

Minutes for the Indigent Legal Services Board Meeting

April 24, 2020

11 A.M.

Virtual Meeting by WebEx

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

ILS Office Presenters: Bill Leahy, Patricia Warth

Minutes taken by: Mindy Jeng

I. Chief Judge's Remarks

The Chief Judge stated that it has been an extraordinary time, and she hopes everyone's families are well. She has seen how ILS has remain focused and disciplined. Since the coronavirus crisis, she has witnessed goodness and selfless service that has been inspiring, humbling, and reaffirming. Bill and his staff have been wonderful models of service (see the Chief Judge's remarks attached).

II. Approval of Minutes of December 6, 2019

A motion was made to approve the minutes and seconded. The board unanimously approved the December 6, 2019 minutes.

III. Ongoing ILS Work

Bill Leahy stated that ILS sees opportunities amid the crisis, and he is proud of the remarkable work of the staff during difficult times. Prior to the meeting, he circulated a document detailing the work that ILS has been and continues to perform (see attachment).

Patricia Warth reported on the following:

- i) ILS required reports – On April 4, 2020, the Hurrell-Harring Settlement team (“HH settlement team”) submitted a report on compliance with the Eligibility Standards in the settlement counties, and on April 30th, the HH Team will submit a report on caseload standard compliance. The Hurrell-Harring Statewide team (“HH statewide team”) has a series of reports due starting in June 2020. Patricia also noted that ILS has extended to June 1st the county/provider reporting deadlines (i.e., Annual Financial report, ILS-195 report, and Performance Measure Progress report).
- ii) Grants Unit fiscal work – Continuing to timely process claims for reimbursement is a vital service to our counties. Though it is a paper intensive process, the Grants Unit has successfully transitioned to remote work with occasional trips to the office as needed.

March was a banner month in terms of claims processed (\$9.3 million in claims), and April is on target to do the same. The Grants Unit is also working with counties to process budget amendments where needed to accommodate Covid-19-related changes in spending (such as purchases of technology for remote work and virtual court appearances).

- lii) Contracts - ILS recently announced the six awardees for the Second Regional Immigration Assistance Center (RIAC) grants. ILS received top notch proposals, and they are looking forward to working with the six awardees. In the FY 2020-21 state budget, OCA sub-allocated to ILS \$47 million dollars in caseload relief funding for the trial level providers in New York City. ILS coordinated with these providers, OSC, and DOB to ensure that a contract for this sub-allocation was delivered to NYC on April 16th, the day after the April 15th budget enactment. Finally, ILS has also received authorization to issue a renewed contract for the 4 HH settlement counties that received the 1st Counsel at Fit Appearance (CAFA) competitive grant. This renewed contract is funded via the HH settlement and ensures continuity of the programs necessary for settlement compliance.

Patricia noted there are 2 grants the Board has approved – a 3rd CAFA grant and a 3rd Upstate Caseload Reduction and Quality Improvement grant. For each of these grants, there are 5-6 counties that need renewed funding this year. ILS is consulting with the Division of Budget (DOB) to try to continue the funding for the programs funded by these grants, particularly for those counties that are in dire need of renewed funding year. Finally, the RFP for a Regional Assigned Counsel grant that ILS was hoping to send out this spring has been put on hold for the time being.

Patricia emphasized that Jen Colvin and the Grants Unit deserve a shout out for the tremendous work they are doing, despite still being understaffed.

- iii) HH Statewide implementation – The HH Statewide team continues to work with the counties on developing Year 2 budgets, conducting meetings by phone and WebEx.
- iv) ILS staffing – Patricia noted that ILS currently has 30 staff members, and recently received approval to hire an additional person for the HH settlement team (he starts June 1st). This leaves 9 open positions. ILS has extended offers to 2 people for the HH statewide team research data officer positions. Their hiring paperwork is pending with the state. ILS started hiring a Grants Unit position, but this process has been put on hold for the time being.

Bill had the following additional points to contribute. With respect to the HH team, it has now been five years that the counties started to implement reforms. We have learned lessons that will guide our statewide implementation.

Bill continued that the Parental Representation Unit (Angela Burton and Lucy) are working to guide providers through the crisis. They are providing updates and tips for effective virtual court advocacy. They are effectively utilizing listservs and staying in communication with numerous organizations.

Bill stated that the “pause” gives us a chance to step back and assess what can be next to build momentum for reforming Parental Defense and to assess what this reform should look like. ILS is taking advantage of this opportunity to do some long-range planning.

Bill also praised Melissa Mackey’s effectiveness in her role as Director of Research, noting that in directing all ILS’s research capacity she has been inclusive, open-minded, flexible, and communicative. Under her leadership, the researchers are contributing to all aspects of ILS work.

Matt Alpern, Director of Quality Improvement, Trial level, is spreading his forensic expertise and knowledge. He is filling in on the HH statewide team and has been an invaluable team member. Cindy Feathers, Director of Quality Improvement, Appeals and Post-Conviction, is providing a great service in disseminating the decisions of interest and sharing information about covid-19 priority work.

A board member expressed that she was proud of the work that ILS has been able to accomplish amidst the pandemic.

Another board member asked Bill for his thoughts on why there is a lack of support for parental representation. Bill recalled a planning meeting that Judge Marks held before the Advisory Committee on Parental Representation was convened. At this meeting, Judge Marks noted that *Gideon* captured the public’s attention regarding criminal defense. For parental defense, there is no *Gideon*-like case that has grabbed the imagination in the same way. Parental representation was not part of the Kaye Commission; nor was parental representation part of the HH lawsuit and settlement that broke open the path to public criminal defense reform in New York. But the ILS mandate includes parental representation, and ILS will persist in working to improve the quality of mandated parental defense, capitalizing on the relationships we have built and building new bridges to reform.

IV. Report and Discussion of FY 2020-2021 State Budget

Bill Leahy stated that were it not for the covid-19 crisis, the FY 2020-21 enacted budget would be straightforward. It added the \$50 million in year 3 for HH statewide implementation. The State Operations budget allows for a 2% salary increase and 2 additional staff positions. The only disappointment is that the additional \$5 million in Aid to Localities for parental representation was not added in.

But 2 weeks before budget was finalized – the crisis hit. Bill referenced a quote he had heard in describing the State budget – i.e., it is written in pencil, not pen. The budget gives the Budget Director unprecedented authority (with some legislative oversight) to make

adjustments/reductions if there is a fund imbalance during any one of 3 measurement periods: one ends next week, one ends in June, one is at the end of the calendar year. In the meantime, Governor Cuomo is advocating for federal intervention (in the form of a multi-billion-dollar support package for state and local governments) to prevent/diminish the need for deep state budget cuts.

All the work that ILS is doing would not be possible without OCA and the Executive branch, as well as the support of the Legislature and the close ties with defense community. Bill noted that while major political decisions may be out of our control, what ILS can control is moving forward.

Bill said that we will respectfully pause due to the coronavirus health concerns, but we will not lose direction and we won't stop working. Hiring is on pause. There is uncertainty regarding the percentage cuts that may be coming. ILS does not have all the answers. But we will be flexible, responsive and as effective as possible.

A board member agreed with Bill's statement that we can't quit, and we can't bet that we are going to get it all. ILS can be ready and able to respond to what comes next without losing focus on our mission.

A board member asked Bill if he had any updates on federal money (via Title IV-E) for parental representation, including ancillary services. Bill shared that parental representation has some heroes in Washington whose influence has resulted in the availability of federal Title IV-E funding to support parental representation, and not just for attorney costs but also for ancillary costs including social work support. ILS and OCA have been communicating with state Office of Children and Family Services (OCFS). A board member asked if ILS knows when these funds will be available to NY. Bill said OCA was in regular communication with OCFS before the coronavirus; this has been put on pause. Currently, it's not possible to predict when the funds will materialize.

Bill commented on the fact that the ILS contract for the OCA \$47 million sub-allocation was sent to NYC immediately after the budget was passed. He noted that ILS made this a priority in response to the concerns of NYC providers, and that we are grateful to DOB and OSC for working with us to make this happen. But most importantly, he appreciates the fact that the NYC providers thanked ILS for this effort. In this time of crisis, expressions of gratitude for extraordinary effort are particularly important.

A board member thanked Bill and his staff for their extraordinary work on behalf of the board.

V. Next Meeting - June 5, 2020

A motion was made to adjourn and seconded. The board meeting was adjourned to June 5.

Indigent Legal Services Board

Meeting – April 24, 2020

Welcome

Welcome to this virtual meeting of the ILS Board. We are living through a very serious pandemic, unlike anything we've seen in more than a century. And while there are hopeful signs that the worst of the health crisis may be easing,-- we know that there are many challenges ahead of us, including what is certain to be a very serious economic and fiscal crisis that is going to make the work and the mission of our justice system,-- and the ILS Office,-- more difficult,-- yet more important,-- than ever before.

Virtual Court System: Balancing Access to Justice with Public Health

New York has been at the epicenter of this pandemic, and when the virus began to spread rapidly in March, our court system pivoted quickly to keep our courts up and running. We created a virtual statewide court system that is temporarily delivering justice services through remote technology in order to contain the spread of the virus,

and safeguard the health of our judges, professional staff, lawyers, litigants and the general public.

Contributions of Judges, Staff and Public Defense Stakeholders

We are grateful to the judges, professional staff and many different stakeholders whose support and contributions have made it possible for us to implement virtual court operations, including:--

- Our leadership team of Administrative and Supervising Judges, and our technology staff, who worked around the clock to put together the framework for a virtual court system in record time,-- starting first with virtual arraignments in the New York City Criminal Court on March 25th,-- followed the next day by virtual hearing of emergency and essential matters in the New York City Family Court.
- Our trial judges and professional staff who have enthusiastically embraced our virtual court model and hit the ground running last week,-- conferencing over 15,000 cases in

just two weeks,-- settling almost a third of those cases in just the first two weeks,-- and issuing about 3,000 written decisions on motions and other undecided matters.

- Our skeleton crew of Court Officers, Court Clerks and other staff, who continue to report to our courthouses each day and put their health on the line in order to support our virtual operations:-- processing critical paperwork, troubleshooting technology and providing essential security.

Contributions of our Public Defense Providers and Stakeholders

And we are grateful, of course, to the mandated legal service providers in the criminal justice and family justice arenas. These dedicated lawyers are the first responders of our justice system,-- and they have been working hard, under very difficult circumstances, to represent their clients and carry out their mission and in the middle of this pandemic.

We are grateful for their patience and understanding. Our transition to a virtual court model would not have been possible without their cooperation and support. They have worked with us to

modify their policies and protocols, especially on the operational side, because they understand that this is what needs to be done,-- on a temporary basis,-- for the health and safety of the public at large,-- and for the health and safety of the many different individuals and agency personnel who typically appear in these court proceedings.

Contributions of Bill Leahy and ILS

And, of course, I could not rightly start this meeting without acknowledging the efforts of Bill Leahy and his terrific staff. They have been working to support our mandated service providers and local governments throughout the crisis.

Working from home, navigating a paper-intensive process, ILS has managed to issue record-high state funding reimbursement to counties for the months of March and April. This funding comes at a critical time, when many county finances are in shambles.

ILS has also been working closely with the court system to support struggling 18-B attorneys, by adopting interim billing procedures and streamlining the review of assigned counsel vouchers.

Bill and staff have also been meeting regularly with the State Association of Counties;... the provider community;... and county and

city governments,-- to get out ahead of the economic fallout of COVID-19 and prepare for the impact it will have on state and local budgets.

And, of course, Bill has been out there with just the right message, which is:-- we're all in this together, and we must work collaboratively and more efficiently than ever before to preserve the continuity of mandated representation and the progress we have made together in our state.

Thank you, Bill, for your leadership, and for all the good work that you and your staff are doing to sustain a criminal and parental defense system of which we can all be proud.

And, now, I'll turn it over to you.

**ILS Board Meeting
April 24, 2020
Ongoing ILS Work**

A. County reporting requirements

ILS extended the following county/provider reporting deadlines to June 1, 2020:

- County Law § 722-f (2), Annual Financial report
- County Law § 722-f (1), ILS-195 report (formerly USC-195 report)
- Performance Measures Progress report (required per HH Statewide contracts)

B. Reports ILS completed or will complete

1) HH Settlement

- April 4th - The HH Settlement Team submitted to the parties a report on implementation of the *Eligibility Standards*
- April 30th - The HH Settlement Team will submit to the parties a report on 2019 caseload standard compliance for the five settlement counties (the report will show that the counties were in compliance for 2019)
- October 2020 – report due on effectiveness of caseload standard implementation in improving the quality of representation in the five counties

2) HH Statewide Team

- July 1, 2020 - Performance Measure Progress report
 - Original deadline of May 31, 2020 extended due to provider deadline for their reports being extended to June 1st.
- July 31, 2020 - Quality Improvement Update report
- Sept. 30, 2020 - Counsel at First Appearance Update report
- October 31, 2020 - Caseload Update report
 - Completion of this report is contingent on ILS obtaining the ILS-195 and the Annual Financial reports from the counties.

3) Parental Defense

- Family Court Workload Standards report - At the last Board meeting, Research Director Melissa Mackey described the workload study being done in conjunction with the Welfare Research Institute (WRI). Since, ILS has received data from OCA about family court cases. Having analyzed the OCA data, the research team is using it along with the workload study data to develop a preliminary petition-based weighting system and proposed standards.
- Family Court Eligibility Standards - ILS compiled the information from the hearings conducted in 2019 and Angela has presented the draft Standards to the Parental Representation Commission for comment.

C. ILS Funding – Contract Status

The following are contracts for which DOB has approved funding (i.e., approved the B1184):

- 1) Model Family Representation Office
 - Westchester County was awarded the grant; the county is subcontracting with Legal Services of the Hudson Valley to operate the Model Family Representation Office. The contract was sent to the County on March 13th. ILS is awaiting a signed contract from the County.
- 2) Regional Immigration Assistance Center (RIAC) - 2nd RFP
 - 8 counties applied for 6 regions, 2 in Region 1 (WNY), and 2 in Region 3 (Capital region). All strong applications
 - ILS to notify successful and unsuccessful applicants the week of April 20th
- 3) OCA Sub-allocation contract (NYC caseload relief)
 - Before the budget was passed, ILS obtained DOB and OSC approval to issue a single-source, 3-year contract; we also worked with the 6 NYC trial level providers to finalize budget and workplans. Thus, we sent a contract to NYC on April 16 – the first day after the budget with the sub-allocation was signed into law.
- 4) Distribution 10
 - At its Sept. 2019 meeting, the Board authorized issuance of Dist. 10; in November 2019, ILS sent the solicitation email to the counties.
 - Thus far, we have received 30 proposals and sent out 25 contracts.
- 5) CAFA Continuation Contracts for four HH Settlement counties
 - Funded by the Settlement, these single-source contracts continue the funding that 4 Settlement counties received for arraignment representation via the First Counsel at First Appearance (CAFA) competitive grant. The contract term of the first “CAFA Continuation” contract expired on December 2019.
 - Schuyler’s contract is complete and will be sent the week of April 20th; Schuyler was prioritized because it was the only county that had fully spent out the 1st CAFA Continuation contract. The HH Team is working with the 3 remaining counties to finalize budgets and workplans.

Contracts for which ILS does not yet have DOB approval (i.e. no approved B1184):

- 6) 3rd Counsel at First Appearance grant (CAFA 3)

- The original term of the CAFA 2 contract ended Dec. 31, 2019. At its Sept. 2019 meeting, the Board approved issuing a CAFA 3 contract.
 - 30 counties have CAFA 2 contracts, for a 3 year total of \$17.2 million; there is a total of \$10.4 million remaining.
 - 3 counties have fully spent out the CAFA 2 grant; 3 more are on pace to spend out by the 1st or 2nd quarter of this year.
- 7) 3rd Upstate Caseload Reduction and Quality Improvement grant (Upstate 3)
- The original term of the Upstate 2 contract ends June 30, 2020.
 - 37 counties have contracts; of the 3-year statewide total of \$11.4 million, \$8.6 is remaining.
 - 5 counties are on pace to fully spend out the contracts this year.
- 8) Regional Assigned Counsel Program RFP
- Approved by the Board in September 2019; intended for proposal solicitation in spring/summer 2020.
 - On hold due to fiscal crisis

An HH Settlement contract:

- 9) HH Settlement Caseload Relief II contract
- This is the next HH settlement contract with an original term soon to expire (May 31, 2020). But because it took time for the counties to fully hire, all the counties continue to have enough funding to extend the contract. ILS is obtaining DOB approval to extend the contracts another year.

D. Statewide Team – Year 2 contract amendments

- Statewide Team continues to meet (virtually) with counties to develop Year 2 budgets and workplans, which are implemented in each county via a budget amendment (AG and OSC approval not required)
- Eleven (11) Year 2 amendments have been sent to counties; 2 will be sent soon.

E. ILS Grants Unit Work and Coronavirus-Related Priorities

Despite the challenges of working remotely given the paper-intensive nature of their work, under Jenn Colvin’s leadership, the Grants Unit is taking steps to continue/expedite cash flow for the counties and NYC by focusing on:

- *Claims:* During March 2020, the Grants Unit processed \$9.38 million in claims, far surpassing previous monthly totals. The Grants Unit continues to process claims in a timely manner (for example, last week’s total was over \$2 million). 4/22 update: This week, through Wednesday, we have processed another \$3.9 million in claims.
- *Contracts:* See above. The Grants Unit is seeking to ensure that contract proposals are processed as soon as possible.

- *Budget Amendments:* Several counties have had to adjust spending to accommodate the Coronavirus crisis. The Grants Unit is working with the counties to identify expenditure lines on which they can claim unanticipated expenses; if one does not exist, we work with the counties to process budget amendment requests quickly.

Other ILS Work

1) Cindy Feathers

- Continuing the weekly “Decisions of Interest”
- Working closely with the ILS Appellate Council to identify and address issues resulting from limitations on court activity and to offer support to providers statewide seeking release of medically vulnerable incarcerated people
- Working with the Domestic Violence Survivors Justice Act (DVSJA) Task Force on implementation of the DVSJA
- Member of the recently created NYSBA Covid-19 Recovery Task Force

2) Matt Alpern

- Working with the Statewide Team until Amanda Oren can be replaced
- Planning a virtual meeting with the Forensic Practice Workgroup he created earlier this year and assisting specific providers and counties with forensic resources and assigned counsel mentoring
- Though on hold for now, continuing to work on Regional Assigned Counsel Program RFP
- Continuing to consult with providers on complex cases

3) Angela Burton and Lucy McCarthy

- On March 10, Angela presented at Families Together NYS, Family Empowerment Day, and on March 12-13, she attended the Federal Children’s Bureau State Team Planning Meeting in Washington D.C. with representatives from OCA, OCFS and attorney for the child
- Working with ILS research team on workload study
- Using listserv to distribute Covid-19-related information for Family Court attorneys, as well as updates and information about the recently enacted amendments to the State Central Registry (SCR);
- Worked with Jan Fink and Judge Mendelson to assure access to the courts for parents during the coronavirus crisis; collaborating with Casey Family Program representatives on tip sheet/practice guide for attorneys to analyze safety issues in support of parents and children maintaining contact during pandemic
- Note: the April 24-25 Families Matter Conference had to be postponed; ILS is hoping to re-schedule in October/November 2020

4) Nora Christenson – RTA Liaison

- Continuing to use the ILS-supported listserv to disseminate Raise the Age (RTA) information, particularly related to advocacy in the context of the Coronavirus crisis.

5) Joanne Macri - RIAC

- Continuing to provide oversight and support to the six Regional Immigration Assistance Centers, with a focus on Coronavirus-related information.

Regional Support Center (RSC)

- DOB had previously authorized ILS to implement the first RSC in the 8th Judicial District; ILS has been working with OGS on the steps needed to transfer funds from Aid to Localities budget to State Operations
- Implementation is currently delayed due to the uncertain fiscal situation

ILS Staffing/Hiring Updates

ILS's Approved FY 2020-21 State Operations Budget allows for a total of 38 staff. In addition, DOB had previously authorized a funding transfer for two Research Data Officers. This is a total of 40 ILS positions.

Updates on hiring:

- In January 2020, two new attorneys started with the Statewide Team – Claire Knittel (Caseload Relief), and Kathryn Murray (NYC); additionally, Hannah Andrews started with the Grants Unit as a new Grants Administrator.
- In February 2020, Karlijn Kuijpers started as Senior Researcher for the HH Statewide Unit.
- In March, Alyssa Clark (former Student Intern) officially started as HH Settlement Unit Senior Researcher (replacing Melissa Mackey who was promoted to Research Director).
- On April 13th, Jennifer Chenu began her employment as HH Settlement Unit Caseload Relief Attorney (replacing Nora Christenson, who was promoted to HH Settlement Unit Chief).
- Jami Blair has been appointed ILS Assistant Counsel, which leaves his position as HH Settlement Unit Quality Improvement Attorney open. (Note: Until the HH Settlement Unit is better staffed, Jami's priority will continue to be HH Settlement work, though when possible, he will assume some Assistant Counsel work.)

Since these hires, we have been informed that there is a current hold on DOB giving final approval for new hires ("DOB waiver"); BDAs are continuing to be processed to this last step. For ILS this means as follows:

- The following 3 people were offered and accepted positions with ILS; they are in the BDA process, but it is unknown when they will receive the final DOB waiver:

- Nick Watson, Data Scientist
- Reilly Weinstein, Data Outreach Officer
- Brendan Keller, HH Settlement Unit, CAFA Attorney (to replace Deb Schneer who resigned Jan. 31, 2020). 4/22 update: this BDA has received final approval and Attorney Keller will begin employment soon
- The Grants Unit posted the position for Assistant Grants Manager 2 (to replace Ron Foster, who resigned in October 2019), and had selected 5 applicants to interview. Interviews for this position have been postponed.

In addition to the above, the following positions are open:

Grants Unit: Assistant Grants Manager 2; Assistant Grants Manager 1; Grants Administrator (all 3 of these are new positions that were not previously filled).

Statewide Team: Quality Improvement Attorney (to replace Amanda Oren)

Settlement Team: Quality Improvement Attorney (to replace Jami Blair, who is transitioning to Assistant Counsel)

ILS Office: Assistant Executive Assistant (this is a new position that has not yet been filled)