

## **Minutes for the Indigent Legal Services Board Meeting**

December 13, 2024

11 A.M.

In person at the New York City Bar Association

**Board Members Present:** Chief Judge Rowan Wilson, Diane Atkins, Hon. Carmen Ciparick, Christopher DeBolt, Lenny Noisette (virtual), Jill Paperno

**ILS Office presenters:** Patricia Warth, Burton Phillips, Nora Christenson

**Special Guest presenters:** Susan Lettis (Otsego County Public Defender), Andy Correia (Wayne County Public Defender), Mark Funk (Monroe County ACP Administrator)

**Minutes taken by:** Mindy Jeng

### **I. Approval of Minutes of September 20, 2024 Board Meeting (attachment) (vote)**

Ms. Paperno made a motion to approve the September minutes. Judge Ciparick seconded the motion. The board unanimously approved the minutes.

### **II. Updating ILS Caseload Standards for Criminal Defense Representation (attachment) (Nora Christenson)**

Nora Christenson gave a brief overview of how ILS' current caseload standards for criminal defense representation were developed in 2016. She stated that the current caseload standards are a product of the *Hurrell-Harring* (HH) settlement. Before that, ILS relied on the National Advisory Commission on Criminal Justice Standards and Goals (NAC) standards. These were national standards that were not the result of empirical evidence but based on discussions that were made among providers.

When it was time for ILS to develop standards, ILS wanted to do it in a way that was evidence driven. ILS worked with the HH settlement parties and conducted a caseload study with the RAND Corporation. The caseload study included time tracking in the five settlement counties, a time sufficiency survey, and then the convening of a Delphi panel of experts in the criminal defense field. These criminal defense experts discussed and came to a consensus on what the average amount of time it should take to complete certain case actions for seven case types. ILS was also required to consult with the parties, the counties, and various other stakeholders to ensure that whatever standards ILS was issuing could be fully funded. ILS took all the data and issued ILS' criminal caseload standards in December 2016.

Ms. Christenson shared that a lot of things have happened since then, and ILS has learned a lot in the past seven years of implementation. There is a need to continually evaluate and update the standards. There have been advances in technology, which has impacted the time people spend on cases and changed the practice of law. In 2019, New York enacted significant reforms to criminal case discovery obligations, resulting in a significant amount of information being disclosed to the defense early in the case. Defense attorneys now must spend time to review this information.

Many other jurisdictions have conducted their own caseload studies since 2016. There was also a set of new evidence-driven national standards issued in 2023. It was a product of the National Association for Public Defense, the Rand Corporation, the National Center for State Courts, and an ABA Committee. They had 33 participants in their Delphi panel and went through an iterative process. Another development that occurred was that the ABA has revised their Ten Principles of a Public Defense Delivery System. The third principle says that public defense providers should adhere to local caseload standards that do not exceed the national workload standards.

Last year, ILS worked its Chief Defender Advisory Group to take the first step of mapping the new national standards to ILS' caseload standards. It was difficult because they had different case types. ILS always knew that it needed to update the case-type categories to distinguish homicide representation and other violent felony representation. ILS also knew that it needed to update its appellate case types since the 2016 standards include only two appellate case-types.

ILS has decided this is the right time to update the 2016 caseload standards. ILS had a meeting with the Chief Defender Advisory Group this summer to come up with a plan. ILS will convene two Delphi panels: one for trial-level practice and one for appellate-level practice. ILS has also updated the case types, increasing the number of case types to ten. For each of these case types, the Delphi panels will determine how much time, on average, is needed to provide professionally competent representation. ILS is also conducting a survey of providers to see how the new discovery laws have impacted their time. The survey on the discovery laws closes on December 23. ILS is also in the process of obtaining input for Delphi panel membership. Ms. Christenson says she anticipates the trial-level update will be complete in April, for presentation to the Board in June. For the appellate level standards, they would like to keep it close to that schedule as well but will keep the Board posted.

Ms. Paperno commented that she liked the distinction between Class A felonies and other types of felonies. She asked if there will be weighted caseloads if people are handling both felonies and misdemeanors? Ms. Christenson said they do have a weighted caseload formula in place right now. The formula is that attorneys can be assigned no more than 300 misdemeanor equivalents in one year, and one violent felony is equal to six misdemeanors. Ms. Paperno asked if ILS has thought about hiring a recruitment position since hiring is a problem for many providers. Director Warth said that the New York State Defenders Association (NYSDA) has funding for a recruitment project. ILS' regional coordinators are also working with

providers on recruiting strategies. Ian Harrington in Buffalo is teaching a class at SUNY Buffalo to expose students while they are still in law school. The approach is multi-faceted.

Ms. Bryant, Executive Director of NYSDA, stated that NYSDA hired a Director of Recruitment and Retention, who started on September 23. They had a three-hour meeting with the chief defenders. A lot of providers are not used to the law school hiring schedule. Ms. Bryant said they have many plans for the new funding, and it is an exciting project that will make an impact on the future.

Ms. Atkins asked if internships are paid or unpaid. Ms. Bryant said they are hoping that they can provide something to interns. Even if they are not paid, there may be ways that they can get school credit, a housing stipend, or some other benefit. Ms. Christenson said that most counties are using ILS funding to pay interns, and ILS is urging all counties to do so.

Mr. DeBolt asked if ILS has any idea of what the new caseload standards will be. Ms. Christenson said that they expect it to be closer to the national standards Mr. DeBolt said that the providers will run into space issues if they double the number of attorneys and support staff. There will be issues with recruitment and retention, and they won't know where they are going to put staff. There is a capital component to getting space for staff. It takes 10 years from conception to cutting the ribbon on a new building. Ms. Christenson said they have learned about the space issues, and ILS has a better understanding of how long it takes to get things done. Ms. Christenson said there will be ongoing conversation about these issues. Many counties are still facing space issues right now.

Mr. DeBolt also said that going forward, the providers will need to hire managers and mentors for young attorneys. It takes a long time to develop more senior staff. Director Warth agreed and said there needs to be strong messaging about the implications of the caseload standards. There will need to be an understanding that time is needed to implement updated standards.

### **III. Implementing Public Defense Reforms - Providers' Perspectives Special Guests:**

Director Warth invited three different Chief Defenders to speak to the Board. She asked them to be honest about their successes and the challenges. She invited them to talk to the Board about the additional support that ILS can provide them that would facilitate their efforts.

#### **a. Susan Lettis, Otsego County Public Defender**

Ms. Lettis said she began her position one year ago. Her office has 13 people: three full-time criminal defenders, three part-time criminal attorneys, three family court attorneys, one administrator, one data specialist, and some support staff. It is a large staff for a relatively rural county. Their county did not take full advantage of the state funding available at first. It took time and effort to create positions and recruit. The county board is now very supportive of the Public Defender Office department, which is in part due to the support of ILS. These positions

would not exist if not for state funding. One of the challenges is that the defenders wear many different hats. Attorneys carry a caseload and must do administrative tasks. Ms. Lettis said that the work is fun, and she has gotten a lot of support from her contact at ILS, Kathryn Murray. They have been able to make modifications of ILS grants so that it works better for their office. They have used state funding to hire private investigators, social workers, and other assistance. They hope to do more of that in the future.

Ms. Lettis said that they been lucky with hiring. They were able to fill attorney positions quickly. They have competitive salaries compared to other parts of the state. Recruitment took time and effort, but they are fully staffed now. With the new 2nd HH Statewide contracts, reimbursements are a little bit easier. Ms. Lettis recently reported to the office's parent committee that their revenue line and budget line was where they expected it to be. Ms. Lettis' office also created internships. They had three interns in the last year, two of whom said that they wanted to return. Their interns have been able to obtain a practice order, allowing them to go to court and practice as an attorney.

Ms. Lettis said that with ILS funding, they were able to have Gideon's Promise conduct a training. It was a training for the whole office to create a vision and a mission statement. It is clear now why this is important. They were able to think about what they are doing and why they are doing it. Everybody has an important role to play. Director Warth explained that she appreciated Ms. Lettis' creativity in re-purposing unspent money from a previous contract for the training. Ms. Paperno said that Ms. Lettis has done great work, considering she has only been in the position for one year.

#### **b. Andy Correia, Wayne County Public Defender**

Mr. Correia said that Wayne County has a population of 93,000 people. There are no cities, and the area is largely agriculture. There are 18 Town and Village Courts and three County Court judges that handle criminal, family, and surrogate court matters. They have about 2,000 criminal cases a year. There are about 20-24 positions in the office now, including a constant rotation of social worker interns. Mr. Correia said they are squeezed into their renovated office space and are fully staffed, though it has been a herculean effort to be fully staffed.

Mr. Correia described the accomplishments of the office by summarizing "what has the funding done?" They have added staffing and raised the pay grades and salaries for positions in the office. It took protracted political negotiations with the county to raise salaries. They are now competitive in their region. They have a mitigation team, composed of a social worker, social work assistant, and their first assistant. The first assistant in their office is a JD/MSW. They have full-time investigators, and the investigators communicated the tools that they needed. Mr. Correia said that they will have generation of lawyers on staff who will never know what it is like to go without an expert. They have money to send staff to national trainings. They can pay for organizational memberships for any staff.

Mr. Correia said that there has been an absolute revolution in how they handle appellate practice. Their first assistant has provided new information about the work associated with appeals. They have money to outsource some appellate work as well.

Mr. Correia shared two stories with the Board. In 1995, a 17-year-old young woman was charged with a misdemeanor for endangering the welfare of a child. She was supposed to keep an eye on her seven-year-old nephew. She went into court without a lawyer, and the judge accepted a guilty plea on the misdemeanor. She was sentenced with a fine. Though the court was legally required to adjudicate her a youthful offender, which would have vacated and sealed the conviction, because she was not represented by a lawyer, this was not discussed or granted. Nearly 29 years later, as a 46-year-old woman, she lost two jobs because of the outstanding conviction, and a business start-up loan was denied. When she contacted the Public Defender's Office for help, the office was able to chase down the records of the court. Mr. Correia was able to coordinate with the District Attorney to get the matter before a judge, who agreed to vacate the original conviction, dismiss the case, and seal the records.

Mr. Correia said that what happened to this woman in 1995 would never happen today, and that this case illustrates that now, thanks to ILS funding, public defenders are in the room, and there is counsel at first appearance. Judges and clerks know better, and judges will not accept guilty pleas from a person who is not represented by counsel. Ignoring youthful offender status would never happen now.

Mr. Correia shared a second story. In 2011, Chief Judge Lippman announced that as Chair of the ILS Board, he was ensuring that the newly created ILS Office would make funding available for Counsel at First Appearance (CAFA). Using this funding, the Wayne County Public Defender Office started CAFA in 2016 in about six of the 18 justice courts. In 2019, the county created a Centralized Arraignment Part, which creates regular and knowable arraignment sessions at the Wayne County Jail two times per day. In 2021, there was a problem. People were being marooned at the Wayne County jail. The office was getting about 80% of defendants released, but they didn't have transportation to go home and there was no public transportation available. The office worked with the County Department of Social Services and the Aging and Youth Department. They decided to use a ride sharing program called Go Go Grandparents. They were able to sign a contract for under \$5,000 using ILS funding. This helped to provide a service to clients who did not have their own transportation. This solution addressed an obvious problem. But even this small solution, with everyone supporting it, took three years to implement.

Mr. Correia also discussed whether their office has the independence called for by professional standards. The answer is sort of. There is an illusion of independence or constructed independence that requires a good working relationship with the county. Previous public defenders have earned the county's respect, and as a result, have used ILS funding effectively. This year, half of the County's board of supervisors turned over. Mr. Correia has had to return to the drawing board to educate them about ILS funding.

Mr. Correia also noted that managing the funding takes work, and recommended that information be provided more systematically to public defenders on how to structure a budget, how to be a fiscal good manager, etc.

Mr. Correia finished by saying that he thinks a lot about whether it is possible to meet the goals of quality public defense improvement in a county-based system.

### **c. Mark Funk, Monroe County Assigned Counsel Program**

Director Warth introduced Mark Funk, the Monroe County Assigned Counsel Program Administrator. Mr. Funk used to head the Conflict Defender Office that oversaw the Assigned Counsel Program (ACP). Mr. Funk shared that the Public Defender's Office works cooperatively with the ACP. The ACP took on some cases from the Public Defender's Office to ensure that the Public Defender Office had manageable caseloads. The ACP took about 25 of these "caseload overflow" cases a month from them. *Hurrell-Harring* funding has allowed the Conflict Defender Office to be the primary representative in Rochester City Court, which was a huge change. This also allowed the Public Defender's Office to achieve compliance with ILS caseload standards. The other huge change was the split of the Conflict Defender and ACP. For 6.5 years, Mr. Funk did both jobs. That prevented the ACP from doing new initiatives. In the last year and a half, the office has been able to focus exclusively on the ACP. Sarah Holt is the current Conflict Defender. They work cooperatively together to implement reforms to benefit their clients.

The ACP is doing many things to implement reforms, including:

- They utilize a resource attorney, who provides resources to panel attorneys and creates a more manageable work distribution within the ACP.
- They have filled a training and mentorship position. They have 100 years of criminal defense experience among the three attorneys.
- They moved into a new space in March. They have meeting rooms for attorneys to meet with clients. They have TVs so attorneys can put videos disclosed through discovery on the screen.
- They implemented a second chair program for cases homicide cases and other case types that could result in a life sentence. Two attorneys are involved. They are trying to get younger attorneys to handle second chairing.
- They are case conferencing cases with attorneys. The Supreme and County Clerk offices provide a calendar of upcoming trials. They reach out to attorneys who have upcoming trials to prepare for them. They have had complete acquittals in half of the cases.
- They have implemented Westlaw for all panel attorneys.
- A big project they have worked on is updating the website. The goal is for the website to be a one stop shop for everything that the attorneys need.
- They are working on a Giglio database (information that goes to the credibility of law enforcement witnesses) using the information the DA's Office is required to disclose

pursuant to two US Supreme Court decisions, Giglio (impeachment evidence) and Brady (exculpatory evidence), and they are compiling their own information as well.

Mr. Funk said one of the biggest challenges is that not all panel attorneys consistently listen to the ACP Administrator. The Administrator has no authority over them. Mr. Funk is trying to change the culture of the ACP. They want the attorneys to hire experts, make them aware of the different services that are available to them. They send out post cards to the panel attorneys to remind them of the trial that is coming up. They are also trying to utilize social media in a smart way.

Mr. Funk said that the Family Court attorneys are shut out of these reforms, and therefore feel neglected. At the first annual meeting of the panel, they only spent five minutes on Family Court. They try to have regular communication with the attorneys. They are also organizing monthly happy hours to get folks together.

Mr. Funk said many improvements are needed in Family Court. In 12% of proceedings where children are removed, the parents are not represented in court. Only 50% are reunited with their parents. There have been many reports on how bad the Family Court is. The Chief Defenders Association of New York (CDANY) estimated that \$220 million of State funding is needed to implement reforms in Family Court. Only \$19.5 million was received in this current year state budget. The Monroe County Public Defender's Office was one of the first to get an ILS family defense grant. With that funding, they are able to represent clients and litigate cases and to have fact finding hearings. That was unheard of prior to the grant. The Conflict Defender has been awarded ILS Family Court funding as well to hire one attorney and one social worker for Family Court. They are litigating cases, which was not possible without ILS funding. Hopefully the Governor and Legislature will give more money for parental representation.

Ms. Paperno asked ILS if there is a way to share this information from these three speakers with different counties. She said that ideas such as providing transportation to clients, conducting the training from Gideon's Promise, etc. should be shared widely. Ms. Christenson said that they will make this information more easily accessible to others and they are working on that.

Chief Judge Wilson said that the Legislature has given more Family Court judges, but that is insufficient if they do not have sufficient lawyers. Family Court needs a change in culture. Judges will give a party one hour to provide testimony, and then the matter is adjourned for a month. The trials can go on for a year, and there are only six hours of testimony total.

#### **IV. ILS Office Updates (Burton Phillips)**

Mr. Phillips discussed ILS Office staff updates. ILS has two new staff members: Julia Shaw, Special Assistant for Mitigation with the Statewide Appellate Support Center, and a new attorney with the Statewide Appellate Support Center joining in January. They have also made an offer to someone for the Assistant Counsel position in the Family Representation Unit. There

are also two other positions with offers accepted that are making their way through the approval process. One is a Grants Administrator position, and the other position is a Criminal Defense Representation Counsel who will be on Ms. Christenson's team.

ILS will be posting for new attorney positions, one in the Statewide Appellate Support Center and one in the Western New York Regional Support Center. There are also three new Grants Unit positions that will be posted.

## **V. Adjourn**

The schedule of ILS Board Meetings for 2025:

- April 4<sup>th</sup>\*\*
- June 13<sup>th</sup>
- September 19<sup>th</sup>
- December 12<sup>th</sup>

All meetings will take place at 11:00 am at the New York City Bar Association.

Chief Judge Wilson adjourned the meeting at 12:27 pm.

\*\*Note: this date has subsequently been changed to April 2, 2025