

Minutes for the Indigent Legal Services Board Meeting

December 3, 2021

11 A.M.

Virtual Meeting on WebEx

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

ILS Office presenters: Patricia Warth, Burton Phillips, Cynthia Feathers, Melissa Mackey, Lucy McCarthy, Nora Christenson

Minutes taken by: Mindy Jeng

I. Approval of Minutes of September 24, 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. Brief Updates

A. Staffing Updates & Introduction to Burton Phillips

Patricia Warth updated the Board and stated that the Grants Unit hired a new staff member, Petros Papanicolaou. The Grants Unit will also be hiring an additional staff member. The paperwork for Burton Phillips' Counsel position was finally approved, though the Division of Budget needed to do its due diligence before Burton can come on board. Thus, he has not officially started yet, but he has joined the call today.

Burton Phillips said he went to SUNY Buffalo Law School. He has lived and worked in Albany for the last thirteen years. He served as Albany Chief of Staff and Counsel to Senator Brad Hoylman. He worked with a diverse array of stakeholders in a wide variety of issues which will be applicable to his new position with ILS.

B. Approval of Statewide Appellate Support Center

Patricia stated that prior to the pandemic, there was an approval for a Western New York Regional Support Center. The pandemic delayed implementation of the resource center, but ILS has now started the process again, and they are looking for office space in Buffalo. More recently, the Division of Budget has also approved ILS' request to launch a Statewide Appellate Support Center.

Cynthia Feathers shared that the Statewide Appellate Support Center will be a gamechanger for ILS. It will assist attorneys with post-conviction procedures, 440.10 motions, litigation support (issue preservation, memoranda of law, etc.). It will involve intense consultation

but no direct representation. ILS is looking to hire 5 attorneys and 3 non-attorney professionals. They are looking into space for the Appellate Support Center.

A board member asked how the process will work. Cynthia Feathers said that ILS will educate the defense bar and chief defender groups that the services are available. They often do receive overtures for help. There will be structural approaches, such as more education on 440.10 motions, resentencing motions, and litigation support. Often defense counsel does not preserve the defendant's right to appeal. There are structural problems, and ILS will now have the resources to address these issues in a meaningful way and to use the Center as a forum for consultation and collaboration with appellate attorneys across the state on some of these structural issues.

Vince Doyle joined the meeting at this time.

III. *Hurrell-Harring* Statewide: October 2021 Caseload Report Overview

Patricia Warth said that Fall had been report writing season for ILS. The HH Statewide Expansion Team has submitted a comprehensive report on caseloads, and the HH Settlement Team submitted a report on caseloads and a report on counsel at arraignment. ILS is giving an update to the Board on all of these activities.

Melissa Mackey gave a slide presentation as an overview of the HH Statewide Expansion Team's caseload report. The report is required under Aid to Localities Budget (L. 2021, c. 53). It utilizes data from the ILS-195 form that all mandated representation providers must submit. Highlights of the report are as follows: the number of new case assignments in the 52 counties (not including NYC and the *Hurrell-Harring* counties) declined from 2019 in 2020 (a 39.7% decrease in new case assignments); the number of new case assignments in New York City was lower in 2020 than in 2019 (a 52.7% decrease in total new case assignments); there was a 63.8% increase in Family Court cases between 2019 and 2020 in New York City; in the 52 upstate counties, there was an increase in the number of attorney staff from 2019 to 2020, but a slight decrease in the number of non-attorney staff from 2019 to 2020; in New York City, between 2019 and 2020, there was an increase in the number of attorneys and non-attorneys.

The report also has data on the total expenditures for institutional and assigned counsel providers for the 57 upstate counties and for NYC. Between 2019 and 2020, the provider offices were still increasing their expenditures even in the midst of the pandemic, with the majority of the increase being driven by the institutional providers. The assigned counsel programs experienced a decrease in expenditures, but this is almost certainly a pandemic-related anomaly because of the reduction in new case assignments and the manner in which ACP attorneys are paid.

The data also showed that for assigned counsel attorneys, the average spending per weighted case increased from \$270 per weighted case in 2019 to \$389 per weighted case in 2020. They also found it concerning that the average spending per weighted case for criminal cases was \$463, while average spending per weighted case for Family Court cases was \$234.

Melissa finished by highlighting two overarching themes. First, there was still a significant increase in expenditures and staffing between 2019 and 2020, despite the pandemic. Second, there continues to be a discrepancy between funding for criminal court cases and Family Court cases.

Patricia thanked the support of the Division of Budget team. The funding continued to flow during the pandemic, and ILS was able to continue to pay counties and issue contracts to ensure continuity of ILS funded quality improvement initiatives.

A board member asked how ILS would address the reasons behind the discrepancy between the expenditures between criminal court cases and Family Court cases. Patricia emphasized that mandated providers have the motivation and expertise to improve the quality of Family Court representation but lack the resources; they cannot spend what is not there. ILS must continue to advocate for increased state resources for parental representation in Family Court

IV. Parental Representation: What We Learned from the Upstate Family Defense RFP Process

Lucy McCarthy gave a presentation on the parental representation RFP. ILS issued an RFP in August soliciting applications for grants totaling \$2.5 million over three years, targeting Family Court Article 10 cases (neglect and abuse cases). There were 25 applications. It was a very competitive grant. The applications revealed compelling information about the status of mandated parental representation. Very few providers have the resources needed for multi-disciplinary representation, and very few providers have adequate funds to hire experts. Not all providers seem aware of the ILS practice standards. All of the providers noted that they knew about the caseload standards issued by ILS. Many of the counties reported double or triple the caseload standards compared to the current ILS standards. Many of the providers stated that their clients lacked the basic necessities of life to allow them to successfully parent their children despite government involvement in their family.

Many providers/counties are committed to initiating or formalizing pre-petition representation if the funding is provided.

A board member said that the team is spot on in terms of their findings, and it was consistent with what she has seen as well. The board member said that money is a huge issue for getting experts. She also sees the acute need for social workers to work together with providers.

Angela Burton noted that better financial support for more effective lawyering would in turn, help change the culture in Family Court, enhancing the fairness of proceedings and promoting access to the supports families need to keep them intact.

V. *Hurrell-Harring* Settlement: What Five County Arraignment Data Tells Us About Bail Reform Implementation

Nora Christenson gave a brief overview of the recent findings of the HH Settlement Team's Counsel at Arraignment report. Since the five HH counties began implementing the settlement

they have reported data on arraignments and counsel at arraignments. In recent years, ILS can say that the systems have been able to ensure counsel at arraignment in those counties.

They have also been collecting information on arraignment outcomes. Since bail reform, ILS has looked at various data to try to see the impact of bail reform on arraignment proceedings. There was a decrease overall in the number of case assignments. ILS is aware that COVID also has an effect on the data, but the data can still be useful to look at bail reform's impact. ILS looked at the time period prior to bail reform (July 2018 to June 30, 2019) and the time period from July 2020 to June 2021. There was a marked decrease in the use of pre-trial detention. This was most pronounced in misdemeanor/violation cases. There was also a reduction in pre-trial detention the non-violent felony cases. Violent felonies were the least affected by bail reform. If the judges had the option to use cash bail, it appears that they still opt to do so in those cases.

The data has shown that the bail reform laws are reducing reliance on pretrial detention. Washington County is a good example. Prior to the Settlement, the county did not have systems in place for counsel at arraignment. They quickly put those in place after the HH settlement, and they were one of the first counties to establish a Centralized Arraignment Part (CAP). After CAP implementation, ILS closely monitored arraignment data to see if the CAP impacted release rates and found a slight reduction in use of pre-trial detention. One thing ILS learned was that bail was often set, even in lower-level cases, at small amounts. But defendants could not pay even these small amounts, and therefore many were detained pre-trial. After bail reform implementation, this changed significantly, and there has been a dramatic reduction in pre-trial detention in lower-level cases – e.g., a 72% reduction in the use of bail in misdemeanor cases in Washington County.

VI. In Memoriam: Susan John, former Assembly Member and ILS Board Member (2010-2013)

The Chief Judge paid tribute to Susan John, who was a founding member of the Board. She was a lawyer, a graduate of Syracuse Law School. She served in the Assembly for 20 years. She served her constituents with distinction and honor. She served on the ILS Board from 2010 to 2013 as an engaged member. She was an invaluable source on the inner workings of government. She was an outstanding public servant, who made a meaningful contribution to ILS.

The Board sends its heartfelt condolences to her family, friends, and colleagues.

VII. Schedule of Board Meetings for 2022

The format and location will be determined.

April 8th, 2022
June 3rd, 2022
September 23, 2022
December 2, 2022

A motion was made to adjourn the meeting and seconded. The meeting adjourned at 12:03 pm.