

INDIGENT LEGAL SERVICES BOARD

AGENDA

**September 25, 2015
Association of the Bar of the City of New York**

- I. Opening Remarks by the Chief Judge**
- II. Approval of Minutes from June 19, 2015 Board Meeting**
- III. Allocation of FY 2015-2016 Aid to Localities Appropriation
(See Memorandum)**
- IV. Budget Request for FY 2016-2017 (See Memorandum and Chart)**
- V. Status of *Hurrell-Harring* Settlement Implementation (with Patricia Warth)**
- VI. Nomination of Office of Indigent Legal Services Director**
- VII. Remaining 2015 Board Meeting**
 - Friday, November 6
- VIII. Concluding Remarks**

Minutes for ILS Board Meeting

June 19, 2015

11:00 A.M.

Association of the Bar of the City of New York

Board Members Present: Chief Judge Lippman, Mike Breslin (via conference call), Sheila DiTullio (via conference call), Vince Doyle (via conference call), John Dunne, Joe Mareane, Lenny Noisette and Sue Sovie

ILS Office Attendee(s): Bill Leahy, Joseph Wierschem and Angela Burton

I. Opening Remarks by the Chief Judge

The Chief Judge welcomed and thanked all for attending.

II. Approval of Minutes from the April 10, 2015 Board Meeting

The Chief Judge inquired whether the board members had received copies of the minutes from the prior meeting. The board members acknowledged that they had in fact received the minutes. The Chief then asked the Board to vote to approve the minutes.

John Dunne moved to approve the minutes; his motion was seconded by Joe Mareane and unanimously approved by the board members in attendance.

III. Preview of Proposed *New York State Office of Indigent Legal Services Parental Representation Standards and Best Practices*

Angela Burton, Director of Quality Enhancement for Parental Representation, provided an update on the progress of *ILS Standards and Best Practices for Parental Representation*. She began with a brief history of her working group which was formed in the summer of 2013. It is comprised of 20 NYS practitioners, including both attorneys and social workers. Ms. Burton stated that the members of her group share a "family-centric" approach. The group used the American Bar standards as their basic template. In fact, Ms. Burton's working group includes members that were part of the committee that devised the American Bar standards.

Ms. Burton explained that the large working group was divided into 6 subcommittees (she was a part of each). In December 2014, each subcommittee provided a draft for its assigned subject matter. The individual drafts are now being edited into one concise document by a committee of 7 and she was proud to report that they are "90% there." She provided a draft Table of Contents for review and in a basic

overview she identified the 4 pillars of the standards as:

- client-centered representation;
- early engagement of representation;
- multi-disciplinary practice with an holistic approach; and
- zealous advocacy with proactive litigation

It was highlighted that the ABA standards include pre-petition representation during the investigatory stage. Susan Sovie pointed out that such early involvement might help avoid court intervention because parents (without appropriate representation) do not generally cooperate with investigators.

Angela advised that examples of earlier involvement exist in other jurisdictions, such as Vermont and Washington, D.C. The Department of Social Services in D.C. issued a Request for Proposals for legal services providers to represent parents at the investigatory phase. This would give parents the opportunity to engage services that help them avoid removal.

Bill added that Angela has had a lot of contact with Family Court judges. He also said that a comprehensive draft would be provided to the board in the early fall.

John Dunne inquired about how the standards will be implemented. Bill advised that they would provide a basic plan when the comprehensive draft is reviewed at the fall meeting.

Angela made special mention that Sue Sovie has been available and helpful throughout the process. The Chief Judge thanked Sue for her assistance.

IV. Status of *Hurrell-Harring* Settlement Implementation

Bill advised that he would provide a written update via memorandum to the members regarding the status of the Hurrell-Harring implementation, including the hiring of the soon-to-be announced Chief Implementation Attorney.

V. Schedule of Remaining 2015 Board Meetings

- Friday, September 25
- Friday, November 6

The ILS Fact Sheet prepared by Joe Wierschem was distributed. It included the usual summary of the "Level Funding for Counties." In addition, it outlined developments with the Competitive Grants authorized by the board in furtherance of: counsel at first appearance, upstate quality improvement and caseload reduction, immigration regional resource centers, assigned counsel infrastructure program,

wrongful conviction prevention center and upstate parental representation office. And, finally, it summarized the current status of quality enhancement non-competitive distributions #1 through #5.

VI. Executive Session

The Chief Judge moved for the meeting to go into Executive Session; his motion was seconded by John Dunne and unanimously approved by the remaining board members.

At the conclusion of the executive session, John Dunne reported that no action had been taken.

The Chief Judge thanked everyone for attending.

The meeting was adjourned.



Andrew M. Cuomo
Governor

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William J. Leahy
Director

Joseph F. Wierschem
Counsel

Improving the Quality of Mandated Representation Throughout the State of New York

To: Indigent Legal Services Board

From: Bill Leahy

Re: Allocation of ILS FY 2015-16 Aid to Localities Appropriation (\$84 million)

Date: September 23, 2015

Matthew Alpern
Director of Quality
Enhancement,
Criminal Trials

Peter W. Avery
Manager of
Information Services

Angela Burton
Director of Quality
Enhancement, Parent
Representation

Andrew Davies
Director of Research

Tammeka Freeman
Executive Assistant

Risa Gerson
Director of Quality
Enhancement,
Appellate and Post-
Conviction Litigation

Karen Jackuback
Grants Manager

Joanne Macri
Director of Regional
Initiatives

At each of its previous September meetings, the Board has allocated the entirety of the ILS Aid to Localities appropriation for the fiscal year, thereby enabling the Office to (1) develop grants and distributions as authorized by the Board and (2) describe to providers, county and state officials the precise purposes for which the appropriated funds will be spent.

In similar fashion and for the same reasons, I propose that the ILS FY 2015-16 Aid to Localities appropriation of \$84 million be allocated for the following purposes:

1. **Statutory Distribution.** The statutory distribution of \$40,000,000 to New York City, as mandated by State Finance Law § 98-b (3) (b). As noted at the September 26, 2014 Board meeting, the final statutory payment to upstate counties was made in March, 2014; beginning in FY 2014-15, in accordance with the phase-out provisions of State Finance Law § 98-b (3) (c), upstate counties no longer receive a statutory payment.
2. **Quality Enhancement Distributions.** Quality enhancement distributions totaling \$30,210,924 under Executive Law §§ 832 (3) (f) and 833 (7) (c), under which all counties and New York City will be enabled to receive no less state funding (a total of \$70,210,924) than they received in 2010. Of the \$30,210,924 total, the funds would be distributed as follows:
 - **Distribution #4.** \$7,361,326 represents the third year of the three-year distribution authorized by the Board at its September, 2013 meeting ("Distribution #4").
 - **Distribution #5.** \$15,488,228 represents the second year of a three year allocation of funds ("Distribution #5"), which is comprised of two parts: (1) \$7,361,326 represents the amount paid to upstate counties in March, 2014 (see above) as their final statutory payment (25% of 2010 amount) under the phase-out provisions

of State Finance Law § 98-b (3)(c); and (2) \$8,126,902 represents the continuation of the amount allocated to upstate counties and New York City for the three year distribution authorized by the Board at its September, 2011 meeting (Distribution #2).

- **Distribution #6.** \$7,361,326 represents the first year of a new three-year distribution ("Distribution #6") which amount is similar to the amount allocated to upstate counties for the three year distribution authorized by the Board at its September, 2012 meeting (Distribution #3). Since the Board has previously allocated funding for each of three years for Distribution #3 (FY 2012-13, FY 2013-14 and FY 2014-15), the Board is asked to authorize this new three funding allocation to continue providing this funding to the counties, subject to the same conditions of consultation with providers and approval by the Office as the previous quality improvement distributions.

3. Competitive Grants.

- **Quality Enhancement and Upstate Caseload Reduction.** Grants in the amount of \$4,000,000 that will finance the first year of a three year program to enhance quality and reduce caseloads in counties outside New York City. The Board has previously allocated three years of funding for the initial Quality Enhancement and Upstate Caseload Reduction grant (FY 2012-13; FY 2013-14; FY 2014-15) and is now requested to authorize the development of this second three-year Quality Enhancement and Upstate Caseload Reduction grant in a similar amount of \$4,000,000 per year (\$12,000,000 over three years).¹
- **Counsel at First Appearance.** Grants in the amount of \$4,000,000 that will finance the second year of a three-year program to provide counsel at a defendant's first court appearance in counties outside of New York City.²
- **Model Upstate Parental Representation Office (pilot program).** Grants in the amount of \$870,139 that will finance the second year of three year program to develop one or two model upstate parental representation offices.

¹ During the FY 2015-16 State budget negotiations, we sought to secure additional funding to supplement the Quality Enhancement and Upstate Caseload Reduction grant, in order to expand the scope of existing programs and add new programs. While we were unsuccessful in FY 2015-16, we will again seek additional funding in the FY 2016-17 State Budget and, if successful, the Board may be asked at a later date to authorize supplementing this grant with such additional funding.

² During the FY 2015-16 State budget negotiations, we unsuccessfully sought to secure additional funding to supplement the Counsel at First Appearance grant, in order to continue existing programs and offer counties that did not participate in the first round of funding an opportunity to do so. We will again seek additional funding in the FY 2016-17 State Budget and, if successful, the Board may be asked at a later date to authorize supplementing this grant with such additional funding.

- **Wrongful Conviction Prevention Center (pilot program).** Grants in the amount of \$870,139 to finance the second year of the three-year program to develop a model Wrongful Conviction Prevention Center.
- **Assigned Counsel Infrastructure.** Grants in the total amount of \$870,139 to finance the second year of the three-year program to develop six grants to either establish or enhance assigned counsel programs.

4. Single Source Contracts

- **Clinton County.** \$80,000 represents the second year of a three year single source contract; by providing this funding, Clinton County became the 46th county to benefit from submitting a proposal for the Quality Enhancement and Upstate Caseload Reduction grant.
- **Steuben County.** \$98,658 represents the second year of a three year single course contract; by providing this funding, Steuben County became the 47th county to benefit from submitting a proposal for the Quality Enhancement and Upstate Caseload grant.

5. Implementation of *Hurrell-Harring* (HH) Settlement Order

- **Quality Improvement Funding.** \$2,000,000 represents the amount appropriated in the FY 2015-16 State Budget for initiatives to improve the quality of indigent defense in the five *Hurrell-Harring* settlement counties (Onondaga, Ontario, Schuyler, Suffolk and Washington). The Office is tasked with developing and implementing a written plan for each HH county that provides for specific, targeted progress and provides for such monitoring and enforcement procedures as deemed necessary by the Office.
- **Counsel at First Appearance.** \$1,000,000 represents the amount appropriated in the FY 2015-16 State Budget for funding "interim steps" for the five HH settlement counties in order to achieve compliance with the State's obligation to provide eligible defendants with counsel at first appearance. The Office is tasked with developing and implementing a written plan for each HH county that provides each criminal defendant who is eligible for publicly funded legal representation with counsel at his or her first appearance.



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Director

Joseph F. Wierschem
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Improving the Quality of Mandated Representation Throughout the State of New York

To: Indigent Legal Services Board

From: Bill Leahy

Re: FY 2016-2017 Budget Request

Date: September 23, 2015

I ask your approval of a budget request for FY 2015-2016 in the amount of \$139,255,210, which consists of \$133,255,210 in Aid to Localities and \$6 million in State Operations. Please see the enclosure, **Office of Indigent Legal Services: FY 2016-2017 Budget Proposal**. As indicated therein, with respect to State Operations, we seek an increase of \$200,000 (from \$3 million to \$3.2 million) to annualize the salaries and expenses necessary to continue implementation of the *Hurrell-Harring* settlement through the next fiscal year; and to make initial investments of \$2 million for our long-proposed network of Regional Support Centers and \$800,000 for our Statewide Appellate Resource Center. The need and justification for these critical pieces of our statewide quality improvement efforts are contained in the enclosed Attachments A (2 pages) and B (5 pages) from the September, 2013 Board meeting. The total request for State Operations is \$6.0 million, an increase of \$3 million over current funding.

Last year, several weeks before the lawsuit settlement was reached, the Board approved an additional \$31 million in Aid to Localities, all for purposes that the Board had previously authorized. Of that amount, \$20 million was to be devoted to bringing upstate institutional providers into compliance with national maximum caseload limits and to providing basic support for upstate assigned counsel programs; \$8 million was to extend the reach of our Counsel at First Appearance grant program to the remaining upstate counties; and \$1 million each was approved to further fund the three proposals authorized by the Board at its June, 2014 meeting: Assigned Counsel Program grants, a Model Parental Representation Office, and a Wrongful Conviction Prevention Center. We request your authorization this year in the same amounts and for the same purposes. This year, we also seek your authorization to request an additional \$3 million to help localities and providers comply with the enhanced obligations set forth in the ILS **Appellate Standards and Best Practices** which went into effect in January, 2015 and with our forthcoming Standards and Best Practices for Parental Representation and for Assigned Counsel Programs. So, in all, we request an increase of \$34 million in Aid to Localities that is not based upon the HH settlement agreement.

Matthew Alpern
Director of Quality
Enhancement
Criminal Trials

Peter W. Avery
Manager of
Information
Services

Angela Burton
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Representation

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Enhancement
Appellate and Post-
Conviction
Litigation

Karen Jackuback
Grants Manager

Joanne Macri
Director of Regional
Initiatives

With respect to the HH settlement implementation, we seek your approval for an additional \$15,255,210. Of this amount, \$13,255,210 is the cost of reducing caseloads in institutional programs and providing adequate support in assigned counsel programs in the lawsuit counties; and \$2 million is for additional funding for counsel at arraignment (\$1 million) and to implement the quality initiatives pursuant to the settlement agreement (\$1 million).

Thus the total budget request for FY 2016-2017 is \$139,255,210; an increase of \$52,255,210 over our current fiscal year appropriation.

(9/25/15)

OFFICE OF INDIGENT LEGAL SERVICES: FY 2016-2017 BUDGET PROPOSAL

	<u>Amount Requested</u>	<u>Amount of Increase over FY 2015-16</u>
<u>State Operations</u>		
Office Staff & Expenses	\$3.2 million	\$0.2 million
Regional Support Centers	\$2 million	\$2 million
Statewide Appellate Center	\$0.8 million	\$0.8 million
Total State Operations	\$6 million	\$3 million
<u>Aid to Localities</u>		
Prior Year Funding	\$84 million	
Upstate Caseload Relief	\$20 million	\$20 million
Counsel at First Appearance	\$8 million	\$8 million
ACP and Model Office Grants	\$3 million	\$3 million
Standards Compliance Funding	\$3 million	\$3 million
HH Caseload Relief	\$13,255,210	\$13,255,210
HH CAFA additional	\$1 million	\$1 million
HH Quality additional	\$1 million	\$1 million
Total Aid to Localities	\$133,255,210	\$49,255,210
Total ILS FY 2016-17 Request	\$139,255,210	\$52,255,210