

Minutes for the Indigent Legal Services Board Meeting

September 23, 2022

11 A.M.

In person at the New York City Bar Association and virtual meeting on WebEx

Board Members Present: Acting Chief Judge Anthony Cannataro, Judge Carmen Ciparick, Diane Atkins, Lenny Noisette (virtual), Suzette Melendez (virtual), Vince Doyle (virtual)

ILS Office presenters: Patricia Warth, Burton Phillips (virtual), Matt Alpern, Lucy McCarthy

Minutes taken by: Mindy Jeng

I. Approval of Minutes of June 3, 2022 Board Meeting (vote) (attachment)

Judge Ciparick moved to approve the minutes, and the motion was seconded by Mr. Doyle. A vote was taken, and the minutes were approved unanimously.

II. ILS Budget Request for State Fiscal Year 2023-24 (vote) (attachment) (Patricia Warth & Burton Phillips)

ILS Director Patricia Warth summarized the ILS proposed budget request for the upcoming State Fiscal Year 2023-24. She started with ILS' State Operations proposed budget request, which is \$7.72 million, an increase from the current fiscal year's State Operations budget of \$6.96 million. The increase is attributable to fully annualizing the costs of current staff salary and fringe as well as the creation of three new staff positions. Director Warth briefly described the three sought positions and the explained the rationale for the requests:

- A Human Resources (HR) manager, this position would allow ILS to better coordinate with other state agencies and provide the office with much-needed in-house expertise. ILS' HR functions are currently hosted by the Office of General Services.
- An Auditor for the Grants Unit, this person would supplement the work of ILS' current Auditor, and help streamline the audit review process to make sure that the funding is flowing in a fiscally responsible way.
- An Appellate Attorney for Parental Representation. This person would report to Cindy Feathers, in consultation with Lucy McCarthy. The need for this position reflects the interplay between Family Court trial level representation and appellate representation. This position would also liaise with the Statewide Appellate Support Center.

Last year, ILS' State Operations budget request was fully funded.

Acting Chief Judge Cannataro asked whether the Human Resources position would work on Diversity, Equity, and Inclusion issues. Director Warth answered that the new position would liaise directly and work hand-in-hand with Luchele Chisunka on DEI efforts.

Ms. Atkins asked whether ILS employees are civil service employees. Director Warth answered that under Executive Law Sec. 832, the ILS Director has discretion to hire upon consultation with the Board. ILS asks for its positions to be civil service exempt, and ILS employees generally fit very well as management/confidential employees because the necessary job qualifications do not necessarily lend themselves to a civil service exam.

Judge Ciparick asked if clerical staff are also exempt from civil service requirements. Director Warth answered yes.

Ms. Melendez asked if ILS is envisioning any additional new staff positions beyond the ones included in this year's budget request. Director Warth answered that there is a desire to hire more staff for the Parental Representation unit along with the desire for additional state Aid to Localities funding to improve the quality of parental representation. She also noted that the Grants Unit is not yet fully staffed, and that she desired get the Grants Unit fully staffed before undertaking an assessment of ILS' needs.

Director Warth then summarized ILS' Aid to Localities budget request. The current ILS Aid to Localities budget includes \$81 million for grants and distributions; \$23.8 million for the *Hurrell-Harring* settlement; \$250 million for statewide extension of the *Hurrell-Harring* settlement, and \$4.5 million for improved quality parental representation grants. The ILS Aid to Localities budget request for State Fiscal Year 2023-24 seeks an increase of \$23.5 million over the current fiscal year. The entire increase for \$23.5 million is for improved parental representation. Director Warth explained the rationale for the amount requested and described the need for dedicated State funding for parental representation.

The current level of State funding available for improved quality representation only allows ILS to distribute funding through a competitive process. ILS issued an RFP in August for counties to receive grants for improved quality parental representation, but there is only funding available to issue around 16 awards, and 23 counties applied. The funding ILS is requesting would not fully address the crisis in parental representation but would help ILS get closer to meeting the need.

Judge Ciparick asked what ILS would do if the Legislature only approved half of what ILS is requesting for parental representation. Director Warth answered that the ILS Board would be part of the decision, but that ILS would explore whether it is enough to disburse to all counties without a competitive process, and if not, then disbursing it to all counties through a competitive process might be necessary.

Acting Chief Judge Cannataro asked if counties had the necessary infrastructure in place to handle increased funding from ILS. Director Warth responded that counties are already

required under State law to provide mandated representation, and that this funding will allow them to bolster that infrastructure. She then explained some of the possible uses of the funding.

Judge Ciparick asked whether the funding could be used by Assigned Counsel Programs. Director Warth said that it could and noted that one of the previous awardees of parental representation funding is Erie County, for use by its ACP.

Judge Cipatruck made a motion to approve the budget request, and it was seconded by Ms. Atkins. The budget request was unanimously approved.

III. Update on *Hurrell-Harring* Statewide Implementation (attachment) (Matt Alpern)

Matt Alpern, ILS' Interim Chief Statewide Implementation Attorney & Director of Quality Enhancement for Criminal Defense Trials, provided the Board with an update on the progress made to date on statewide implementation of the *Hurrell-Harring* settlement reforms, pursuant to Executive Law § 832(4). ILS had recently completed a Performance Measures Progress Report, which was attached to the Board meeting agenda, to demonstrate what statewide implementation looks like to date.

Mr. Alpern discussed the successes and challenges of statewide implementation, and described the collaborative process that ILS engages in with providers of mandated legal representation and county governments in furtherance of successful implementation. He also spoke about ILS' focus on ensuring that providers have sufficient funding for staffing to be in compliance with ILS' caseload standards, but also the work that ILS does to fund non-attorney resources that are so critical to delivering quality representation.

He also described the work that ILS is doing to improve the quality of mandated criminal defense being provided by assigned counsel programs (ACPs), including providing funding for full-time ACP administrators, experts and other non-attorney professional services, second chair and mentoring programs, and appellate consultations.

Mr. Alpern identified recruitment and retention of attorneys as one of the biggest challenges that providers are currently facing across the state but particularly in rural areas. ILS has been working with providers and other stakeholders to develop strategies to overcome these challenges. He also discussed other initiatives that he described as being "layered on top of everything else that ILS does," including the Gideon's Promise public defense leadership training program and ACP summits.

Ms. Atkins asked if there are caseloads standards for attorneys providing mandated representation for parents in Family Court. Mr. Alpern responded that the statewide implementation funding is only for criminal cases. Director Warth noted that the ILS Board previously approved caseload standards for parental representation, but the approval was contingent upon state funding, which has not yet been forthcoming.

Acting Chief Judge Cannataro asked who or what entity provides services like mentoring, second-chairing, or appellate consultation for assigned counsel programs. Mr. Alpern responded that the ACP administration usually oversees the programs. Some of the larger ACPs may have dedicated staff such as a training director or forensic director who will implement the programs; other ACPs identify private attorneys who have the qualifications to help implement these programs. Director Warth identified the ACP in Onondaga County as being successful in having some people on staff to provide some services and identifying qualified private attorneys to deliver other services.

IV. Introduction to Lucy McCarthy, new ILS Director of Quality Enhancement, Parental Representation (Lucy McCarthy)

Lucy McCarthy, the new ILS Director of Quality Enhancement, Parental Representation, introduced herself to the Board after a brief introduction by Director Warth. Ms. McCarthy was hired from within ILS to fill the vacancy left by the departure of Angela Burton.

Ms. McCarthy described Ms. Burton's impact on ILS and her accomplishments as Director of Quality Enhancement, Parental Representation, including cultivation of relationships with providers, the development of practice standards for child welfare cases, the development of caseload standards, and the development of eligibility standards for parental representation. Ms. McCarthy said she was honored to continue the work that Ms. Burton started.

She also identified her long-term goal of elevating the work of parental representation, with the ultimate goal of helping keep families intact.

It was noted that ILS has posted for Ms. McCarthy's former position of Assistant Counsel for Parental Representation.

Ms. Melendez stated that she had great confidence in Ms. McCarthy's ability to move forward, and that she is looking forward to seeing all the new developments. Ms. McCarthy responded that it was exciting to have an ILS budget request seeking a substantial increase in Aid to Localities funding for parental representation.

Ms. Melendez asked about the possibility of legislation that was being prepared by the OCA's Commission on Parental Representation. Ms. McCarthy acknowledged that the Commission is preparing legislation and had met the previous day but had not yet made any final decisions about the draft legislation.

Mr. Noisette asked for an update on Title IV-E funding. Ms. McCarthy answered that Title IV-E funding is coming in. Director Warth elaborated that ILS is working with counties to approve their plans to use Title IV-E funding improve the quality of parental representation. She also noted that the New York State Office of Children & Family Services is handling the claiming and disbursement of the funding.

Ms. Melendez thanked Judge Peters for her work on the Commission and asked whether there were any thoughts on when the Commission's legislation might be available. Patricia said that it is her understanding that the Commission on Parental Representation is continuing to work on the legislation with the goal of having something ready for the coming legislative session.

V. *Hurrell-Harring* Settlement Compliance Update (Patricia Warth)

Director Warth provided the Board with an update on a compliance issue with the *Hurrell-Harring* settlement that ILS is monitoring.

She explained that the settlement provided that New York State shall provide funding to the five defendant counties to improve the quality of mandated criminal representation, including funding for counsel at arraignment, caseload relief, and initiatives to improve the quality of public defense. Director Warth noted that, since 2016, ILS has consistently noted in its settlement-required *Hurrell-Harring* settlement reports that the failure of New York State to increase the assigned counsel rates was a looming crisis for settlement implementation. On April 29, as part of its regular reporting requirements, ILS again flagged for the *Hurrell-Harring* parties that a crisis was imminent. On May 16, ILS sent a letter to the *Hurrell-Harring* parties identifying Onondaga and Schuyler Counties as being out of compliance with the settlement, because of the failure to raise the assigned counsel statutory rates and despite the good faith efforts of the two counties to fully implement the settlement. The plaintiffs then issued a non-compliance notice to the State, triggering a negotiation period under the terms of the settlement.

Consistent with the terms of the settlement, ILS was invited to participate in some of the negotiations and asked to provide information to the parties. Director Warth noted that to date there is no final negotiated solution, and that the plaintiffs had since filed an escalation notice that allows them to seek a judicial resolution. However, ILS' understanding is that the negotiations are continuing.

Judge Ciparick asked whether a resolution to the issue would involve legislation. Director Warth responded that it was not clear whether that would be the case and noted that there could be a judicial order but that the timing of a resolution was unclear at this point.

Acting Chief Judge Cannataro asked about ILS' effort to reach out to judges and magistrates. Director Warth explained that as part of our efforts to obtain information from a variety of perspectives about settlement implementation, earlier in the year, ILS had conducted a survey of judges and magistrates to elicit their thoughts and experiences with settlement implementation. The survey questions did not focus on the assigned counsel rates, but even though they did not actively elicit information about assigned counsel rates, the judges volunteered that there needed to be an increase in assigned counsel rates.

VI. ILS Office Updates (Burton Phillips)

Burton Phillips, ILS Counsel, provided the Board with an update on hiring ILS staff, including backfilling vacant positions and hiring for newly-created positions:

- Allison Clifford recently started as HH Implementation Attorney for Quality Enhancement. She most recently served as the Principal Law Clerk to Albany County Court Judge William Carter, served as Court Attorney in Albany City Court, and has wide-ranging experience including private practice, appellate work, and Family Law.
- Madeline Rasmussen recently started as Statewide Implementation Attorney for Caseload Standards. She comes to ILS with experience providing direct representation in criminal defenses cases at both the Warren County Public Defender's Office and the Nassau County Legal Aid Society.
- Liah Darlington started the prior week as Administrative Assistant. Liah comes to ILS from the Cornell Cooperative Extension of Albany County and has professional experience in a number of legal offices.

Mr. Phillips also noted that two new hires were imminently joining ILS in the new Statewide Appellate Support Center:

- Mandy Jaramillo was hired as Senior Appellate Attorney and will be starting with ILS next week. Mandy comes to ILS from the Office of the Appellate Defender in New York City, where she most recently served as Supervising Attorney and Director of Reinvestigation. She's also worked for the Innocence Project and the Center for Family Representation
- Kelly Egan was hired as Appellate Attorney and will be starting with ILS in October. Kelly has worked at the Rural Law Center of New York for almost eight years, most recently serving as Appeals Director. She's also served on both criminal and family law assigned appellate panels in the Third Judicial Department.

Mr. Phillips also noted that ILS was currently in the process of interviewing candidates for several other Statewide Appellate Support Center positions, including two additional mid-level Appellate Attorneys, a junior Appellate Attorney, and a paralegal. He also announced that ILS was currently posting for an Assistant Counsel for Parental Representation, to backfill Ms. McCarthy's former position, and would soon be posting for a number of other positions:

- Filling or backfilling four Grants Unit positions
- Family Court Senior Research Associate
- Family Court Program Associate
- Statewide Appellate Support Center Investigator
- Statewide Appellate Support Center Case Manager

Several newly-funded ILS staff positions must still go through the State's Civil Service classification process, including:

- Assistant Manager of Information Services
- Six positions to fully staff ILS' new Western New York Regional Support Center

Mr. Phillips also notified the Board that ILS is making progress toward executing a 10-year lease for office space in downtown Buffalo for the Western New York Regional Support Center and have a preliminary move-in date of March or April 2023.

VII. Adjourn

Acting Chief Judge Cannataro moved to adjourn the meeting until the December 2, 2022 meeting. The motion was seconded and the meeting ended at 12:19 p.m.