

INDIGENT LEGAL SERVICES BOARD

AGENDA

June 8, 2012

Association of the Bar of the City of New York

- I. Opening Remarks by the Chief Judge**
- II. Approval of Minutes from March 14, 2012 Board Meeting**
- III. Status Reports**
 - Distribution of Funds to Counties for Quality Improvement
 - Appointments and Recruitment
- IV. Authorization to Expend Appropriated and Reappropriated Funds (see Attachment A)**
- V. Approval of Proposed Conflict Defender Standards and Criteria (see Attachment B)**
- VI. Schedule of Remaining 2012 Board Meetings**
 - Friday, September 28
 - Friday, November 9
- VII. Concluding Remarks**

Minutes for ILS Board Meeting

March 14, 2012

11:00 A.M.

Association of the Bar of the City of New York

Board Members Present: Chief Judge Lippman, Michael Breslin, Sheila DiTullio, John Dunne, Gail Gray, Susan John, Joe Mareane, Lenny Noisette and Sue Sovie

ILS Office Attendee(s): Bill Leahy

I. Opening Remarks by the Chief Judge

The Chief Judge welcomed and thanked everyone for attending. The Chief Judge also acknowledged ILS budget issues.

II. Approval of Minutes from November 9, 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 acknowledged that they had in fact received the minutes. The Chief asked the Board to vote to approve the minutes.

John Dunne moved to approve the minutes; his motion was seconded by Mike Breslin and unanimously approved.

III. Status Reports

Bill distributed an ILS budget request summary (prepared by Bill and his Counsel Joe Wierschem) and a copy of his budget hearing testimony, in which he advocated for the \$6 million we proposed for upstate caseload relief, and also for adequate funding for the New York state Defenders Association Backup Center. He then summarized the Senate and Assembly resolutions. Bill highlighted the ILS Office budget reduction proposed by the Senate (from \$1.5 million to \$1.1 million) and how, if approved, it would affect Office staffing. He also noted that neither the Assembly nor the Senate resolution included the \$6 million requested for upstate caseload relief. He expressed concern that the Assembly budget would remove General Appropriation funding for the NYSDA Backup Center, and instead would use funds from the ILSF for this purpose. He also discussed two Senate amendments that would limit state funding to New York City, and would cap ILSF funding distributions by the office to the counties at 50% of the 2010 amounts.

The Chief Judge noted that outreach to both houses was critical and necessary. Bill noted that the Office was actively meeting with key legislators and others (including

NYSAC, Vincent Doyle, etc.) to discuss his budget proposal and the need to pass it as submitted.

Bill explained the dire need for upstate case relief funding. He noted that the enormous case overloads outside of NYC were not confined to a handful of counties. Joe Mareane voiced his support and the need for the upstate caseload funding.

On the topic of distributions and grants authorized by the Board, Bill noted the assistance of Jim Yates (Counsel to Speaker Silver). He also said the prospect of 3-year grant funding looked promising and that the year one money is being sent to the counties as they submit vouchers for reimbursements of expenses.

Finally, with respect to appointments and recruitment, Bill explained that the difficulties in having his appointments confirmed were a continuing issue. He is actively working with the administration to expedite the process as much as possible.

IV. Authorization to Seek Statutory Amendment to County Law Article 18-B

Bill explained that the County Law requires the counties to file an annual report with the Comptroller that details the total expenditures for providing legal representation to persons unable to afford counsel. Bill has been urged to seek an amendment whereby these reports would be filed directly with his office since they are simply being forwarded to ILS in any event. Bill asked the Board to vote on seeking such an amendment.

Susan John indicated that the Board should not take away the reporting to the Comptroller requirement in the statute. In light of her suggestion, the Chief Judge suggested adding the ILS Office as an additional recipient instead. The Chief Judge then asked the Board to vote on the amended request.

John Dunne moved to approve the amended proposal to seek a statutory amendment adding the ILS Office as a recipient of the county annual reports; it was seconded by Gayle Gray and unanimously approved.

V. Briefing on ILS Outreach

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

Bill reported on his attendance at the NYSAC Conference. The Chief Judge noted that it is critical to make NYSAC understand that ILS is here to help and this message should not be communicated just to top leadership. Mike Breslin agreed that this message must be reinforced again and again.

Bill met with the Sheriff's Association and was pleased to report that Onondaga County Sheriff Philip Povero had been appointed as liaison to his office. He also met

with the Justice Task Force, attended a Cardozo Symposium and appeared at a County Attorney meeting.

VI. Development of Conflict Defender Standards

Bill explained that the legislation that created the Board and the Office also gave us the responsibility to establish conflict defender standards. He noted that the counties are very anxious for this to happen. Bill said that OCA approval is ultimately needed but they (OCA) need ILS standards in place to make the approval process effective and efficient. Bill is working with NYSDA to craft these standards, and he also noted that since solid standards exist, this process did not need to be started from scratch. He expressed his hope that he will bring standards for a board vote at the June meeting.

John Dunne inquired as to whether each county has a conflict defender office. Bill said each county does not have such an office.

VII. Preparation of First Annual Report

Bill explained that the Executive Law also requires an annual report to the governor, legislature and judiciary. While noting that the Office will draft the report, he expressed his desire for the board to have an active role in its preparation. Bill would like to have a draft by early summer.

The Chief Judge suggested a report that promotes the positive work of the Office and Board and stresses the unique concept that was approved with the legislation, i.e., an independent board authorized to provide financial support to the counties. The Chief acknowledged that there have been little bumps but said that's not surprising because of the novel concept.

Judge DiTullio commented that this is a marathon and noted how impressed the 3 justice courts in the 8th Judicial District were by Bill's visit.

Sue Sovie suggests more press and/or announcements. She was concerned that there are many who still don't know about ILS.

Mike Breslin said we should look for more opportunities like those described by Judge DiTullio.

Joe Mareane urged that communication is key. He suggested a quarterly news bulletin; something that is readable, reaches a broad audience and stresses success stories.

Susan John added that a website with testimonials on a revolving basis would be great.

Bill noted the delay in getting a website up and running is due to the delay in having his MIS director appointment confirmed.

The Chief Judge suggested grafting onto other agencies links such as OCA, NYSAC, State Bar, NYSDA, etc.

The Chief stressed that we have the tools to do something great!

VIII. Schedule of 2012 Remaining Board Meetings

June 8 and November 9 were confirmed and the new date for the September meeting was agreed to be Friday, September 28.

John Dunne asked about the time frame for the annual report and Bill said his goal was to get a rough draft to the board one month before the meeting at which it will be discussed in detail.

IX. Concluding Remarks

It was collectively agreed that ILS budget challenges were a priority.

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

The meeting adjourned at 12:15 PM.



Andrew M. Cuomo
Governor

STATE OF NEW YORK
OFFICE OF INDIGENT LEGAL SERVICES
STATE CAPITOL, ROOM 254
ALBANY, NEW YORK 12224

William J. Leahy
Director

Joseph F. Wierschem
Counsel

To: Members of the Indigent Legal Services Board

From: William J. Leahy, Director

Re: Authorization to Expend Appropriated and Reappropriated Funds

Date: May 31, 2012

As previously reported, we received \$4 million of the \$6 million additional appropriation we requested in the FY 2102-2013 budget for the purpose of alleviating excessive caseloads in upstate counties. I now seek authorization to expend this amount for that purpose, in furtherance of the Board's September 27, 2011 authorization for the Office to seek funding to address it.

In addition to the \$81 million appropriation for Aid to Localities, the FY 2012-2013 final budget also contained Aid to Localities reappropriations in the total amount of \$87,420,000. Of this amount, \$77 million was reappropriated from FY 2011-12 funds, and \$10,420,000 from FY 2010-2011.

While all of the \$77 million reappropriation has been authorized to be expended pursuant to the Board's action on September 27, 2011, only \$4.4 million of the \$10.4 million reappropriation has yet been authorized to be expended, pursuant to the Board's action on March 10, 2011. This leaves approximately \$6 million in funds, if they are in fact available for expenditure, which the Board could authorize for such purposes as it sees fit.

At a meeting with the Governor's Legal Counsel and other members of the executive branch on April 23, 2012, we raised the question of the availability of these reappropriated funds, in the context of a discussion about what I called the left and right Achilles heels of New York's county-based system for providing counsel in cases of mandated representation: specifically, the failure to provide counsel at arraignment, and the burden of excessive caseloads in upstate counties. Counsel Denerstein inquired as to the adequacy of the \$4 million per year we had available to address each of these issues. It was at that point that I brought up the subject of the reappropriated six million dollars. If the funds were indeed available, I said, I would likely ask the Indigent Legal Services Board to authorize an additional four million dollars in spending to provide counsel at arraignment; and the remaining two million dollars to reduce upstate caseloads, in order to bring our spending for that purpose up to the six million dollar level that we sought in our most recent budget request.

"The right... to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours."

Gideon v. Wainwright, 372 U.S. 335, 344 (1963)

Counsel requested that we consult with the Department of the Budget (DOB) to determine whether these funds were in fact available. Despite a written inquiry, followed by a telephone conversation and a personal meeting between agency Counsel Joe Wierschem and DOB representatives, we have no clear answer to that critical question.

We do not know precisely what it will ultimately cost to provide counsel for every person who cannot afford it at arraignment, nor what it will ultimately cost to reduce upstate caseload levels to at least no more than the maximum national norms. What we do know is that the currently authorized spending levels are just the beginning of a long and expensive effort to remedy these major deficiencies in the provision of mandated representation. Therefore, assuming that funds are or will be available, I seek the Board's authorization to expend a total of six million dollars from the reappropriated SFY 2010-11 funds, as set forth above: \$4 million to augment our initial RFP which will address the provision of counsel at arraignment, and \$2 million to increase our initial RFP which will address the reduction of excessive upstate caseloads.



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William J. Leahy
 Director

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Joseph F. Wierschem
 Counsel

Recommended standards and criteria for the provision of mandated representation¹
in cases involving a conflict of interest.

These standards and criteria are promulgated by the Office of Indigent Legal Services, in consultation with the Indigent Legal Services Board, in fulfillment of its responsibility under Executive Law Article 30 Section 832 (3) (d) to establish standards and criteria for the provision of legal services mandated and provided in each county pursuant to article 18-B of the County Law. [They were approved by the Board on , 2012, and they will be in effect as of , 2012.]

In further fulfillment of its responsibilities under Executive Law Article 30 §832 (3) (d), the Office of Indigent Legal Services will assist counties to develop plans that are consistent with these standards and criteria. These guidelines will also be employed by the Office of Court Administration in its consideration of conflict defender plans submitted by counties pursuant to County Law Article 18-B, §722 (3) (b) and (c).

Counties must ensure, through their plans for providing public defense representation and other provisions, that attorneys and programs providing mandated legal services in conflict cases:

1. Demonstrate a commitment to quality representation of every client and are free from political and other influences that erode the ability to provide quality representation. See *New York State Bar Association Revised Standards for Providing Mandated Representation (2010)* (hereinafter NYSBA Standards) A, Independence. The selection of the chief conflict defender and his or her staff shall be made solely on the basis of merit. See *NYSBA Standard A-2*.
2. Maintain, by practices that include the ability to decline or withdraw from cases, manageable workloads that ensure the capacity to provide quality representation. See *NYSBA Standards G-1 through G-6, Workloads*.
3. Have access to and use investigative services as needed to provide quality representation, without restriction to a particular type or level of case. See *NYSBA Standard H, Support Services/Resources*.

Mandated representation is defined as “Legal representation of any person financially unable to obtain counsel without substantial hardship who is (1) accused of an offense punishable by incarceration; (2) entitled to or is afforded representation under §249, §-262 or §1120 of the Family Court Act, Judiciary Law §35 including child custody and habeas corpus cases, Article 6-C of the Correction Law, §-407 of the Surrogate’s Court Procedure Act, §-259-I of the Executive Law or §-717 of the County Law; or (3) otherwise entitled to counsel pursuant to constitutional, statutory or other authority. See *NYSBA Standards* at pp. 3-4.

4. Have access to and use as needed the assistance of experts in a variety of fields including mental health, medicine, science, forensics, social work, sentencing advocacy, interpretation/translation, and others. See *NYSBA Standard H, Support Services/Resources*.
5. Provide representation for every eligible person at the earliest possible time and begin advocating for every client without delay, including while client eligibility is being determined or verified. Provide continuous representation by the same attorney, unless the needs of the client require otherwise, in all relevant proceedings. Lawyers should have the time and resources needed to ensure that they:
 - a. Are present at arraignment or first appearance, or earlier when an individual has invoked a constitutional or statutory right to counsel in an investigatory stage of a case, and at every stage thereafter, and in all other proceedings for which a right to counsel exists;
 - b. Interview the client as soon as possible, and in a setting in which client confidentiality can be maintained and a client/attorney relationship can be established;
 - c. Review initial charging documents or petitions as soon as possible, and challenge inadequacies in documents and proceedings unless doing so would harm the client;
 - d. Zealously advocate for pretrial release and/or diversion and for dismissal of proceedings whenever warranted;
 - e. Aggressively pursue discovery in individual cases and seek to secure improved policies for the timely disclosure of information to which their clients are entitled; and
 - f. Immediately begin preparations for trial and sentencing/disposition.

See *NYSBA Standards B, Early Entry of Representation and I, Performance*.

6. Have the ability to spend sufficient time with clients to establish a meaningful client/attorney relationship; to communicate with family or friends of the client and with professionals and service providers; to inform the client regularly as to the progress of the case; to provide copies of documents prepared or received by the attorney; and to provide the client with the opportunity to make an intelligent and informed decision where a decision is to be made by the client.

See *NYSBA Standard I-3, General Performance Standards*.

7. Operate under quality control procedures that:
 - a. require meaningful attorney qualifications for representing public defense clients and match attorneys' ability, training, and experience to the complexity of clients' cases;
 - b. provide for meaningful, periodic and ongoing evaluation of the work of attorneys and others according to objective criteria;
 - c. include mechanisms for obtaining, evaluating, and responding to comments and complaints from clients and the client community to improve the quality of services; and
 - d. require entry-level and continuing training relevant to the types of cases in which mandated representation is offered.

See *NYSBA Standards* E, Qualification of Counsel; F, Training; J, Quality Assurance.

8. Investigate potential consequences that can arise from cases, advise each client about those consequences, and advocate for case dispositions that limit negative consequences as much as possible. See *NYSBA Standards* I, General Performance Standards at I-7 (e) (iv) and (v) (Criminal Matters), I-9 (e) (Abuse and Neglect Matters).
9. Provide well-prepared sentencing advocacy in criminal cases, including cases in which a plea bargain exists, and well-prepared dispositional advocacy in parent representation cases. See *NYSBA Standards* I, General Performance Standards at I-7 (h) (Criminal Matters) and I-9 (a) (Abuse and Neglect Matters).
10. Have and use adequate resources and procedures to:
 - a. maintain appropriate law office facilities, including research capability, data collection and evaluation, means by which incarcerated clients may have confidential communication with counsel, and systems for quality control and other management responsibilities, including case management systems;
 - b. receive or provide compensation commensurate with that of opposing counsel and opposing counsel's office; and
 - c. seek additional resources whenever client needs require.

See *NYSBA Standards* H, Support Services/Resources and K, Compensation

Note: These standards and criteria apply to representation at the trial court level. Standards for appellate and post-conviction representation will be published at a later date.