

Minutes for the Indigent Legal Services Board Meeting

April 8, 2021

11 A.M.

Virtual Meeting on WebEx

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

ILS Office presenters: Bill Leahy, Patricia Warth, Angela Burton, Melissa Mackey, Lucy McCarthy, Nora Christenson, Claire Zartarian, Jen Chenu

Other presenters: Joanne Sirotkin

Minutes taken by: Mindy Jeng

I. Approval of Minutes of December 4, 2020 meeting (attached)

A motion was made to approve and accept the minutes and seconded. No comment was received. The minutes were unanimously approved.

II. Report on the FY 2021-22 ILS Budget (Bill and Patricia)

Bill Leahy said that the ILS Budget requested \$5 million in appropriations for parental representation. The \$5 million was not included in the Executive budget but was inserted in both the Assembly and Senate budgets. In past years, the number has come back zero. After many discussions with the Legislature, Bill was optimistic that ILS would receive the \$5 million in its entirety. However, the final budget provided only half that amount or \$2.5 million. Nevertheless, this marks the first time that state funding has been specifically earmarked for the improvement of parental representation.

ILS will issue an RFP and target where the funding will be best used. The RFP for the second Model Upstate parental representation office has already been released. Bill emphasized that ILS is moving forward and will continue and strengthen its efforts to improve parental representation. He noted that when people look back at our ultimate success, no one will care whether it started with \$2.5 million or \$5 million. The challenge now is to demonstrate how much positive change can be made with the targeted infusion of this funding.

Another significant development for the budget was that the Legislature filled the New York State Defenders Association funding shortfall, ensuring stable funding for the organization. This was a core piece of our budget presentation to the Legislature, as NYSDA contributes significantly to our reform efforts.

Patricia Warth reported that there was a provision in an earlier draft of the budget (Article 7 – Public Protection, part J) that would allow for virtual arraignments to continue permanently. ILS opposed it because it was contrary to the Executive Law and the terms of the Hurrell-

Harring settlement. A lot of advocacy occurred around the provision. The Chief Defenders Association of NY, NY Association of Criminal Defense lawyers, NYSDA and other organizations spoke out against it. The good news is that the provision, part J of the budget, was omitted and thus not included in the final version of the budget that passed in the Legislature.

Bill added that once again, the State continued its commitment to the Hurrell-Harring settlement and statewide funding in the approved budget, with an additional \$50 million for the fourth year of statewide implementation.

III. Discussion of Proposed ILS Caseload Standards for Parental Representation Cases (Angela Burton, Melissa Mackey, Lucy McCarthy)

Angela Burton noted that the caseload standards for parental representation has progressed through many different phases. She thanked Melissa and Lucy for the work that they have done to navigate through the process.

Melissa Mackey said ILS has been working on the parental representation caseload standards for a year and a half, pursuant to the recommendation of the Commission of Parental Legal Representation's Interim Report. This Interim Report recommended that, until there were caseload standards, attorneys in child welfare matters represent no more than 50-60 clients at one time. This is a workload standard. A workload standard tracks the number of clients that attorneys can represent at one time - the client is the unit of analysis for workload standards. In contrast, caseload standards use the case type as the unit of measurement. For caseload standards, ILS looks at the number of new case assignments each year.

Early in this endeavor, ILS realized the problems of establishing workload standards as opposed to caseload standards. For example, in many offices, attorneys represent clients in many different types of cases, including Family Court and criminal court cases, and the different types of cases vary in the amount of time needed for quality representation.

Instead of just looking at how many clients one attorney can handle, ILS determined that it is necessary to look at case type, and that was the focus of the WRI caseload study. Thus, the WRI study and OCA data have given information about attorney time based on case type. What are the minimum number of hours attorneys need to spend on a case in a well-resourced office? The chart circulated prior to the meeting tells us that on average, an attorney needs to spend 6.25 hours on a paternity case, the type of case which requires the least amount of attorney time. We use the paternity case as the base on which to weight everything else. 1875 attorney hours in a year, is how much time an attorney has, which calculates to a maximum of 300 paternity cases in one year. The minimum average number of hours increases when the cases become more complex. Because there are many different types of Family Court cases, the ILS proposed caseload standards group together case types based on the similarity of complexity and time needed to provide quality representation. The most complex cases (neglect, abuse, termination of parental rights) an attorney can only handle 33.3 proceedings per year.

Throughout the process, ILS has relied on the invaluable insight and patient cooperation of providers from all over the state who provided information. Overwhelmingly, the providers said that these standards would allow them to have sufficient time/resources to adequately represent their clients. ILS is preparing a report to present to the Parental Commission and to the ILS Board. It will make an argument about why we landed on these standards. ILS is also starting to collect more Family Court data, to see how the standards could play out once implemented.

Lucy McCarthy said that ILS was not able to address caseload standards for Family Court appeals because we were unable to gather sufficient data about the number of appeals that providers handle. ILS looks forward to doing this in the future. She also reiterated that ILS couldn't have gotten here without advice and counsel of the providers. Their input was key to the recommendations.

Bill said that ILS will use the April to June period to have a compelling document for the Board's consideration at June 11 meeting.

Angela added that the caseload report represents a significant step of cooperation between ILS and OCA. The caseload study and the eligibility standards were two of the recommendations that have been implemented that came out of the Commission on Parental Legal Representation. The caseload and eligibility studies are foundational to larger policy recommendations, including the expansion of model offices. ILS and the Commission can build on these elements.

The Chair of the Board marked the item over to the June meeting for final review and approval.

IV. 2021 Report on Compliance with Eligibility Standards in the HH Counties (Nora Christenson)

Bill stated that ILS recently submitted its fifth annual report on compliance with the 2016 ILS Eligibility Criteria and Procedures in the five lawsuit counties. This is a unique report because it assessed compliance in 2020, a COVID year, which changed everything.

Nora Christenson reported that the ILS resident eligibility expert, Lisa Joy Robertson, could not be at the meeting. She explained that our annual reports have demonstrated that the five HH counties are complying with the standards, and that the standards are working well.

Nora said that, entering 2020, ILS and the providers anticipated some challenges due to the enactment of bail reform. What was not anticipated was the pandemic, and the abrupt change in court operations. With the onset of COVID, and the assistance of the HH team, the providers were able to adapt, and continued their full compliance with the standards and timely access to counsel.

For example, Onondaga County transitioned from a burdensome, paper-driven application process to a cloud-based system, which allowed them to seamlessly adapt, and ensure that applicants received access to counsel in a timely fashion. Washington County transitioned

successfully from in-person interviews, by accepting applications for counsel via e-mail. This change allowed for a seamless transition when the pandemic happened.

In Ontario County, the providers worked with other stakeholders to work on early assignment and early eligibility screening. Its benefits magnified when COVID struck. Clients who had been issued desk appearance tickets for a future arraignment date could be contacted early on. In sum, the HH providers were well prepared. It is striking that leadership in every county ensured that there were no barriers to providing representation.

A board member commented that the creativity and adaptability across the State has been phenomenal.

V. Progress Report on Westchester County Model Family Representation Office (Joanne Sirotkin), and Issuance of RFP for Second Upstate Model Parental Representation Office (Angela)

Joanne Sirotkin is the Attorney-in-Charge of White Plains office of the Legal Services of the Hudson Valley (LSHV). She said thank you to ILS for selecting LSHV. It has been her dream to establish a family defense unit. The organization is very committed to the project, and it has been wonderful to collaborate with the ILS team, Angela, Lucy, and Melissa. (Linda McCarthy is the deputy, and Joanne is also privileged to work with Linda.)

Joanne stated they did face some delays because of the pandemic. It required flexibility and creative problem-solving. The county had some issues to work on and used the delay to think these through. Legal Server is the database that they use. It is used to collect grant information and attorneys' notes. LSHV will be able to give a lot of data: number of hours that team members spend on the case, etc. They will be able to tell ILS when other types of cases must be opened in connection with parental representation cases. LSHV has developed specialized screening. They have attended a lot of trainings and meetings. LSHV successfully applied for a grant from a private foundation, which will allow them to add an appellate attorney to the team to handle appeals, expungements, Article 78, appeals of Article 10 cases, stays pending appeals, etc. This data will also be reported to ILS. In the last few months, they have also hired more team members. They are developing a robust training program and the team will be joining the Center for Family Representation's training. They are also bringing in trainers that can focus on different aspects of the practice. They are also working with the DSS office. They are open for business and recently accepted their first client. They are going to be drawing on lots of relationships for referrals. They will also present Know Your Rights trainings for parents.

Angela stated that she is happy because the first model office is off the ground - a real step forward in changing the face of parental representation. ILS is thrilled to be working with Joanne and her team. Angela hopes that there will be an avalanche of enthusiastic bidders for a second model representation office. We are looking forward to keeping the momentum going. Angela wanted to thank the Chief Defenders Association and other providers for pushing to get the \$2.5 million for parental representation.

A board member stated that she was so excited for the model office. She noted that there was great enthusiasm. She believes that it is a platform for great things to come.

VI. Highlights of Recent Assigned Counsel Program Statewide Summit (Claire Zartarian, Jen Chenu)

Jen Chenu (ILS HH Caseload Standards Attorney) stated that the statewide Assigned Counsel Program (ACP) summit meetings have built an invaluable bridge between the ACPs in the HH counties and the ACPs across the state. In addition to bolstering the individual programs, they have given ACP leaders a depth of knowledge and a sense of community. It all began in 2017, when ILS conducted the first meeting of ACP leaders in the 5 Hurrell-Harring counties. ILS brought in expert advisors from established programs, and it was a turning point for ACP leadership. In July 2020, ILS conducted an inaugural summit for all ACP leaders across the state. The now-established ACP leaders in the HH counties now served as the voices of experience. Since then they have made invaluable connections. They realize that they are not alone. An exciting part of the Summit is that the HH ACP leaders are stepping into their role as leaders.

Claire Zartarian (ILS Statewide CAFA Attorney) said that the inaugural 2020 summit focused on the experience of the HH county ACPs and the assigned counsel standards. This was followed by a summit on the use of non-attorney and expert resources, highlighted by a presentation by Kathleen Dougherty (Onondaga County ACP) regarding funding approval process for experts. There has been a positive impact in bringing the ACP leaders together. One of administrators of the panels said a year ago that he was not interested in setting up direct access to funding for experts. Now, one year later, he is setting up access to funding for experts for his panel attorneys. Claire credits Kathy Dougherty's presentation and the influence of other ACP leaders for this evolution.

The most recent summit was on budgeting and creative use of ILS funding for successful quality improvement. It empowered ACP administrators to take a more active role in budget negotiations, alongside their county's institutional providers. It also provided a forum to brainstorm different ways to use funding. Future summits will introduce ACP administrators to regional immigration centers, establishing mentorship programs, etc. The summit topics are driven by the ACP administrators. ILS also hosts a listserv for ACP administrators, and we encourage ACP administrators to take advantage of it to ask questions and share experiences.

Bill stated that this investment in ACP leadership development invokes the principle that no client is left behind because they are represented by an assigned counsel panel attorney rather than an institutional provider. Historically, it was a lot worse in the assigned counsel world compared to full-time public defenders. He is very proud of the work ILS is doing and the responsibility that Jen and Claire have taken on.

A board member stated that on behalf of the board, we are appreciative of the leadership that has been demonstrated.

VII. Hiring Update: Data Officers Nick Watson and Reilly Weinstein, replacement for Dana Ferris

Bill stated that it is a miracle that Nick Watson has started, and Reilly Weinstein will be coming on in a few weeks. On March 10, 2020, offers were made to and accepted by both of them. Then the state hiring freeze took effect. Despite the long delay, each is still eager to work at ILS. They are two terrific new additions to our data and research staff. It is a wonderful development. ILS recently lost a staff member, Dana Ferris in the Grants Unit. We are working hard to get that position filled.

VIII. Statewide Meetings Update: County Data Officer training April 7; Parental Representation Advisory Council April 15; ACP Summit April 21; Chief Defender Advisory Group (April 28)

Bill reported that there were close to 100 participants at yesterday's data officer training. There has been great teamwork. Angela and Lucy have a parental representation Advisory Committee meeting coming up next week. There will be a Criminal Defense Advisory Group meeting on April 28. We will talk about what we have done during the past 10 years and consider the path of future reform.

IX. Next meeting Friday, June 11, 2021

The Chair of the Board said this was the last Board meeting with Bill as the ILS director. The Chief Judge read a statement into the record on behalf of the entire board. (remarks attached)

Bill thanked the Board and reflected that he was not able to do it alone. He is thankful for the leadership of the two Board chairs, Chief Judges Lippmann and DiFiore. At the beginning, he had a lot to learn about the differences between the statewide system he led in Massachusetts, and New York's county-based system. He recalled that Jonathan Gradess encouraged his interest in leading New York's right to counsel reform effort. Bill expressed his gratitude to John Dunne, Mike Breslin, Joe Mareane, and all the Board members. He said the Board has been a wonderful support. It does not get the recognition and praise it deserves. He sees the Board as the Office's lifeline, backbone, and savior. He said credit goes to the Board, and all the defenders across the state. He thanked leaders such as Norm Effman, Susan Bryant, Laurette Mulry, and Leanne Lapp. He is thankful for all the staff at ILS. They have done the hard reform work. There is a big difference between litigation and reforming structures. He says it has been an enormous challenge and a great thrill. And there is still a lot of work ahead.

A board member moved for the Board to go into executive session. The motion was seconded.

X. Executive Session

The Board discussed the process for hiring the new Director of ILS.

A board member moved to conclude executive session. The motion was seconded.
The board meeting concluded.

**On the Occasion of the Retirement of William J. Leahy,
Director of the Office of Indigent Legal Services**

Chief Judge Janet DiFiore – April 8, 2021

I'd like to take a moment today, on behalf of the Board of Indigent Legal Services, to express our deep gratitude and appreciation to William J. Leahy, who will be retiring as Director of the Office of Indigent Legal Services, effective June 1, 2021, after more than a decade of service.

I have served as Chair of the Board of Indigent Legal Services since February 2016, and I have had the privilege of working closely with Bill Leahy, a brilliant lawyer and gifted leader, who has been at the vanguard of New York efforts to build -- literally from the ground up -- an effective statewide infrastructure to support high-quality legal representation of individuals who are legally entitled to the assistance of counsel but cannot afford a lawyer.

There is no overstating how remarkable this transformation has been. In less than a decade, New York State went from failing to meet its constitutional obligation to provide effective assistance of counsel to indigent criminal defendants to now setting the national standard for what a properly-funded, high-quality public defense system should look like. This historic achievement would not have been possible without Bill Leahy's extraordinary vision and leadership.

Bill came to us in February 2011, after an accomplished career as a trial and appellate public defender, and after two decades of service as the Chief Counsel of the Massachusetts Committee for Public Counsel Services. He brought a wealth of knowledge and experience to his assignment as the first-ever Director of the newly-created New York State Office of Indigent Legal Services, but what no one could have known at the time was the extraordinary level of passion, energy and commitment that he would bring to the monumental task of forging an effective statewide system out of a dizzying patchwork of over 150 county-controlled and county-financed providers of indigent representation in our criminal and family courts across the state.

For the first few months, Bill was literally the only employee of ILS before he was joined by Counsel Joe Wierschem, but within three years recruited and hired an excellent corps of dedicated professionals who came to be widely respected by all constituencies for their great competence and professionalism. In those first years, Bill and his ILS team worked tirelessly to gain the trust of county officials and help bridge the complex historic, geographical and political differences that existed among the many different stakeholders involved in indigent defense services, including between the counties and the state.

Bill's philosophy and approach of consultation, collaboration and local empowerment paid dividends, resulting in positive and constructive relationships with all stakeholders. And his insistence on independence, nonpartisanship and the pursuit of data collection and data-driven research and decision-making contributed greatly to ILS's credibility in the field. Surely and steadily, ILS was able to convert the skeptics, overcome the challenges and gently but firmly

accomplish much-needed structural change to improve the quality of representation in our state.

Under Bill's leadership, ILS not only implemented the terms of the Hurrell-Harring settlement in the five affected counties but leveraged the positive impact of those changes to help create the groundswell of momentum that eventually led to the 2017 legislation that expanded many vital reforms, such as the presence of counsel at arraignment and caseload reductions, throughout the state at state expense. In addition to leading the transformation of our legally mandated representation system on the criminal side, Bill has also laid the groundwork for comparable and much-needed improvement in the quality of public parental defense representation in our Family Courts, improvement that our Board is fully committed to accomplishing.

The right to counsel is a fundamental constitutional right of every person, and no one has worked harder or more successfully to vindicate that right than Bill Leahy. As one of our Board Members, Joe Mareane, so aptly put it: if there was a Mount Rushmore of Indigent Defense in our nation, Bill's visage would surely be portrayed there.

On behalf of the Board of Indigent Legal Services, and the entire justice system in our state, I want to express our deepest gratitude to Bill Leahy for his excellent service as Director of the Office of Indigent Legal Services,-- and for making a meaningful difference in the lives of countless individuals who are now able to receive the effective assistance of counsel. I join his many colleagues, friends and admirers in congratulating him on a job extraordinarily well done, and

in wishing him nothing but the greatest success and satisfaction in all of his future endeavors.