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

INDIGENT LEGAL SERVICES BOARD
AGENDA
September 22, 2017
Association of the Bar of the City of New York

- I. Approval of Minutes from June 9, 2017 Meeting
- II. Allocation of FY 2017-2018 Aid to Localities Appropriation
- III. Budget Request for FY 2018-2019
- IV. Summary of Recent Office Activities
- V. Next Board Meeting **November 3, 2017**
- VI. Executive Session

Minutes for the Indigent Legal Services Board Meeting
June 9, 2017
11:00 A.M.
New York City Bar Association

Board Members Present: Chief Judge Janet DiFiore (by phone), Michael G. Breslin, Carmen B. Ciparick, Judge Sheila DiTullio (by phone), John Dunne, Joe Mareane, Leonard Noisette

ILS Office Attendees: Bill Leahy, Joseph Wierschem, Angela Burton

Invited Guest: Suzette Melendez (by phone)

I. Approval of minutes of April 21, 2017 meeting

A motion to approve the minutes was made and seconded. The Board voted to approve the minutes of its meeting of April 21, 2017.

II. Discussion of Improvements in the Provision of Parental Representation

Bill Leahy stated that while parental representation was not addressed in the April Budget reforms or the Hurrell-Harring settlement, it is every bit as important to ILS as mandated criminal representation. He noted that ILS issued an RFP in March for the establishment of a model Parental Representation Office in a county outside New York City to provide legal representation to parents in child protective proceedings under Family Court Act Article 10 and termination of parental rights proceedings under Family Court Article 6. Bill Leahy stated that ILS is committed to the development of a coherent statewide parental representation structure, and to ensuring that parental representation is given the same level of attention as criminal representation.

Angela Burton thanked the Board for the opportunity to seek its input on how to improve the quality of indigent legal services in Family Court matters. Ms. Burton provided legal and historical context on the issue of parental representation. She noted that the right to effective assistance of counsel for indigent parents is constitutionally and statutorily mandated in New York, pursuant to the Court of Appeals decision in Matter of Ella B., 30 NY2d 352(1972) and, three years later, by Family Court Act sections 261 and 262.

Ms. Burton noted the many thoughtful ideas she had received from providers about actions the Office and Board might take to improve the quality of representation. The New York State Defenders Association (NYSDA) submitted a thoughtful memo proposing that Family Court representation should be administered as an independent agency funded and managed by the State. Ms. Burton stated that she believes such an approach has merit, and that it presents political and policy issues that need to be resolved. In the shorter term, she emphasized that regional resource centers are urgently needed around the State to provide support to solo

practitioners and improve the quality of representation in rural areas. Another priority is ensuring the availability of counsel at first appearances in child protective hearings. In many cases, lawyers are not assigned until after the parent's first appearance, and decisions affecting parental rights are made without counsel being present. ILS has benefitted from the support of external partners like the New York State Bar Association (NYSBA) and NYSDA, but the time has come to consider expanding ILS staffing levels to facilitate essential work, such as data collection that would help identify the nature and scope of parental representation deficiencies in New York.

A Board member stated that for political reasons ILS understandably has been unable to address parental representation in the same manner and to the same extent as indigent criminal defense. However, now that significant progress is being made on criminal representation, the time is right to prioritize parental representation. ILS does not want to risk creating a perception among policymakers that parental representation is not a high priority.

Chief Judge DiFiore suggested that Family Court representation should be integrated into the court system's Excellence Initiative, a major initiative to reform court operations and improve timeliness, efficiency and the quality of justice services delivered to the public. Parental representation is a key operational issue that directly impacts the Family Court's ability to deliver justice in child protective proceedings. Bill Leahy welcomed this suggestion and stated that it would act as a force multiplier in generating momentum for parental representation reform.

Angela Burton noted that a number of organizations are committed to pushing for reform, including NYSBA's new Standing Committee on Families and the Law, the Child Welfare Improvement Project and the Permanent Commission on Justice for Children.

A Board member suggested that the rollout of reforms in this area should proceed in a careful, incremental manner. County governments, policy makers and the public also need to be given a clear sense of the problems that need to be addressed. He stressed the need for a comprehensive study of the current landscape of parental representation, to have a credible basis for determining how best to reform the system. Another Board member asked whether it would be helpful to establish a Commission to document problems and educate the public and policy makers about parental representation.

A Board member stated that fragmented trials are a significant problem in upstate family courts. Chief Judge DiFiore stated that the New York City Family Court has made significant progress in increasing the number of continuous trials and introducing case scheduling reforms. The problem is harder to address upstate but remains a priority on the Excellence Initiative agenda.

Bill Leahy stated that the experience with parental representation in the New York City Family Court provides cause for optimism. Only about a decade ago, indigent representation in the New York City Family Court was a mess. Today, it is a model for the rest of the State. He believes that the Excellence Initiative will bring judges and stakeholders together to focus on reforming the parental representation system in the rest of the State. He suggested three other points that

would generate significant momentum for reform: establishing regional support centers; increasing ILS staffing levels dedicated to parental representation; and pursuing an upstate Model Parental Representation Office based on the New York City experience.

III. NYSBA Committee on Mandated Representation Award

Bill Leahy was pleased to report that ILS had received the NYSBA's Committee on Mandated Representation's "2017 Award for Outstanding Achievements in Promoting Standards of Excellence in Mandated Representation." The Awards Ceremony was scheduled for June 9th, the same day as the ILS Board meeting. While Bill Leahy and Joe Wierschem thus could not be present, they were pleased to designate ILS staff to accept the award and receive much deserved public recognition for their excellent work.

IV. Status of Hurrell-Harring Implementation

Joe Wierschem reported that the implementation process is going well. A meeting with the plaintiffs' representatives is scheduled for early July. A day-long meeting between ILS and the five counties scheduled for June 13 is being hosted by the Onondaga Assigned Counsel Program, which has made great strides since January. The intention is to have the five counties (Onondaga, Ontario, Schuyler, Suffolk, Washington) serve as leaders and models for the rest of the State with respect to statewide extension of the Hurrell-Harring reforms. Mr. Wierschem said that the focus is on implementing the new caseload standards that were developed last December, which the State has fully funded. ILS staff members will continue to meet with the Counties through the month of July to assess their needs. ILS expects to have contracts ready for the fall.

V. Status of Statewide Extension of Hurrell-Harring Reforms

A Statewide meeting was held at NYSBA headquarters on May 2nd at which ILS outlined its plan and time table for implementation. Approximately 90 people attended in person or by videoconference, with Governor Cuomo's First Assistant Counsel in attendance. Working groups have been formed (quality enhancement, counsel at first appearance, and caseload standards) and are meeting on a weekly basis. The working groups are conducting needs assessments for every county. Over 100 surveys have been received. Individual follow-up meetings are then held by videoconference to ask questions and better determine the level of resources and types of services needed in each county. The working groups expect to hold several such meetings every week. After the meetings, ILS expects to send out tentative awards to each county. ILS continues to follow a collaborative approach in working with the counties.

The counsel at first appearance working group faces the additional complication of coordinating with OCA on the new centralized arraignments legislation. Bill Leahy spoke to Chief Administrative Judge Marks and Deputy Chief Administrative Judge Coccoma to ensure that ILS is kept informed and given the opportunity to comment on the creation of centralized arraignment parts.

Bill Leahy stated that ILS is doing everything in its power to meet the December deadline for creation of implementation plans in each county. He expects that plans will be in place by the deadline but that some of them may not be fully fleshed out and may have to be modified going forward.

VI. Status of RFPs: CAFA #2 and Upstate Model Parental Representation Office

Bill Leahy provided an update on the status of the RFPs.

VII. Staffing Update

Bill Leahy stated that he is very pleased that Cynthia Feathers has joined ILS as Director of Appellate Representation. Several Board members congratulated him on making a fine appointment. ILS has also received very positive feedback after hiring Joanne Macri to serve as Statewide Chief Implementation Attorney. Four new attorney positions have been posted, including one each to focus on statewide implementation in the areas of counsel at first appearance, quality enhancement and caseload standards. Additional non-attorney positions will be posted soon.

VIII. Other Activities

Bill Leahy reported on the Governor's Pretrial Detention Symposium held on May 18, 2017, which was hosted by the Governor's Counsel, Alphonso David. The symposium addressed the fact that pretrial detention rates are higher in upstate New York than in New York City, as well as the racial impact of bail decisions. Mr. Leahy stated that he has provided the Governor's Office with recommendations for bail reform, including establishing a statutory presumption of release for nonviolent offenders, which has been adopted in many other states; prohibiting pretrial detention where counsel is not present; and creating a statutory right to an immediate de novo hearing before another judge when bail is ordered.

The Empire Justice Center is hosting a meeting on June 27th to focus on the future of civil legal services in light of threatened federal budget cuts. Bill Leahy accepted an invitation to attend. Many civil legal services providers provide criminal defense services. It is important for ILS to stay involved and to understand how potential funding cuts to those programs might affect ILS's work and mission.

IX. Schedule of Remaining 2017 Board Meetings

The next meeting of the ILS Board is scheduled for September 22, 2017.



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To: Indigent Legal Services Board

From: Bill Leahy

Re: Allocation of ILS FY 2017-18 Aid to Localities Appropriation (\$104.81 million)

Date: September 22, 2017

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; (2) describe to providers, county and state officials the precise purposes for which the appropriated funds will be spent; and (3) fulfill its obligations to implement the terms of the *Hurrell-Harring* settlement.

In similar fashion and for the same reasons, I propose that the ILS FY 2017-18 Aid to Localities appropriation of \$104.81 million be allocated for the following purposes:

1. **Statutory Distribution (total: \$40,000,000).** The statutory distribution of \$40,000,000 to New York City, as mandated by State Finance Law § 98-b (3) (b). This statutory payment will be made to New York City in March of 2018. 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 (total: \$30,210,924).** 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 #6.** \$7,361,326 represents the third year of a 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).

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Gideon v. Wainwright, 372 U.S. 335, 344 (1963)

- **Distribution #7.** \$7,361,326 represents the second year of a three-year distribution, which amount is similar to the amount allocated to upstate counties for the three year distribution authorized by the Board at its September, 2013 meeting (Distribution #4).
- **Distribution #8.** \$15,488,228 represents the first year of a new three year allocation of funds ("Distribution #8"), which 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 26, 2014 meeting (Distribution #5). Since the Board has previously allocated funding for each of three years for Distribution #5 (FY 2014-15, FY 2015-16 and FY 2016-17), the Board is asked to authorize this new three year funding allocation to continue providing this funding to the counties and New York City, subject to the same conditions of consultation with providers and approval by the Office as the previous quality improvement distributions.

3. Competitive Grants (total: \$10,789,075).

- **Quality Enhancement and Upstate Caseload Reduction (\$4,178,658).** Grants in the amount of \$4,178,658 that will finance the third year of a three year program to enhance quality and reduce caseloads in counties outside New York City (\$12,535,974 over three years). 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) in an amount of \$4,000,000 per year (\$12,000,000 over three years).¹
- **Counsel at First Appearance (total: \$5,740,278).** Grants in the amount of \$5,740,278 that will finance the first year of a three-year program to provide counsel at a defendant's first court appearance in counties outside of New York City.
- **Assigned Counsel Infrastructure (\$870,139).** Grants in the amount of \$870,139 to finance the first year of a three-year program to develop grants to either establish or enhance assigned counsel programs.

¹ The increase in available funding for the second Quality Enhancement and Upstate Caseload Reduction Grant (increase of \$178,658/yr.) is attributable to the redirecting of funding otherwise available to support the continuation of two single source contracts - the purpose of each being similar to that of the second Quality Enhancement and Upstate Caseload Reduction Grant – to reduce excessive caseloads. Counties holding these single source contracts must submit a proposal and compete with other upstate counties in order to receive continued funding.

4. Implementation of *Hurrell-Harring* (HH) Settlement Order (total: \$23,810,000)

- **Quality Improvement Funding (\$2,000,000).** \$2,000,000 represents the first year of a new five year contract to extend implementation of the terms of the written plan developed by ILS to improve the quality of indigent defense in the five *Hurrell-Harring* settlement counties (Onondaga, Ontario, Schuyler, Suffolk and Washington).²
- **Counsel at First Appearance (\$2,000,000).** \$2,000,000 represents the amount appropriated for funding the third year of a five year contract implementing the written plan developed by ILS to provide each eligible criminal defendant in the five *Hurrell-Harring* settlement counties (Onondaga, Ontario, Schuyler, Suffolk and Washington) with counsel at his or her first appearance.
- **Counsel at First Appearance (\$800,000).** \$800,000 represents the amount appropriated for the second year of a three year contract to ensure that the four Settlement Counties participating in ILS's first three year Counsel at First Appearance Grant program will continue to receive the same level of funding once funding for that program has ended.
- **Caseload Relief (\$19,010,000).** \$19,010,000 represents the amount appropriated for the first year of a three year contract to provide caseload relief for indigent legal service providers in the five *Hurrell-Harring* settlement counties. The \$19,010,000 figure was derived from applying the Caseload Standards determination submitted by ILS in December of 2016 for the five Settlement counties.

² The development of a five year contract is subject to approval of the Office of State Comptroller.

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To: Indigent Legal Services Board
From: Bill Leahy
Re: FY 2018-2019 Budget Request
Date: September 22, 2017

I seek your approval of a budget request for FY 2017-2018 in the amount of \$166.8 million, which consists of \$158.8 million in Aid to Localities and \$8 million in State Operations.

Please see the specific components of this request in the attached **Office of Indigent Legal Services: FY 2018-2019 Budget Proposal**. As indicated therein, with respect to State Operations we seek to add four additional staff positions, and a \$100,000 fund to provide modest salary increases to reward and retain highly valued long-term staff. We have also renewed our request, four times previously approved by the Board, for funding of the first two of nine Regional Support Centers (\$2 million). Time has proved the wisdom of our position that these Centers are indispensable to the accomplishment of effective statewide reform.

The additional staff positions are identified and their duties are described in the attached **FY 2018-2019 ILS Staff Positions**. The justification for the Regional Support Centers is found in the attachment **Regional Support Centers: An Essential Component of Statewide Reform**. The total request for State Operations is \$8 million, an increase of \$3.17 million over current funding.

Our request for Aid to Localities funding is in the amount of \$158.8 million, an increase of \$54 million. Fifty million dollars would finance the first year of the five-year implementation of the statewide expansion of the *Hurrell-Harring* Settlement reforms, as authorized in the current budget including the enactment of Executive Law § 832 (4) and the amendment to County Law § 722-e. Three million dollars would fund the creation of additional Model Upstate Parental Representation Offices; and one million dollars would fund additional quality improvement initiatives in the five lawsuit counties.

Please note that level funding of Aid to Localities would also preserve and continue the current \$81 million funding for grants and distributions to the counties and New York City, and the \$23.8 million in funding to the five lawsuit counties.

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OFFICE OF INDIGENT LEGAL SERVICES: FY 2018-19 BUDGET PROPOSAL

	<u>Amount Requested</u>	<u>Increase over FY 2017-18</u>
<u>State Operations</u>		
FY 2017-18 Funding: \$4.83 million		
Office Staff & Retention	\$6 million*	\$1.17 million
Regional Support Centers	\$2 million	\$2 million
Total State Operations	\$8 million	\$3.17 million
<u>Aid to Localities</u>		
FY 2017-18 Funding: \$104.81 million		
Current grant/distribution programs	\$81 million	\$0
Current HH programs	\$23.8 million	\$0
Statewide HH expansion	\$50 million**	\$50 million
Model Parental Representation	\$3 million	\$3 million
HH Quality additional	\$1 million	\$1 million
Total Aid to Localities	\$158.8 million	\$54 million
<u>Total ILS FY 2017-18 Request</u>	<u>\$166.8 million</u>	<u>\$57.17 million</u>

*Includes funding for (a) four new positions, consisting of: (1) one Administrative Officer; (2) two Grants Administrators; and (3) one Parental Representation analyst (total salary for new positions approximately \$260,000 plus fringe); (b) long-time employee retention salary increases (\$100,000) and (c) full annualization costs of new FY 2017-18 positions. Funding requested includes 1% salary increase in FY 2018-19 for existing staff.

**\$50 million would be the 1st year of 5 year phase-of Statewide HH Expansion (\$50 million/yr.) (\$250 million over 5 years)

FY 2018-2019 ILS Staff Positions

#1. 2nd & 3rd Grants Administrator positions (projected annual salary range: \$45,000 to \$55,000).

Our grants and distributions unit is in great need of additional staff to handle the current workload generated by our seven distributions and three competitive grants available to all of the counties outside New York City. The Grants unit is currently managing well over 400 active reimbursement contracts, with another 150+ contracts to be developed in the next half year (for the eighth distribution and second set of contracts for Counsel at First Appearance and Upstate Caseload). In addition, the *Hurrell-Harring* settlement has generated five sets of structured payment contracts that require quarterly submission of detailed expenditure reports, quarterly reconciliations of payments and, where appropriate, a detailed review of supporting documentation.

While the FY 2017-18 Final Budget contained funding for the Office to add a Grants Administrator position (we are currently in the process of interviewing candidates to fill this position), with the expansion of the Office's duties and responsibilities in the FY 2017-18 Final Budget to develop and implement plans to extend the *Hurrell-Harring* reforms statewide, we are looking ahead in order to continue building our Grants unit to address both our current workload and the new challenge of the Statewide Expansion.

The Grants Administrator would review and process claims for reimbursement and assist the Grants Manager in preparing contracts, contract extensions and modifications and communicating with counties to keep them current on submitting their paperwork. The addition of these positions would allow for the Grants Manager and Assistant Grants Manager to spend more time on developing RFPs and working with the counties, providers and the Office of General Services, Business Service Center and State Comptroller's Office, to ensure the most effective utilization of state funds.

#2. Administrative Officer (projected annual salary range: \$70,000 to \$90,000).

Under the direction of agency Counsel, the Administrative Officer would be responsible for a wide variety of administrative duties, particularly as they relate to financial management, procurement, and the agency's provision of funding to counties, vendors and indigent legal service providers. Responsibilities would include assisting agency Counsel in working with state and local agencies such as the Division of Budget, Office of General Services and State Comptroller's Office to identify problem areas, prepare documents, determine solutions, and obtain necessary authorizations for use of ILS funding in order to advance agency procurements and programs. The Administrative Officer would assist in various aspects of managing contracts, review and analyze reports and make recommendations, as requested, and perform other duties as assigned.

#3. Parental Representation Policy Analyst/Researcher (projected range: \$60,000 to \$70,000).

Reporting to the Director of Quality Enhancement for Parental Representation, the Policy Analyst/Researcher will be responsible for collecting and analyzing information and data regarding the programmatic, operational and fiscal aspects of the systems for delivering legally mandated representation in Family Court cases, and will work closely with the Director of Research to analyze and

evaluate such data and information in order to consider and recommend measures to improve the quality of parental representation.



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Regional Support Centers: An Essential Component of Statewide Reform

It is unmistakably clear to the ILS Office and Board that the creation of Regional Support Centers throughout the state is a necessity for improving the quality, the consistency and the efficiency of legally mandated representation throughout New York.

Five years ago, the **First Annual Report of the Indigent Legal Services Board** (November, 2012), advised that:

The current county-based system cannot long survive if it is not supplemented by Regional Resource Centers, operating as integral parts of the Office, to assist counties in each region. These resources can include not only the already-planned Regional Immigration Assistance Centers, but also such areas as investigation, social services, litigation training, forensic assistance, appellate representation, certification of counsel, and others: many of which have been identified in the *2012 Report on Sharing Resources* of the New York State Bar Association Committee to Ensure the Quality of Mandated Representation. (First Annual Report at 13-14).

Every locality needs access to state-provided and locally accessible expertise, training, consultation and support. Once established, these Centers will help to assure that the quality of justice one obtains in New York does not fluctuate and often fail, depending solely on the happenstance of where one's case arises, or which provider assumes responsibility for one's representation. Now, given the state's commitment to fund expansion of the *Hurrell-Harring* settlement reforms to all New York counties, these Centers will not only provide invaluable assistance to the counties themselves; they will also be the linchpin of the dramatic statewide reforms.

Specifically, the Centers will assist local providers of mandated representation in the following areas: 1) criminal defense and family court representation, 2) legal research and advice, 3) appellate and post-conviction advice and assistance, 4) training for lawyers and staff, including supervisors; 5) development of and access to investigative, forensic and other litigation support services; and 6) regional cooperation and planning. These resources will be fully available to Assigned Counsel Programs, many of which lack the resources, expertise and independence to provide the effective representation that is required by law. In short, the Centers will improve quality and promote efficiency.

We envision a total of nine Centers: one in each of the upstate Judicial Districts (JDs 3 through 9), one on Long Island (JD 10), and one in New York City. Each Center would be staffed by a training director, a criminal defense attorney, a family court representation attorney, an appellate/post-conviction attorney, an investigative and forensic support resource person, a certified social worker, and a regional planner. When fully operational, we estimate the annual cost of operating these Centers to be approximately \$10 million.

We want to begin building this essential support network in the new fiscal year, with the establishment of the first two Centers in far western New York (8th Judicial District, 4th Appellate Department: counties of Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, Wyoming) and in the North Country (4th Judicial District, 3rd Appellate Department: counties of Clinton, Essex, Franklin, Fulton, Hamilton, Montgomery, Saint Lawrence, Saratoga, Schenectady, Warren, Washington).

These Regional Support Centers will enable the success of the Governor's commitment to extend the *Hurrell-Harring* reforms to every corner of the state. They will vividly express the State of New York's commitment to all counties, by providing state resources that are of immediate assistance to overburdened local providers of mandated representation. They are an idea for which we have long advocated, and whose time has arrived.