

Minutes for the Indigent Legal Services Board Meeting

December 2, 2022

11 A.M.

In person at the New York City Bar Association

Board Members Present: Acting Chief Judge Anthony Cannataro, Diane Atkins, Judge Carmen Ciparick, Judge Sheila DiTullio, Suzette Melendez

ILS Office presenters: Patricia Warth, Burton Phillips, Karlijn Kuijpers

Special Guests: Former Chief Judge Janet DiFiore, Joe Mareane (via WebEx)

Minutes taken by: Mindy Jeng

I. Approval of Minutes of September 23, 2022 Board Meeting (vote) (attachment)

Acting Chief Judge Cannataro called the meeting to order. Judge Ciparick moved to approve the September 23, 2022 Board meeting minutes. Ms. Atkins seconded the motion. Judge Ciparick submitted minor, non-substantive edits to the minutes. The minutes were unanimously approved by the Board.

II. Honoring retired ILS Board members, former Chief Judge Janet DiFiore and Joe Mareane (attachments)

ILS Director Patricia Warth said on behalf of the ILS office, the office created a resolution in honor of Chief Judge DiFiore's service as Chair of the ILS Board. (See attachment – ILS Resolution for Chief Judge DiFiore.) Director Warth read the text of the resolution for Judge DiFiore.

Director Warth said that after former ILS Director, Bill Leahy, retired, she knew that she had big shoes to fill, and that former Chief Judge DiFiore told her that she would ably fill the role and had confidence in her abilities. The Chief Judge's encouragement was very meaningful to the Director. Director Warth thanked the Chief Judge for her support and for pushing her out there.

Director Warth then read a resolution in honor of Joe Mareane's service as a member of the ILS Board. (See attachment – ILS Resolution for Joe Mareane.) Director Warth noted that Mr. Mareane served on the ILS Board since 2010, the inception of the Board. She noted that Mr. Mareane always asked probing questions and added thoughtful comments during Board meetings, which helped to improve the work of ILS over the years.

Acting Chief Judge Cannataro said he also felt some disorientation when coming into the new role of Acting Chief Judge. He said that the honor of serving on the Board is a civic

mandate and a humanistic mandate. Chief Judge DiFiore and Mr. Mareane served the Board well, and their work will be honored for many years to come. Acting Chief Judge Cannataro noted that former Chief Judge DiFiore persistently advocated for increasing the funding for ILS and that now that he has a better appreciation for how busy Chief Judge DiFiore was, he has a good appreciation for the time and effort she devoted to serving on the ILS Board.

Judge DiTullio said Chief Judge DiFiore's passion and commitment to ILS was incredible. She had the ability to "close" and to follow through on matters.

Chief Judge DiFiore thanked the ILS employees and the Board. The role of Chief Judge involves an array of responsibilities, and Chief Judge DiFiore said that her service on the Board as chair was one of the highlights of her service. She said that the Board bonded quickly and coalesced to effectively work together.

Chief Judge DiFiore further noted that there is no overstating how remarkable the transformation of public defense has been in New York, when it went from a failing system to setting the standard for the nation. It is the work, the dedication, and passion of the staff; that is the catalyst for the work that is being done. Chief Judge DiFiore thanked ILS and said she was very humbled by the resolution.

Mr. Mareane said that he spent a long time in government. He said that serving on the ILS Board is one of the greatest honors of his career. He is thankful to be part of something so transformational and something that is so good. He was amazed to see how ILS emerged from a simple piece of legislation to a vibrant, effective agency. He described the ILS staff as uniquely dedicated, smart, driven, and passionate, and that he is proud of the work of the ILS Office. Mr. Mareane said that the work of ILS defines how state and counties can work productively together. Mr. Mareane finished by saying that it was an honor to have served the members of the Board and the staff of ILS.

Acting Chief Judge Cannataro congratulated both honorees again.

III. Two brief updates

a. *Hurrell-Harring* Settlement compliance

Director Warth provided an update on the failure to fully implement the *Hurrell-Harring* settlement (HH settlement) because of the state's failure to raise the assigned counsel statutory rates. She noted that in May 2022, ILS had notified the HH settlement parties that Onondaga and Schuyler County were out of compliance with the terms of the HH settlement because of the state's failure to increase the assigned counsel rates. Soon after ILS sent this notification, the plaintiffs sent a non-compliance notice in accordance with Section 11 of the settlement, which triggered a period of negotiations with the State. The terms of the settlement allow the parties to invite ILS to participate in the negotiations, and ILS was invited

to some of the negotiation discussions, where we identified the cost to the State of increasing the assigned counsel rates in criminal cases for the five HH settlement counties.

In mid-November, ILS learned that the negotiations had fallen apart. Director Warth said it is our understanding that the plaintiffs are likely to pursue litigation.

Judge Ciparick commented that there was successful litigation in New York City regarding the assigned counsel rates, and that the New York State Bar Association had just filed a lawsuit to raise the assigned counsel rates outside of New York City.

Director Warth stated that it is her understanding that the HH settlement parties are aware of these lawsuits, and there was uniform agreement that the rates need to be raised.

Ms. Melendez said that she saw firsthand that there is damage being done in Onondaga County because of the insufficient assigned counsel rates. It is impacting the litigants that they are trying to serve. It is debilitating.

Ms. Atkins asked if the assigned counsel rates are standard throughout New York State. Director Warth said yes. Ms. Atkins asked for clarification on why there were two counties out of compliance. Director Warth said that in May 2022, it was evident that two of the five counties involved in the *Hurrell-Harring* litigation were out of compliance, with the remaining three being on the verge of being out of compliance.

Acting Chief Judge Cannataro commented that it has been close to 20 years since the assigned counsel rates have been raised.

Ms. Atkins followed up by asking about the pay rates for the lawyers representing tenants in housing court (right to counsel). Acting Chief Judge Cannataro said the legal services organizations set the salaries. The state entities have contracts with the legal service organizations, but the organizations themselves set the salaries.

Judge DiTullio stated that in Erie County she is observing the same phenomena Ms. Melendez identified in Onondaga County. Director Warth said that there are multiple pressure points pushing for an increase, and as already noted, more than one lawsuit. Judge Ciparick noted that the court system also supports the assigned counsel rate increase.

b. Second Upstate Family Defense Quality Improvement & Caseload Reduction Grant

Director Warth stated that there is \$4.5 million in the current state fiscal year ILS Aid to Localities budget for improved quality parental representation. Since this was not enough funding for every county, ILS is disbursing it via a competitive process. After issuing an RFP and receiving 24 proposals, ILS was able to announce awards for 17 counties. The grant amounts

range from \$475,000 over three years to \$750,000 over three years. The money will be used for institutional providers, assigned counsel programs, or both. The grants are pending procurement record approval from the Office of the State Comptroller, but while this is occurring, ILS is working with the awardees to finalize budgets and workplans for contracts so that once the procurement record is approved, ILS can issue contracts. The goal of using this relatively small amount of State funding is to demonstrate how it can be used to create a track record of progress in improving the quality of parental representation, which will provide ILS leverage for increased funding for parental representation.

IV. Overview of Statewide Quality Improvement and Caseload Relief Update Report (attachment)

Karlijn Kuijpers, the ILS Senior Researcher for the Statewide unit provided highlights of the Statewide quality improvement and caseload relief report. The first highlight she shared was a chart of the total caseloads handled by providers in the 52 non-HH settlement counties outside of NYC. Dr. Kuijpers explained that the data showed that the aggregate provider caseload was consistent from 2012 – 2019. From 2020 to 2021, there was a significant decrease in provider caseloads. Dr. Kuijpers stated that in last year’s report, the Statewide team speculated that the decline was due to the COVID-19 pandemic. With the relaxation of COVID-19 protocols in 2021, it is not a surprise that caseloads increased slightly. If caseloads still remain low in future years, ILS may look at different explanations for the decrease, including criminal justice reform, such as the legalization of recreational marijuana use via the Marijuana and Taxation Act, and the Driver’s License Reform Act, which should diminish the frequency of arrests for driving without a valid driver’s license. In terms of total caseloads, there was a greater decline among assigned counsel programs compared to institutional providers.

The second highlight was the trends in providers’ staffing levels. There has been a substantial increase in the staff for providers since 2012 – both attorney and non-attorney staff. The increase in staffing continued, even during the COVID pandemic. Director Warth said that for both NYC and the counties outside NYC, we had hoped there would be a greater increase in staff from 2019 to 2021 given the infusion of State funding to expand the HH settlement statewide. One reason the increase over the past two years is not as high as we would have liked, is the COVID pandemic. Indeed, the fact that there was still an increase, is due to the resilience of the provider groups and the State’s commitment to keeping the funding flowing. But if you look at staffing patterns provider by provider, there are some providers that lost staff over the past year. In ILS’ communication with providers, they are facing the same problem as other public sector entities across the nations. It is hard to retain people in not-for-profit settings. If we are to realize the full implementation of the HH settlement statewide expansion, there needs to be great examination of what that means and what a true living, competitive wage is.

Ms. Atkins commented that in her experience, more attorneys and staff are seeking virtual work. When proceedings were conducted online virtually, there were more attorneys available.

Director Warth said that ILS' position is that in person appearances are important, and a legal imperative for first appearances (arraignments). They are looking at other strategies such as bolstering salaries and increasing recruitment efforts to retain people. For arraignments and other substantive court appearances, virtual appearances diminish the quality of representation; ILS does not want to sacrifice the quality of representation.

Acting Chief Judge Cannataro said that there are lots of reasons to have court proceedings occur in person. When the judge and attorneys try to get cases to resolve in the conferencing process, resolution rates go down by about 50% when the conference occurs virtually. Having proceedings in person helps to resolve issues.

Judge DiTullio agreed that certain proceedings must be in person. She said that in civil cases, remote does work. While she acknowledges that everyone in the public sector is suffering due to recruitment challenges, part of the problem is the wages. Ms. Melendez agreed that the quality of representation suffers when court proceedings occur virtually. She noted that the courts had to conduct themselves virtually earlier in the pandemic. There was a public health need for that, but there should be parameters.

Dr. Kuijpers continued with the third highlight of the quality and caseload report: provider expenditures, set forth visually in Figure 12 of the report. The main findings for the 57 counties outside of NYC, is that expenditures have increased until 2020, when the Covid pandemic started. During the pandemic, the spending of institutional providers continued to increase, but the expenditures for assigned counsel programs went down. This assigned counsel program decline in expenditures is likely due to how these programs differ from institutional providers in organizational structure. Assigned counsel attorneys are paid per case, and the number of new cases went down during the pandemic. Case processing was slowed, meaning that assigned counsel attorneys were billing fewer hours. Additionally, fewer cases were being resolved, and thus, assigned counsel attorneys were submitting fewer vouchers for payment, since most submit vouchers for payment upon case completion.

Dr. Kuijpers then noted that ILS uses two measures to gauge the success of Statewide implementation. For institutional providers, ILS looks at the average weighted caseload per attorney, and this trend over the years is set forth in Figure 15 of the report. The average weighted caseload per attorney declined significantly from 2012 to 2019, due to increased attorney staffing at institutional providers. There was another drop from 2019 to 2021. This drop was due to the decreases in both new case assignments as well as the increase in attorney staffing. Dr. Kuijpers noted that Figure 15 includes both Family and Criminal cases.

Dr. Kuijpers said that the next chart (Figure 16), distinguishes between criminal cases per attorney and family court cases per attorney. The average weighted criminal cases per attorney went up slightly between 2020 and 2021, while the average weighted cases per attorney for family court cases went up even more significantly. This is related to an increase in caseloads institutional providers experienced between 2020 and 2021. But what is noticeable

is that Family Court attorneys contended with much higher average weighted caseloads compared to criminal court defense attorneys.

For assigned counsel programs, Dr. Kuijpers created a chart with average spending per weighted case. The 2021 per average spending for weighted criminal case was \$579, while the average spending for a family court case was \$219. The spending for criminal court cases increased between 2020 and 2021, but it declined for the family court cases.

Director Warth said that the charts show the result of the State's commitment to improving quality representation in criminal cases: increased spending means that attorneys have the ability to spend more time on cases. Meanwhile, on the Family Court side, attorneys are buckling under the heavy caseloads. The last two charts show the importance of the State commitment to quality representation, and the contrast between the resources for the providers of criminal defense and those representing parents in Family Court matters.

Ms. Melendez stated that additional funding is needed for parental representation, not only to reduce attorney caseloads but to implement the components of improved quality that exist in the criminal defense realm, such mentoring and access to non-attorney professional services. It is important to replicate in Family Court representation what is being done well in the criminal context.

Acting Chief Judge Cannataro said that there is urgency to get new counsel to be brought in, as many attorneys with experience may be leaving the profession and mentoring opportunities may be lost.

V. ILS Office Updates

a. New ILS Office staff

Mr. Phillips, ILS Counsel, said that since the last Board meeting, ILS has added two new staff members to the Statewide Appellate Support Center: Emily Lusignan and Daniel Speranza. ILS was very impressed with their energy, enthusiasm, and creativity. Mr. Phillips also reported that ILS made offers to candidates for two other positions: Assistant Counsel for Parental Representation (backfilling Lucy McCarthy's position) and a paralegal for the Statewide Appellate Support Center. Because those candidates are still going through the State's Budget Director Approval (BDA) process, their names will be announced at the next meeting after their BDAs have been approved.

b. Vacant ILS Office positions

Mr. Phillips reported that ILS is also in the process of interviewing for a Senior Researcher for the Family Court unit, additional staff for the Statewide Appellate Support Center, and an Attorney in Charge of the Western New York Regional Support Center.

Additionally, ILS is actively recruiting to fill vacant positions in the Statewide Appellate Support Center, an Assistant Manager of Information Services, and four positions in the Grants unit. ILS has also received the civil service exemption approval for the six newly-created positions in the Western New York Regional Support Center. Once the open positions have been filled, ILS will grow to 57 employees.

c. WNY Regional Support Center

Mr. Phillips reported that ILS has executed the lease for the Western New York Regional Support Center. ILS is currently working with other state agencies and the building owner to ensure that the necessary build-outs and IT infrastructure are in place for an estimated Spring 2023 move-in date.

VI. Adjourn

Acting Chief Judge Cannataro moved to adjourn the meeting and wished everyone a very nice holiday. The meeting adjourned at 12:13 pm.

a. ILS Board Meeting schedule for 2023:

April 14, 2023

June 2, 2023

September 22, 2023

December 8, 2023