

Minutes for the Indigent Legal Services Board Meeting

December 4, 2020

11 A.M.

Virtual Meeting on WebEx/Teleconference

Board Members Present: Chief Judge Janet DiFiore, Judge Carmen Ciparick, Judge Sheila DiTullio, Joseph Mareane, Vince Doyle, Mike Breslin, Suzette Melendez

ILS Office presenters: Bill Leahy, Patricia Warth, Angela Burton

Minutes taken by: Mindy Jeng

I. Appreciations of the Honorable John R. Dunne (two attachments)

The Chief Judge said that it was important to devote some of the meeting time to remembering John Dunne, who passed away on November 1, 2020. She shared that she met and developed a friendship with Senator Dunne after being appointed to the Commission on the Future of Indigent Defense. She read a tribute to Senator Dunne (see attached).

Bill Leahy stated that the past year has been very difficult, because we not only lost Senator Dunne, but Jonathan Gradess and Charlie O'Brien – two other heroes in the public defense world. Bill said that the email he had circulated prior to the Board meeting captured what Senator Dunne meant to him, and that he wanted to give the Board members a chance to express what John Dunne meant to them.

Mike Breslin said he got to know John well serving on the ILS Board. Mike noted that though John possessed an amazing depth of knowledge, and he always solicited and listened to what others added to discussions. John was unbelievably humble and always had more ideas about how to get people to support his cause. Senator Dunne was a servant to all New Yorkers and to the Board. He is a champion for the underserved.

Vince Doyle said he met John many years ago surrounding New York State Bar Association activities. John was a friend of Vince's father, and John shared personal stories about and had an affection for Vince's father (Vince Doyle II). John was a true gentleman and a model of professionalism. He had the ability to make everybody feel important and truly valued other people's contributions. He was a giant in the political and legal community.

Joe Mareane said he first met John from NYSAC events. John Dunne would talk to a room of 5-10 people of the importance of legal indigent defense. Joe felt it was tilting at windmills, but gradually there has been a remarkable change over the years. So much of the change is attributable to John's work.

Sheila DiTullio noted that what impressed her most about John was how he paid attention to other people and took the time to truly get to know them. For example, he knew she loved fishing and always asked to see pictures. He used his well-earned reputation and influence to

help less fortunate people. He was realistic enough to know that meaningful change takes time, and that it is important to stay focused.

II. Approval of Minutes of September 25, 2020 Meeting

A motion was made to approve and accept the minutes and seconded. No comment received. The minutes were unanimously approved.

III. Recent Activities of the ILS staff

Bill Leahy sent out a message the morning of Thanksgiving eve listing recent ILS staff activities. He acknowledged the leaders of ILS for their efforts but noted that all ILS staff members deserve enormous credit for the work ILS has accomplished recently, including two data-intensive reports ILS completed at the end of October. These reports required ILS to obtain and assess comprehensive data from over 100 providers in 57 and NYC counties. This data is essential to monitoring and supporting implementation of reforms to mandated representation.

Bill said that he wanted to update the Board on three additional matters since the email was sent. First, on December 2, he emailed counties and mandated providers an updated ILS Notification Regarding Representation at Arraignment, reiterating that the law requires that arraignments be conducted in-person and conducting arraignments virtually is a temporary, emergency exception to this legal requirement that must not persist longer than absolutely necessary. There is disturbing talk about how efficient and convenient it is to have virtual arraignments. The law and due process must not give way to convenience.

Second, Bill noted that he and Patricia had attended an excellent training on diversity, equity and inclusion (DEI) hosted (virtually) by the Chief Defender Association of New York (CDANY) and conducted by DEI staff of three mandated providers. In response to a question about using ILS funding for DEI initiatives, Bill notified the CDANY leadership that ILS funding can be – and currently is being - used to support DEI efforts. Use of ILS funding for DEI initiatives enhances the quality of representation and client-attorney rapport. It also fosters a professional, equitable, and inclusive work environment that retains staff, thereby promoting compliance with ILS caseload standards.

Third, Bill discussed the statewide ACP summit ILS conducted on November 19 and noted that this was the second such summit and just one component of ILS' work on improving the quality of ACP representation. Other components include the ILS-curated ACP listserv and the work ILS is doing with the NYC ACP – the largest ACP in the state and perhaps the nation – to bolster their administrative infrastructure and move towards independence.

The Chief Judge commended ILS for the work that is being accomplished. Regarding arraignments, she noted that judges from across the state share Bill's sentiments about the importance of in-person court arraignments, and therefore OCA has pushed to return to in-person court appearances when safety allows it. OCA will continue these efforts and "will never take our eyes off that ball."

IV. FY 2021-22 ILS Budget Request (filed November 12, 2020)

Bill said that ILS submitted its proposed fiscal year 2021-2022 budget to the Division of Budget (DOB) on November 12, 2020. The budget was the same as that the Board approved at its September 2020 meeting, with one minor adjustment – a \$100,000 reduction in the State Operations request resulting from personnel fringe rates lower than last year. Bill noted that the Board’s support of this proposed budget is crucial, given the challenging fiscal environment. This is especially true of the request for an additional \$5 million in Local Aid to improve the quality of parental representation.

V. Proposed ILS Eligibility Standards

Bill initiated the discussion by saying that the standards for determining financial eligibility for assigned counsel in family court cases (“parental representation eligibility standards”) is one of the most important steps forward in ILS’ institutional history. Since these standards build upon the work done to promulgate eligibility standards for criminal cases, Bill said it was important to recognize the work of ILS’ Lisa Robertson, who has worked thoughtfully and effectively on both sets of standards and is considered the “ILS’ eligibility guru.”

Patricia Warth provided some background about the criminal representation eligibility standards, which were developed in accordance with and under the tight time-frame set forth in the Hurrell-Harring settlement. To develop these standards, ILS held public hearings in eight judicial districts, eliciting oral and written testimony from stakeholders across the state. In April 2016 ILS promulgated standards for criminal cases. Two foundational principles underlie these eligibility standards: 1) counsel must be provided to people who lack the finances need to retain counsel while still paying reasonable living expenses for themselves and dependents; and 2) counsel must be provided when needed, even if it means before a court proceeding has been initiated. Because these foundational principles apply equally to parental representation, when ILS issued the criminal case eligibility standards in 2016, we noted that they could also help guide parental representation eligibility decisions. We also noted our commitment to eventually building upon the criminal case eligibility standards to issue updated standards that honor the nuances of parental representation.

Angela Burton reported that the parental representation eligibility standards came together through efforts from several ILS staff members and that she is appreciative of all the people involved. Eligibility standards are the key to access to justice. Providing counsel at an early point is vital so that people are not forced to initiate or respond to complex cases without the guiding wisdom of counsel. The Commission on Parental Representation (DiFiore Commission) highlighted this need and the imperative of ensuring that people have access to counsel when they need it. The parental representation eligibility standards promote access to counsel by establishing a presumption of eligibility for assigned counsel for parents being investigated in child protection situations. Thus, counsel will be provided to parents in child welfare proceedings in advance of their first court appearance.

A board member asked about having counsel assigned before the petition is filed. Angela explained that even in a case where there is no petition ultimately filed, parents still need counsel because there are important rights at stake. Parents need credible information about their rights and their options. Having a presumption of eligibility speeds up access to counsel, which not only protects the rights of parents being investigated, but also helps child protective services and the courts in making the best decisions possible.

A board member commended ILS for the work that was done. She appreciated that the information and standards were communicated so clearly. She also agreed that eligibility requirements amounted to access to justice. She reiterated that a denial of process is a denial of substantive rights. Providing counsel means so much to parents because parents cannot adequately represent themselves due to the complexity of the legal system. The environment for parents can be intimidating and downright hostile. Working towards equity is absolutely essential.

Angela added that right now, the presumption of eligibility applies only in child welfare proceedings. But ILS hopes that in the future it will apply to other Family Court proceedings as well. There are the same efficiencies as well in other court proceedings.

A motion was made to approve the eligibility standards as presented. It was moved and seconded. The eligibility standards were unanimously approved by the Board.

VI. Schedule of Board meeting dates for 2021 (always on Friday, at 11:00 a.m.):

The ILS Board will meet in 2021 on April 9, June 11, September 24, and December 3. The Board meeting was adjourned in honor of Senator Dunne at 12:01 PM.

A Tribute to the Late John R. Dunne

Chief Judge Janet DiFiore – December 4, 2020

I'd like to take a moment, on behalf of the Board of Indigent Legal Services, to express our collective appreciation to John R. Dunne, a founding member of our Board, who sadly passed away on November 1st.

Senator Dunne enjoyed an extraordinary career in public service at the state and federal levels, including 23 years as a member of the New York State Senate, where he rose to Deputy Majority Leader and chaired, among others, the Judiciary Committee and the Committee on Crime and Corrections.

Senator Dunne had a significant impact on the law and the administration of justice in so many areas,-- including as Assistant Attorney General in charge of Civil Rights under President George H. W. Bush,-- but he had a deep and abiding concern for the rights of accused individuals and prisoners,-- dating back to his role as negotiator during the Attica Prison riots;... as a Board member of Prisoners' Legal Services and the Capital Defender's Office;... and as someone who worked tirelessly later in his career to reverse the impact of the Rockefeller Drug Laws on our criminal justice system and the well-being of our communities.

And as our able Executive Director, Bill Leahy, can certainly testify, the ILS Board has never had a more passionate;... committed;... energetic;... dedicated;... or valued member. John Dunne possessed an incredible wealth of knowledge and experience about the workings of our state government and the criminal justice system, and he was unfailingly generous in putting all of that wisdom and

knowledge at our disposal,-- no matter how busy his schedule, or how many his commitments. Indeed, John was a truly invaluable contributor to the tremendous progress that the Office of Indigent Legal Services has made to improve the quality of indigent legal representation in our state over the last decade.

Principled;... dedicated;... independent;... caring and compassionate,-- they don't make public servants like John Dunne anymore. Throughout an incredible six-decade career of selfless, public-spirited leadership and service, John Dunne put aside his private interests, time and time again, to serve others, and to strengthen and reform our courts and our democratic institutions: from amending the State Constitution to create our excellent appointive system for the New York Court of Appeals;... to creating the State Commission on Judicial Conduct;... to chairing countless influential committees and task forces, such as the Task Force on the Future of Probation, and the Commission on the Future of Indigent Defense Services.

And while we mourn the loss of a dear friend and colleague today, we cherish Senator Dunne's contributions and celebrate his legacy,-- a noble legacy in which he used the power of the law to make a positive difference in the lives of his clients;... the well-being of our communities;... the functioning of our democratic institutions;... and the state of our society.

On behalf of the entire Board, I send my deepest condolences to Senator Dunne's family;... his friends;... and his colleagues at Whiteman, Osterman & Hanna.