnam, Chemung and Lewis Counties. He also reported a problem with Suffolk County. The County initially declined the formulaic distribution of \$300,000. Their reluctance is unclear but the Office hasn't given up yet. They are still in discussion with the County.

John Dunne asked to be kept informed about the Suffolk County situation. He also inquired about the Office's role generally in Family Court (custody and visitation). Bill explained that one of the new positions that will be posted for the Office will focus exclusively on Family Court representation.

Sue Sovie noted that abuse and neglect and termination of parental rights are also significant areas of practice. Bill noted that this (Family Court representation) is an area that has been historically neglected and the Office will seek to change that.

Joe Mareane suggested that Bill prepare something in writing that lays out where the Board and the Office are going, i.e., what are the goals. Bill said it was a great suggestion.

Regarding future distributions, Bill will continue to work with OSC - along with Jim Yates. He will focus on the distinction between formulaic distributions and competitive grants and the Board's statutory right to authorize both. As an aside, Bill noted that regarding the competitive grants (addressing the Padilla case and counsel at arraignment), the Office is working with NYSDA.

VI. Proposed Schedule for 2012 Board Meetings

Sue Sovie asked the Board to consider changing some of the previously agreed upon dates to accommodate her hectic Family Court schedule. Midweek meetings create scheduling conflicts. Some new dates will be circulated for consideration.

VII. Concluding Remarks

Sue Sovie suggested that the Office's new hires will need to visit Family Court to understand the dynamic of Family Court needs. For example, she explained that a case involving 5 children and 5 different dads with allegations of abuse and neglect and domestic violence and a mom in a rehabilitation program is a common trend. Such a scenario would require six 18B attorneys on one case. Bill supported the suggestion.

The Chief Judge thanked everyone for their commitment and hard work.

The meeting adjourned at 12:15 PM.

To: Members, Indigent Legal Services Board

From: Bill Leahy

Re: Revision of County Law article 18-B section 722-f (2) (a)

Date: March 14, 2012

This law requires the county executive or chief executive officer of each county and New York City to file with the State Comptroller by March 1 each year an annual report that "specifies in detail and certifies...the total expenditures...for providing legal representation to persons who were financially unable to afford counsel[.]" A copy of the statute is attached for your reference.

Since the ILS Office and Board commenced operations, personnel in the Comptroller's office have suggested to us that the statute be amended to have these financial reports sent directly to the ILS office. In fact, OSC has simply forwarded last year's reports to us, and soon will be sending along this year's. We agree that these annual reports should be filed with the Office. I therefore request your approval to seek and obtain the requisite statutory amendment to accomplish this goal.

The amendment we would seek is relatively simple. In line 4 and again in line 11 of subsection (2) (a), the words "state comptroller" would be stricken, and the words "office of indigent legal services" inserted in their stead.

I should also mention that we have formed a working group, in collaboration with OCA and NYSDA, that is reviewing and will likely revise the UCS-195 reports that are required to be filed annually with the judicial conference by public defender and other providers pursuant to section 722-f (1).

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McKinney's County Law § 722-f

Page 1

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Effective: May 15, 2003

McKinney's Consolidated Laws of New York Annotated Currentness
County Law (Refs & Annos)

▣ Chapter 11. Of the Consolidated Laws

▣ Article 18-B. Representation of Persons Accused of Crime or Parties Before the Family Court or Surrogate's Court

→ → § 722-f. Annual reports

1. A public defender appointed pursuant to article eighteen-A of this chapter, a private legal aid bureau or society designated by a county or city pursuant to subdivision two of section seven hundred twenty-two of this chapter, and an administrator of a plan of a bar association appointed pursuant to subdivision three of section seven hundred twenty-two of this chapter shall file an annual report with the judicial conference at such times and in such detail and form as the judicial conference may direct.

2. (a) The county executive or chief executive officer of each county or, in the case of a county wholly contained within a city, such city shall file an annual report which specifies in detail and certifies to the state comptroller the total expenditures of such county or city, identifying "local funds", as defined in subdivision four of section ninety-eight-b of the state finance law, state funds, federal funds and funds received from a "private source" as described in subdivision four of section ninety-eight-b of the state finance law, for providing legal representation to persons who were financially unable to afford counsel, pursuant to this article. Such annual report shall be made on a form developed for such purpose by the state comptroller.

(b) Such annual report, detailing expenditures for the period January first through December thirty-first of the previous calendar year, shall be filed on or before the first day of March of each year, provided, however, that the first report required by this subdivision shall contain the required information, separately stated, for the two preceeding [FN1] calendar years.

CREDIT(S)

(Added L.1966, c. 761, § 4. Amended L.2003, c. 62, pt. J, § 4, eff. May 15, 2003.)

[FN1] So in original ("preceeding" should be "preceding").

CROSS REFERENCES

Board of supervisors, annual report to, see County Law § 720.

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McKinney's Executive Law § 833

Page 1

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Effective: June 22, 2010

McKinney's Consolidated Laws of New York Annotated Currentness
 Executive Law (Refs & Annos)

↳ Chapter Eighteen. Of the Consolidated Laws

↳ Article 30. Indigent Legal Services

→ → § 833. Indigent legal services board

1. There is hereby created the indigent legal services board hereinafter referred to in this section as the "board". The purpose of such board shall be to monitor, study and make efforts to improve the quality of services provided pursuant to article eighteen-B of the county law. No active prosecutor, law enforcement official or person providing prosecution-related services, or employee of such a prosecutor, official or person, shall be appointed to or serve on such board. The board shall consist of nine members who shall be appointed as follows:

- (a) one shall be the chief judge of the court of appeals, who shall be the chair of the board;
- (b) one shall be appointed by the governor on the recommendation of the temporary president of the senate;
- (c) one shall be appointed by the governor on the recommendation of the speaker of the assembly;
- (d) one shall be appointed by the governor from a list of at least three attorney nominees submitted by the New York state bar association;
- (e) two shall be appointed by the governor from a list of at least four nominees submitted by the New York state association of counties;
- (f) one shall be appointed by the governor and shall be an attorney who has provided public defense services for at least five years;
- (g) one attorney who shall be appointed by the governor; and
- (h) one shall be appointed by the governor, from a list of no more than two nominees submitted by the chief administrator of the courts, each of whom shall be a judge or justice, or retired judge or justice, who was elected to the supreme, county or family court, or appointed to the criminal court or family court in the city of New York, and has substantial experience presiding as such a judge or justice in trial matters before such court.

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2. All members of the board shall be appointed for terms of three years such terms to commence on August first, and expire July thirty-first, provided, however, that the chief judge of the court of appeals shall serve ex officio; and provided further, that the initial term of the member appointed pursuant to paragraph (d), the first of the two members appointed pursuant to paragraph (e) and the member appointed under paragraph (g) of subdivision one of this section shall be for two years. Initial appointments must be made within sixty days of the effective date of this subdivision. Any member chosen to fill a vacancy created otherwise than by expiration of term shall be appointed for the unexpired term of the member whom he or she is to succeed. Vacancies caused by expiration of a term or otherwise shall be filled promptly and in the same manner as original appointments. Any member may be reappointed for additional terms.

A member of the board shall continue in such position upon the expiration of his or her term until such time as he or she is reappointed or his or her successor is appointed, as the case may be.

3. Membership on the board shall not constitute the holding of an office, and members of the board shall not be required to take and file oaths of office before serving on the board. The board shall not have the right to exercise any portion of the sovereign power of the state.

4. The board shall meet at least four times in each year. The first meeting of the board shall be held within thirty days of the appointment of the full board or within sixty days after the effective date of this subdivision, whichever occurs earlier. Special meetings may be called by the chair and shall be called by the chair upon the request of five members of the board. The board may establish its own procedures with respect to the conduct of its meetings and other affairs; provided, however, that the quorum and majority provisions of section forty-one of the general construction law shall govern all actions taken by the board.

5. The members of the board shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their functions hereunder.

6. No member of the board shall be disqualified from holding any public office or employment, nor shall he or she forfeit any such office or employment, by reason of his or her appointment pursuant to this section, notwithstanding the provisions of any other general, special or local law, ordinance or city charter.

7. The board shall have the following duties and responsibilities:

(a) To evaluate existing indigent legal services programs and determine the type of indigent legal services that should be provided in New York state to best serve the interests of persons receiving such services;

(b) To consult with and advise the office of indigent legal services in carrying out the duties and responsibilities of such office;

(c) To accept, reject or modify recommendations made by the office of indigent legal services regarding the al-

location of funds and the awarding of grants, including incentive grants, from the indigent legal services fund created pursuant to section ninety-eight-b of the state finance law. When acting on such a recommendation, the board shall set forth the basis for its determination; and

(d) To advise and to make an annual report to the governor, legislature and judiciary.

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(Added L.2010, c. 56, pt. E, § 1, eff. June 22, 2010.)

McKinney's Executive Law § 833, NY EXEC § 833

Current through L.2011, chapters 1 to 604.

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McKinney's Executive Law § 832

Page 1

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Effective: June 22, 2010

McKinney's Consolidated Laws of New York Annotated Currentness

Executive Law (Refs & Annos)

▣ Chapter Eighteen. Of the Consolidated Laws

▣ Article 30. Indigent Legal Services

→ → § 832. Office of indigent legal services

1. There is hereby created within the executive department the office of indigent legal services, hereinafter referred to in this section as the "office". The purpose of such office is to monitor, study and make efforts to improve the quality of services provided pursuant to article eighteen-B of the county law. The office shall report to the indigent legal services board established pursuant to section eight hundred thirty-three of this article, provided, however, that administrative matters of general application within the executive department shall also be applicable to such office.

2. (a) Following the initial appointment of the members of the indigent legal services board established pursuant to section eight hundred thirty-three of this article, such board shall promptly nominate a full-time director of the office and notify the governor of such nomination. After approval or disapproval of the first nominee as director of the office, or at any time thereafter when a vacancy shall exist or is anticipated in the position of director of the office, the indigent legal services board shall promptly nominate a full-time director of the office, and notify the governor of such nomination. Nothing in this paragraph shall prohibit the board from appointing an interim director if there is a vacancy.

(b) The governor, within thirty days after receiving written notice of any nomination of a director made pursuant to paragraph (a) of this subdivision, may approve or disapprove the nomination. If the governor approves such nomination, or fails to act on such nomination within such thirty day period, the nominee shall thereupon commence his or her term as director of the office. If, within such thirty day period, the governor serves upon the chair of such board a written notice disapproving such nomination, the nominee shall not be authorized to serve as director of the office provided, however, that such board may authorize an interim director appointed pursuant to paragraph (a) of this subdivision to serve or continue to serve as interim director until such time as a director of the office is approved, or not timely disapproved, by the governor. Following any disapproval, the board shall have sixty days to submit another nominee, although such period may be extended, upon request of the board, by the governor. A person appointed as interim director may exercise all of the powers available to the director of such office.

(c) The director of the office shall serve full-time and for a term of five years. The director may be removed during this term for good cause shown, after notice and an opportunity to be heard, by a vote of two-thirds or more of the nine members of such board. The person serving as director shall, upon assuming such position, be admit-

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ted to practice law and shall have not less than five years professional experience in the area of public defense services, and have a demonstrated commitment to the provision of quality public defense representation and to the communities served by public defense providers.

(d) The director shall appoint employees and perform such other functions as are appropriate to ensure the efficient operation of the office within the amounts available therefor by appropriation.

3. Duties and responsibilities. The office shall, in consultation with the indigent legal services board established pursuant to section eight hundred thirty-three of this article, have the following duties and responsibilities:

(a) to examine, evaluate and monitor services provided in each county pursuant to article eighteen-B of the county law;

(b) to collect and receive information and data regarding the provision of services pursuant to article eighteen-B of the county law including, but not limited to:

(i) the types and combinations of such services being utilized in each county;

(ii) the salaries and other compensation paid to individual administrators, attorneys and staff providing such services;

(iii) the actual caseloads of attorneys providing such services pursuant to article eighteen-B of the county law;

(iv) how the caseloads of attorneys providing such services compare with the caseloads of attorneys providing prosecution-related services in each county;

(v) the types, nature and timing of dispositions of cases handled by attorneys providing such services and attorneys providing prosecution-related services;

(vi) the actual expenditures currently being made in each county on such services and prosecution-related services;

(vii) the time, funds and in-kind resources currently being spent on such services and prosecution-related services and the amount being spent on ancillary services such as investigators, support staff, social workers and expert witnesses, including consideration of all funds received for such services from all sources;

(viii) the criteria and procedures used to determine whether a person is eligible to receive such services, the number of persons considered for and applicants denied such services, the reasons for the denials, and the results of any review of such denials, including the number of orders issued pursuant to section seven hundred twenty-

two-d of the county law; and

(ix) the standards and criteria used in programs and by each county to determine whether individual attorneys are qualified to provide indigent legal services, on a case by case basis;

(c) to analyze and evaluate the collected data, and undertake any necessary research and studies, in order to consider and recommend measures to enhance the provision of indigent legal services and to ensure that recipients of services provided pursuant to article eighteen-B of the county law are provided with quality representation from fiscally responsible providers, which shall include but not be limited to: establishing criteria and procedures to guide courts in determining whether a person is eligible for such representation; establishing standards, criteria and a process for qualifying and re-qualifying attorneys to provide such services pursuant to article eighteen-B of the county law;

(d) to establish standards and criteria for the provision of such services in cases involving a conflict of interest and to assist counties to develop plans consistent with such standards and criteria;

(e) to develop recommendations to improve the delivery of such services in a manner that is consistent with the needs of the counties, the efficiency and adequacy of the public defense plan operated in the counties and the quality of representation offered, which may include receiving applications for and distributing grants pursuant to specified criteria;

(f) to develop recommendations regarding the distribution and expenditure of any monies appropriated for indigent legal services, including but not limited to monies from the indigent legal services fund created pursuant to section ninety-eight-b of the state finance law, for consideration by the indigent legal services board established pursuant to section eight hundred thirty-three of this article; and, in making such recommendations, may consider, in addition to measures of performance, the commitment of local resources to such services and the changes thereto; the geographic balance of funding among the regions of the state, population, crime rates, poverty rates and individual community needs;

(g) to target grants in support of innovative and cost effective solutions that enhance the provision of quality indigent legal services, including collaborative efforts serving multiple counties;

(h) to investigate and monitor any other matter related to indigent legal services that the director deems important;

(i) to request and receive from any department, division, board, bureau, commission or other agency of the state or any political subdivision of the state or any public authority such assistance, information and data, subject to limitations on the disclosure of information provided confidentially to indigent legal service providers, as will enable the office to properly carry out its functions, powers and duties;

(j) to establish measures of performance which programs and counties shall regularly report to the office, to assist the office in monitoring the quality of indigent legal services;

(k) to apply for and accept any grant or gift for any of the purposes of the office or the indigent legal services board. Any monies so received may be expended by the office to effectuate any such purpose, subject to the same limitations as to approval of expenditures and audit as are prescribed for state monies appropriated for such purposes;

(l) to present findings and make recommendations for consideration by the indigent legal services board established pursuant to section eight hundred thirty-three of this article; and

(m) to execute decisions of the indigent legal services board established pursuant to section eight hundred thirty-three of this article, including the distribution of funds.

CREDIT(S)

(Added L.2010, c. 56, pt. E, § 1, eff. June 22, 2010.)

McKinney's Executive Law § 832, NY EXEC § 832

Current through L.2011, chapters 1 to 604.

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