

Minutes for the Indigent Legal Services Board Meeting

June 11, 2021

11 A.M.

Virtual Meeting on WebEx

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

ILS Office presenters: Patricia Warth, Angela Burton, Melissa Mackey, Lucy McCarthy, Nora Christenson, Karlijn Kuijpers, Cindy Feathers.

Minutes taken by: Mindy Jeng

I. Approval of Minutes of April 8, 2021 meeting

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

II. Ninth Annual Report of the Board

Cindy Feathers from the ILS Office gave an overview of the ninth annual ILS report. The primary theme of the report was that in a year of unprecedented upheaval, ILS made significant progress. The *Hurrell-Harring* (HH) counties continued their compliance with caseload standards and the quality improvement initiatives. Because of state funding, providers across the state had structures in place to pivot and provide quality representation, even with COVID exigencies. The HH Statewide Team continued to work with counties to develop and implement plans and budgets to meet the objectives of Executive Law 832(4). Cindy said that there were also two virtual summits for Assigned Counsel Program leaders from across the state. The listserv for ACP leaders was also implemented to help create a strong vibrant community of ACP leaders.

The Regional Immigration Assistance Centers (RIACS) continue to make an important impact providing attorneys with advisals on the immigration consequences of Criminal and Family Court involvement. Collectively, the RIACS received over 2000 requests for assistance. The ILS Parental Representational Unit has also made a lot of progress and among other things, updated the ILS standards for determining financial eligibility for assigned counsel to include Family Court eligibility, meeting a primary goal of the Chief Judge DiFiore Commission on Parental Representation. The ILS Director of Quality Improvement, Appellate and Post-Conviction matters was also quite busy, among other things working with the Legal Aid Society in NYC to disseminate materials on how to use creative mechanisms to seek the release of clients in the time of COVID and working on a collaborative to promote implementation of the Domestic Violence Survivors Justice Act (DVSJA). The ILS Research Team worked to ensure that ILS met its statutory reporting requirements and, among other activities, conducted several virtual trainings for the county-based data officers.

The Grants Unit took full advantage of the three new staff members added in 2019 to continue its progress in processing claims and issuing new contracts and budget amendments in a timely fashion. The Grants Unit also conducted two trainings on budgeting and contract management for the Chief Defender Association of NY, and as part of the training, developed a manual for providers and county officials. Cindy Feathers also gave a shout out to Peter Avery, ILS's IT Manager, for the making it possible for the ILS staff to seamlessly transition to remote work. She also extended deep thanks to the wonderful board.

A motion was made to approve the ninth annual ILS Board report under Executive Law 833(7)(d) and seconded. A vote was taken, and all board members moved in favor of approving the report. The report was officially approved by the board.

III. Caseload Standards for Parents' Attorneys in New York State Family Court Mandated Representation Cases (vote)

Angela Burton thanked all those involved in working on the caseload standards report, particularly those from the ILS Research Team and key OCA collaborators, including Frank Woods, Jan Fink, and Judge Karen Peters. Angela stated that introduction to the report explains that the crisis in parental representation has been decades in the making, stemming from the persistent failure to financially support mandated parental representation. It ultimately affects the quality of the court decisions as well. In 2019, the DiFiore's Commission interim report called for swift state action, including development and implementation of uniform eligibility standards and attorney caseload standards. Manageable caseloads are vital to improved quality representation. Angela emphasized the importance of aggressive and swift action to improve the quality of mandated parental representation. The promulgation of caseload standards is one such action and could be a complete sea change. If the constitutional and statutory right to counsel in Family Court matters is to be met, the State must fund these caseload standards.

A board member commented that it is a phenomenal report and agreed that implementation of the caseload standards could be a real sea change. In the criminal context, the caseload standards really changed the debate. The board member noted that on page 6, footnote 37 of the report, there is a reference to studies in other states. The board member asked if ILS could share about what other states are doing. Melissa Mackey responded to the inquiry, stating that because New York's right to counsel in Family Court matters is broader than in other states, there is no good analogy from the caseload studies other jurisdictions have conducted. The studies from other states only looked at child welfare cases, and did not include the custody, visitation, violation of support, etc.

Another board member commended ILS on the excellent report, noting the extensive input that ILS received from many Family Court defense lawyers who work on the ground. The process that ILS undertook was amazing. Angela said that one of the joys of the tedious process was to really work with those who are impacted by the work. Even in developing the plan and strategy, ILS included their colleagues who deliver parental representation to determine what should be looked at. Angela noted that Lucy McCarthy had a strong role in helping to identify and recruit Family Court practitioners, and Lucy reiterated that the input of practitioners was vital and guided the ILS team.

Another board member reiterated the accolades about the report. The board member found it to be comprehensive and thanked all the people who were involved in preparing it. She looks forward to seeing how the standards will affect the quality of the representation. She hopes that more attorneys will have resources to use experts and that more time will be spent on developing the expertise of lawyers in this area. She also noted that there are many cross-cultural issues about which attorneys must be trained. The board member hoped that the Board will get behind the financial backing component. It builds off what has already been done in criminal defense. As family representation improves, criminal representation also improves.

A board member said that though he is not a lawyer, he could see from the report that a sound process was followed. The report was inclusive of a cross-section of people across the state, it was careful and thorough, and the report was done with integrity. The board member said that the report's findings are durable. He asked what would have to be done to ensure funding for the program. There will need to be a legislative initiative.

Patricia Warth said she was very proud of the ILS staff for the work that was done. She provided some quick history for the Board. The Board approved – contingent on state funding - caseload standards for criminal and Family Court representation in 2014 that were modified from National Advisory Council (NAC) standards that were developed in 1973. While these 1973 NAC standards were important in initiating the much-needed conversation about public defense caseloads, they were not research-based or attentive to specific jurisdictional issues. Pursuant to the *Hurrell-Harring* settlement, ILS developed research-based and NYS-specific caseload standards for criminal cases in 2016 to be funded by the State. In 2017, the State enacted legislation to extend implementation of these caseload standards to the entire state. Now there is a researched and finalized report on parental representation caseload standards. Like the criminal court caseload standards, these standards must be funded by the State if implementation is to be realized. But currently, there is no additional funding for implementation of these standards. She noted that ILS is asking the Board to approve the standards, but contingent on State funding. Once approved, the standards will be a powerful tool for ILS to advocate for more funding by demonstrating the extreme caseloads that parental representation attorneys have.

A motion was made to approve the parental representation caseload standards, contingent on State funding. The motion was seconded. A full vote was taken, and the report was unanimously approved.

IV. Allocation of FY 2021-22, \$2.5 million in Aid to Localities Appropriation for Improved Quality Parental Representation (vote)

Patricia stated that the Board usually votes on allocation of the aid to localities funding during the September Board meeting. This issue is coming early to the Board for two reasons: 1) The Board currently has the parental representation standards report before them. The report demonstrates that there is need for urgency – ILS wants to get funding to the counties so they can start improving the quality of parental representation right away. 2) If ILS can issue contracts to these counties, it will enhance ILS' advocacy next legislative session for the funding. We will show what the counties who received the funding are effectively using it to improve the quality of representation.

Patricia asked that the \$2.5 million appropriated in the FY 2021-22 ILS Local Aid budget for improved parental representation be disbursed the counties much like the Upstate Quality Improvement and Caseload Reduction RFP that ILS first issued in 2013. The counties will apply with proposals describing how they would use the funding. Even though it is a small amount of funding, Patricia says that the counties can do a lot with those additional resources. Counties can submit proposals for \$160,000 a year for 3-year grants to improve the quality of representation provided in Family Court Article 10 (child welfare) cases, which would allow counties to hire attorneys, enhance access to social workers, parent advocates, and other experts, and implement high-caliber training programs. Grants of this amount would allow ILS to award contracts to 16-17 counties. ILS will give counties the flexibility of choosing how to spend the money to improve qualify. The goals are ultimately, reduced caseloads, improved quality, holistic defense, and improved training. ILS will limit the funding to Article 10 proceedings for two reasons – 1) that seems where the real urgency is in parental representation. Those are cases where the State is trying to intervene in the life of a family. 2) It also allows ILS to access the Title IV-E funding from the federal government.

A motion was made to approve the allocation of \$2.5 million of the Aid to Localities appropriation for the improvement of parental representation quality. The motion was seconded, and a full vote was taken. The motion was unanimously approved.

V. Other updates:

- a. **ILS Hiring** – Patricia reported that both of the two new ILS Data Officers have started. The Board was introduced to the first one (Nick Watson) during the April meeting. Since, the second one, Reilly Weinstein, has started. She has hit the ground running and is very active in the data officer listserv and in training. ILS is in the process of posting a position in the Grants Unit (having received approval to hire two additional people for the unit). One vacancy in the Grants Unit was filled by promoting Patti Cadrette internally, and this promotion was recently finalized. Patricia also noted that it is crucial to fill the Counsel position and she is hoping to post for the position quickly.
- b. **Statewide Implementation: Performance Measures Report**– Karlijn Kuijpers, the senior researcher on the statewide implementation team, gave a report about the performance measures report. Though she was the primary author, Karlijn noted the collaborative team effort involved in ensuring accuracy of the data collected and reported. To refresh the Board’s memory on what performance measures are, providers are asked to complete progress reports twice a year. It’s an online survey that asks providers about the use of state funds for attorney hiring, training events, use of expert services, investigative services, etc. ILS employed various strategies to ensure consistent reporting, including the continuous training of providers and data officers. ILS received many relevant questions, and the statewide implementation team also followed up on the data that was provided. Karlijn is confident that the data provided this year was more accurate.

The information collected spoke to the many challenges the pandemic posed for providers. Everyone had to adapt to a new virtual reality with many people working remotely. Rural providers and assigned counsel programs had unique challenges. Rural areas had difficulty

attracting qualified staff. Despite the challenges, there were several implementation successes. At first there was concern that implementation might stall due to the pandemic. The data showed, however, that between April 1, 2020 and March 31, 2021, 138 attorneys were hired. The average annual use of statewide funding also significantly increased for expert services and for investigative services.

Because ILS was able to reimburse counties on all claims throughout the pandemic and because the FY 2021-22 budget fully funded Statewide implementation, counties are developing confidence that the funding will continue, which is key to ongoing implementation. Data showed that statewide contract funding allowed things to stay afloat for providers, and many made real improvements.

- c. **Hurrell-Harring Settlement Implementation: Caseload Reports**– Nora Christenson reported that ILS continues to work with the five HH settlement counties to ensure that they are compliant with the caseload standards. The HH team is also researching the impact and effectiveness of caseload standard implementation in improving the quality of representation. To do so, ILS is hosting focus groups, conducting interviews, and examining changes in practice. They are seeking to get more information about caseload standard implementation for a report required by the settlement which is due in October.
- d. **Parental Representation: Title IV-E funding and 2nd Upstate Model Family Representation Office RFP** – Patricia thanked the Department of Budget team for working with ILS to ensure that the quality improvement funding could continue to flow in 2020, despite the pandemic-related budget crisis. Patricia also provided an update on Title IV-E funding, which consists of federal reimbursement for the costs of legal representation for parents and children in child welfare matters. ILS is working with OCFS to complete a memorandum of understanding (MOU) so that providers can use that money. OCFS is the financial conduit for the federal money, and ILS will be responsible for collaborating with the counties to develop the quality improvement plans needed to access the funding. OCFS and ILS are close to a final MOU.

Patricia noted that the Board has previously authorized ILS to issue a second RFP for a second model parental representation office. ILS issued the RFP earlier this year, and the deadline for applications was May 24th. A review team is currently reviewing the 7 applications received, and ILS hopes to issue an award by the end of the month.

VI. Next meeting Friday, September 24, 2021

The goal is to have an in-person meeting. A motion was made to adjourn the meeting and seconded. The meeting was adjourned at 10:59 am.