

INDIGENT LEGAL SERVICES BOARD

AGENDA

**September 28, 2012
Association of the Bar of the City of New York**

- I. Opening Remarks by the Chief Judge**
- II. Approval of Minutes from June 8, 2012 Board Meeting**
- III. Status Reports**
 - Distribution of Funds to Counties for Quality Improvement
 - Counsel at First Appearance RFP
 - ILS Website
 - Appointments and Recruitment
 - ILS Staff (see Attachment A)
- IV. Extension of Conflict Case Standards to Include All Trial Level 18-B Cases (see Attachment B)**
- V. Allocation of FY 2012-2013 Aid to Localities Appropriation (see Attachment C)**
- VI. Budget Request for FY 2013-2014 (see Attachment D)**
- VII. Authorization to Retain Counsel for Discovery and Deposition**
- VIII. Schedule of Remaining 2012 Board Meetings**
 - Friday, November 9
- IX. Concluding Remarks**

Minutes for ILS Board Meeting

June 8, 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, Joe Mareane, Lenny Noisette; Sue Sovie participated from a remote location via conference call

ILS Office Attendee(s): Bill Leahy, Joseph Wierschem, Angela Burton

I. Opening Remarks by the Chief Judge

The Chief Judge welcomed and thanked everyone for attending.

II. Approval of Minutes from March 14, 2012 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.

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

III. Status Reports

Appointments and Recruitment: Bill Leahy announced the appointments of Angela Burton, Director of Quality Enhancement for Parent Representation and Matt Alpern, Director of Quality Enhancement for Criminal Defense Trials. The appointments are scheduled to take effect on September 4, 2012, subject to appropriate processing by the Executive Branch.

Angela Burton joined the meeting and spoke about her background and her excitement and enthusiasm for this wonderful opportunity. The Chief Judge indicated his delight, as did Sue Sovie, the Board's parent representation expert. Bill also thanked Gail Gray for putting him in touch with Ms. Burton.

The Chief Judge then asked Bill to discuss staffing generally. Bill advised that he has funding for 10 full-time employees and his office currently has five. He is working with the Executive Branch to get Karen Jackuback, his grants expert confirmed, as well as the two previously mentioned directors. He noted that Judge Leach, the Governor's Appointments Secretary, has already interviewed Ms. Burton and Mr. Alpern. The Office

extended its search for a Director of Quality Enhancement for Appellate Representation. And, the next posting for a Director of Regional Initiatives should be online in July. Bill is looking for "self-starters and self-finishers."

The Chief noted that ILS will make more of an imprint once it is fully staffed. And, he also stressed the Office's "helping hand not top down" approach.

Distributions: Bill noted that the 3-year applications (34) are of very high quality. The Office has been communicating well with the counties and some examples were provided. In Nassau, they are promoting a Family Court pilot with enhanced screening for eligibility; in Suffolk, they are seeking additional staff with bilingual skills; in Fulton (last year they refused funds), they are seeking a public defender position; and, in Hamilton (also refused funds last year), they are promoting a regional training approach centered in their county.

Bill also provided examples of some counties where there are pockets of concern namely, Dutchess and Warren Counties. In Warren, there was a newspaper article about the state taking money away and imposing a financial burden on the counties. Joe Mareane also noted that anxiety is growing because larger portions of baseline funding are decreasing. Bill said that the unpredictability needs to be taken out of the future for the counties. And, the Chief noted that staffing is important in this regard because the office needs enough staff to keep up regular communication.

Mike Breslin said that once you start aiming at quality, anxiety will increase. Joe Mareane added that ILS needs to pursue additional funds to ensure a dedicated revenue stream. On that topic, the Chief noted that progress was made in the last legislative budget session. Senator DeFrancisco agrees with Joe Mareane that every dollar in the ILSF should go to the counties. John Dunne inquired about where the balance of the ILSF monies was being diverted. Joe Wierschem noted that in the final budget, money was passed on to DCJS for DNA funding and some to NYSDA.

Bill is studying last year's contract process with the assistance of an intern with the goal of improving the process. He believes there's already a huge improvement in communication. Judge DiTullio noted that people are eager to hear results, specifically that things are improving - such as the increase in representation at arraignment. She noted the great strides Bill made in her region.

John Dunne asked if Bill had bar support in Erie and Monroe. Such support was key in Nassau and Suffolk. Bill agreed that bar support is critical.

Board Appointments: A copy of § 833 governing ILS board appointments was distributed. Bill noted that 3 board members terms were set to expire. NYSAC already sent a letter to the governor seeking to have Joe Mareane reappointed and NYSBA was intending to do the same for Lenny Noisette. As for Sue Sovie, she is the governor's appointee. She would like to be reappointed. The Chief and Bill will reach out to the governor's office to offer their support, but ultimately it is the governor's decision.

IV. Authorization to Expend Appropriated and Reappropriated Funds

Bill described the major systemic deficiencies of failure to provide counsel at first court appearance and excessive caseloads in upstate counties. He submitted a memo to the Board seeking authorization to expend the \$4 million received in the 2012-2013 budget for the purpose of alleviating upstate caseloads. In addition, Bill explained the reappropriations from the prior two budget periods. The critical question regarding the reappropriated funds is whether they are still, in fact, available. If they are, they would be used to increase the funds we have available to provide counsel at first appearance, and to reduce excessive caseloads in upstate counties. Bill explained that in a meeting with the Governor's Legal Counsel Mylan Denerstein in April, she requested him to inquire of DOB whether these funds were in fact available. However, despite a request and a meeting, DOB has as yet provided no answer to this question.

The Chief suggests that we push DOB regarding these funds and seek help by reaching out to legislators. Bill advised that he will speak with Mylan Denerstein after the current legislative session ends.

Bill then asked the Board to vote to authorize the spending of the \$4 million appropriation.

Joe Mareane moved to authorize the spending of the \$4 million appropriation for the purpose of alleviating excessive caseloads in upstate counties; his motion was seconded by Sheila DiTullio and unanimously approved.

Bill also asked the Board to authorize the spending of the reappropriated funds if DOB advises that the funds are still available - \$4 million to be used to enhance the counsel at first appearance initiative and \$2 million additional toward upstate caseload relief.

John Dunne moved to approve the spending proposal outlined above for the reappropriated funds; his motion was seconded by Gail Gray and unanimously approved.

Lenny Noisette asked how the funds would be allocated and Bill explained that there would be an RFP process that the counties would have to follow. John Dunne inquired about adequate staffing to make the judgments regarding the proposals submitted. Bill assured that experts would be on board by the time the requests were received.

V. Approval of Proposed Standards and Criteria for the Provision of Mandated Representation in Cases Involving a Conflict of Interest

Copies of §832 were distributed - describing the office and board's statutory

obligation to create conflict defender office (CDO) standards. The draft standards were previously sent to all board members. Bill explained that the proposed standards were based largely upon the State Bar Association Standards for Providing Mandated Representation. He also noted that the counties were very interested in having the standards approved. As part of this effort, Bill noted that his office will work with the counties and the defender organizations to help get their plans approved.

Lenny Noisette asked if the State Bar had conflict defender standards or did Bill model the proposal after the general standards? If the State Bar doesn't have such standards, were there any existing CDO standards to borrow from? Bill answered that the State Bar did not have CDO standards and Joe Wierschem said they were not aware of any to borrow from.

John Dunne asked if there were any glaring CDO problems. Bill said they he learned a lot from the office's new hire, Matt Alpern. The big concern generally is that the motivation for creating a CDO is often cost control and thus, adhering to performance measures and maintaining quality is a concern.

Lenny Noisette asked if the standards apply to CDOs only or also Assigned Counsel Plans (ACPs) that provide conflict representation. Bill said that was a good question, as § 832(3)(d) obligates the Board to establish standards and criteria in cases involving a conflict of interest, but does not specifically reference either CDOs or ACPs. He suggested that the breadth of the application of the standards be reserved for a future meeting, and asked the board to vote to approve these conflict case standards and criteria as distributed.

Lenny Noisette moved to approve the conflict case standards and criteria; his motion was seconded by Gail Gray and unanimously approved.

Mike Breslin noted that it should be communicated clearly that these standards apply to conflict cases only. Bill said he would publish them with a clear preamble and effective date.

VI. Schedule of Remaining 2012 Board Meetings

- Friday, September 28
- Friday, November 9

VII. Concluding Remarks

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

The meeting adjourned at 12:05 P.M.

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Governor

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William J. Leahy
Director

Joseph F. Wierschem
Counsel

To: Members, Indigent Legal Services Board

From: William J. Leahy, Director

Re: Standards and Criteria for the Provision of Mandated Representation in All
Trial Level Cases

Date: September 25, 2012

At the Board's most recent meeting on June 8, 2012, it approved a set of **Standards and Criteria for the Provision of Mandated Representation in Cases Involving a Conflict of Interest**. One week later, I distributed those standards to county officials and indigent legal services providers throughout the state.

Over the summer, I have received several questions as to the rest of the cases, i.e., cases in which there is not a conflict of interest. Certainly, we bear no less responsibility to improve the quality of representation in those non-conflict cases, than we do in cases where a conflict of interest has arisen. Indeed, this question was presented during our discussion in June, and reserved for a future meeting.

There are two fundamental reasons why the Board should now extend the Standards and Criteria to cover all trial level cases. First, it fulfills our primary statutory responsibility, as suggested above, by making it clear that there are no lesser expectations for primary providers as for conflict providers; and therefore no lesser standard of protection for the clients who are represented by primary providers. Second, the establishment of statewide standards and criteria underlines the reality that it is the state's responsibility to provide representation that complies with minimum measures of performance; and buttresses our effort to secure increased state funding that is dedicated to helping localities to achieve compliance with these measures.

As we circulate these standards to counties, we will be clear that attainment is a process that may take time and will be assisted by the Office. In the establishment of standards, the intent of the Office and Board is not only to set performance measures, but also to establish the foundation for State support that will contribute toward the achievement of those goals. It is not to enforce an immediate increase in performance thresholds that would require immediate allocations of significant additional local resources.

We begin this effort to secure dedicated state funding for enforcement of these measures of performance at this meeting, in which I seek your approval of a request for three million dollars specifically dedicated to assisting localities in their efforts to improve their compliance with the Standards and Criteria established by this Board.



Andrew M. Cuomo
Governor

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William J. Leahy
Director

Joseph F. Wierschem
Counsel

To: Members, Indigent Legal Services Board

From: William J. Leahy, Director

Re: Allocation of State Fiscal Year 2012-2013 Appropriation

Date: September 25, 2012

At our September, 2011 meeting, the Board allocated the FY 2011-2012 Aid to Localities appropriation, in the amount of \$77 million, for four purposes. By this allocation, the Board enabled this Office to make it crystal clear to providers, county and state officials the precise purposes for which the appropriated funds would be spent.

In similar fashion and for the identical reason, I propose that this year's appropriation (FY 2012-2013) of \$81 million for Aid to Localities be allocated for the following five purposes:

- 1) The **statutory distribution** of \$54,722,696 (50% of 2010 distribution for all counties outside New York City, including \$40 million for the City) as mandated by sections 98-b (3) (b) and (c) of the state Finance Law;
- 2) **General distributions** of \$15,488,228 under Executive Law article 30, section 832 (3) (f) and section 833 (7) (c), under which all counties and New York City will be enabled to receive no less state funding (a total of \$70,210,924) in 2013 than they received in 2010. These general distributions consist of two parts: \$8,126,902 represents the second year of funding for the three-year general distribution authorized by the Board at its September, 2011 meeting, and \$7,361,326 represents the first year of a new three year allocation of funds that I request the Board to authorize, with a total amount over the three year period of \$22,083,978. As was the case last year, each locality is required to consult with its indigent defense leaders in formulating a plan to improve the quality of representation.
- 3) **Grants** in the amount of \$4,000,000 that will finance the second year of the three-year programs to provide counsel at a defendant's first court appearance in counties which do not lie within the city of New York. Our draft Request for Proposals for these grants is currently under review by the Office of State Comptroller (OSC).
- 4) **Grants** in the amount of \$2,789,076 to finance the second year of the three-year programs to create regional Immigration Resource Centers in strategic locations within New York State.
- 5) **Grants** in the amount of \$4,000,000 to finance the first year of the programs to alleviate caseloads in excess of maximum national norms in counties outside New York City. As it has done with previous discretionary distributions and grants, the Board is requested to authorize these grants for a three year period, in the total amount of \$12 million.

Together, these five priorities, all of which have been previously authorized by the Board, will expend every dollar of the state fiscal year 2012-2013 appropriation.



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William J. Leahy
Director

Joseph F. Wierschem
Counsel

To: Members, Indigent Legal Services Board

From: William J. Leahy, Director

Re: Budget Request for FY 2013-2014

Date: September 25, 2012

According to the "call letter" that we received from the Director of the Budget on September 19, appropriation requests for the state fiscal year 2013-2014 are due no later than October 16, 2012. As we had anticipated, the letter instructs agency heads, with the notable exception of those whose responsibilities include School Aid or Medicaid, to assume "zero growth" over current spending authorization.

With this notification in mind, but likewise mindful of the statutory mandate imposed upon both this Office and this Board to "improve the quality of services provided pursuant to article eighteen-B of the county law[]", in a state whose enforcement of the right to counsel has been so notoriously deficient for so long, I propose for your consideration an appropriation request in the total amount of ninety-four million dollars (\$94,000,000), to be allocated as follows:

I. State Operations (Office and Staff): \$3,000,000

This Office was envisioned from the outset as a three million dollar, (approximately) twenty person staff which would undertake the enormous task of studying and assessing the quality and efficiency of mandated legal representation delivered by some 145 providers in the 57 counties and New York City that comprise this diverse and sprawling state; and providing solutions. However, in March, 2011, budget negotiators cut in half Governor Cuomo's recommendation of \$3 million for the Office; and in March, 2012 that inadequate \$1.5 million appropriation was maintained for the current fiscal year. Now, after a series of significant and unnecessary delays in processing the Director's appointment of employees, we are within sight of filling our ten authorized positions under the reduced appropriation; and every one of those employees is a gem. These highly qualified and dedicated employees need help if they are to fulfill their historic responsibilities. It is past time to restore this Office to at least the funding and staffing levels which were originally intended.

II. Aid to Localities: \$91,000,000

As you know, our Aid to Localities appropriation for the current fiscal year is \$81 million. This appropriation is sufficient to maintain state aid at the 2010 level for all 57 counties and New York City (\$70.2 million), as well as funding to provide counsel at arraignment (\$4 million), create regional Immigration Resource Centers (\$2.8 million), and reduce excessive caseloads upstate (\$4 million).

The true cost of bringing New York State into compliance with professionally appropriate performance measures and with its obligations under the state and federal constitutions is far in excess of the \$10 million increase that I propose today. To bring caseloads and workloads in every locality into compliance with national standards; to ensure that counsel is provided at every defendant's first court appearance; to upgrade and make uniform the quality of representation in parent representation cases; to provide sufficient support staff, investigative and forensic resources to deliver effective representation; to furnish comprehensive training suited to every practice area; to ensure that only qualified attorneys are authorized to represent clients; to supervise their representation and evaluate their performance – to achieve compliance with these and other hallmarks of effective representation will require enormously greater resources than can reasonably be achieved in a single annual budget process. But we have begun to make a bit of progress, and I propose that we request the resources necessary to continue and to accelerate that progress. To that end, I propose that we request an additional \$10 million above the current year appropriation, to provide additional funding for addressing the two notorious deficiencies of excessive caseloads (\$4 million) and the absence of counsel at first court appearance (\$3 million); and to request dedicated funding to assist localities in complying with the standards and criteria approved by the Board and put into effect by the Office (\$3 million).