

## Minutes for the Indigent Legal Services Board Meeting

April 5, 2024

11 A.M.

In person at the New York City Bar Association

**Board Members Present:** Chief Judge Rowan Wilson, Hon. Carmen Ciparick, Christopher DeBolt, Vince Doyle, Lenny Noisette, Jill Paperno

**ILS Office presenters:** Patricia Warth, Burton Phillips, Lucy McCarthy

**Minutes taken by:** Mindy Jeng

### I. **Approval of December 8, 2023 Board Meeting Minutes (vote) (attachment)**

Mr. Doyle moved to approve the minutes. Judge Ciparick seconded the motion. The board unanimously adopted the December 8, 2023 minutes.

### II. **Introduction of Christopher DeBolt, new ILS Board Member**

ILS Director Patricia Warth introduced new Board member Christopher DeBolt. Director Warth said that Mr. DeBolt was nominated by NYSAC. Mr. DeBolt was previously the County Administrator in Washington County, one of the *Hurrell Harring* (HH) settlement counties, and in that capacity worked with ILS to implement the HH settlement initiatives. Director Warth said she appreciated that he asked wonderful questions, listened, and really came to value the importance of public defense. Mr. DeBolt transitioned to become County Administrator for Ontario County, another HH settlement county, where he has continued to support the public defense providers. He has also worked to fully implement the HH settlement, identifying and overcoming barriers to implementation. Director Warth said she is excited to have Mr. DeBolt as a member of the Board.

Mr. DeBolt thanked Director Warth and said he is excited to be part of the Board.

### III. **State FY 2024-25 ILS Budget Update (attachment) (Burton Phillips)**

Mr. Phillips shared that as of April 5, New York still does not have a final budget enacted. A budget extender was passed, and ILS anticipates that there will be other extenders passed until a final budget is enacted. Mr. Phillips said he believes the budget will be enacted in advance of the next ILS Board meeting in June, and he will provide the Board a thorough overview of the enacted budget then.

Mr. Phillips then provided an overview of the current budget negotiations. He noted that the Executive budget proposal differed from the ILS budget request in three significant ways. These include:

- The Executive budget proposal did not include a 3% Cost of Living Adjustment (COLA) that ILS requested for the ILS program (which funds distributions and other grants), the HH settlement program, and the HH statewide program.
- The Executive budget proposal did not include the \$50 million for parent representation that ILS had requested as part of a three-year phase in for a total of \$150 million on an annual basis that is needed for caseload standard compliance. The Executive budget proposal actually reduced the amount appropriated for parent representation, from \$14.5 million in FY 2023-24 to \$4.5 million.
- The Executive budget proposal authorized the transfer of \$234 million from Indigent Legal Services Fund into the state's General Fund. Mr. Phillips noted that this budget transfer is commonly referred to as a sweep of funding.

Mr. Phillips said that part of ILS' advocacy and messaging around the Executive budget proposal is that the failure to adequately fund parent representation, combined with the proposal to sweep funds from the Indigent Legal Services Fund sends a negative signal to the counties as to the state's commitment to fund mandated legal representation. Mr. Phillips noted that the Senate and Assembly each proposed their own budgets, which are often referred to as "one house" budget proposals. The Senate's proposed budget includes the \$50 million for improved quality parent representation and it omits the proposed transfer of funds from the Indigent Legal Services Fund, but it did not include the requested 3% COLA increase. The Assembly's proposed budget was aligned with the Executive budget proposal as it related to ILS.

ILS continues to be in contact with the Legislature, Governor's staff, and budget staff regarding the final enacted budget. Judge Ciparick asked how the Board can assist and what can be done. Director Warth said she and Mr. Phillips will continue to have conversations with the Legislature, budget staff, and the Governor's office. ILS is working to figure out what are the leverage points, and to effectively communicate the constitutional implications of a budget. She emphasized ILS' appreciation for the work of the Chief Defenders Association of NY, the New York State Defenders Association, and the New York State Bar Association, which have fully supported ILS' budget request.

Chief Judge Wilson asked, what is the dollar cost of the COLA? Director Warth said she did not have the numbers in front of her and estimated it to be \$27 million for the three programs. [Note: The actual three program total requested increase was \$10.6 million]. Chief Judge Wilson also asked if ILS had to rank the three items, how would you rank them? Director Warth said they need the \$50 million for parental representation. They also need the 3% increase for HH settlement implementation and that in fact, the 3% is probably not enough. The five HH settlement counties are struggling to maintain the progress they have made in implementing the settlement because their funding has been flat for the longest time.

Judge Ciparick asked how much money is currently in the Indigent Legal Services Fund. Director Warth said that the fund currently has close to \$1 billion, but a lot of the money is needed to cover expenditures counties and New York City have made to implement the

settlement and its expansion statewide but have not yet claimed. She noted that the claiming of funds has not kept pace with expenditures already made – i.e., that several counties and New York City are behind in claiming.

Mr. Doyle said that prior governors have tried to do a sweep. Some have done it successfully, but not to this extent. Chief Judge Wilson asked what ILS thinks their chances are of getting the amounts requested. Mr. Phillips said they are hopeful that they will get more than the Executive’s budget proposal of \$4.5 million for parent representation.

#### **IV. ILS’ Twelfth Annual Report (2023) (vote) (attachment) (Patricia Warth)**

Director Warth said that pursuant to Executive Law § 833, every year the ILS Board is to issue a report to send to the Senate, Assembly, and Executive. The draft 12<sup>th</sup> Annual Report circulated to the Board in advance of the meeting covers calendar year 2023. Two themes emerged from the report: substantial change and substantial growth.

Relating to the theme of substantial change, Director Warth noted that the ILS office is constantly looking to improve its work, particularly how it works with the counties and New York City. In 2023, the HH settlement team and the HH statewide teams integrated into one team: the Criminal Defense Representation (CDR) team. The goal is to have a team that is fully responsive to counties and New York City in the efforts to implement the HH settlement across the state. This single team model has allowed ILS to designate to every county and NYC an ILS point person, so counties know who their first point of contact is at ILS. Each CDR attorney is working with no more than seven counties, and their counties are positioned regionally. The CDR fully integrates the Western New York Regional Support Center, which is responsible for the counties in western New York.

Director Warth stated that the Grants Unit also significantly changed their approach to issuing contracts and managing and reviewing claims for reimbursement. For example, contracts and claims processing is now done electronically. And the Grants Unit moved from conducting a desk audit of every claim to a more streamlined claims review process that includes fiscal checks, such as occasional desk audits.

ILS also had substantial growth. In 2023, ILS added 15 new staff members, so that by the end of calendar year 2023, ILS had 49 people on staff compared to the 35 on staff at the end of 2022. Most of the staff members filled newly created positions. The Statewide Appellate Support Center opened its doors in 2022, but it was not fully staffed. Now it is fully staffed. The Western New York Regional Support Center opened its doors in mid-2023 and added staff through the end of 2023. The Family Representation Unit also added people, and they backfilled the position created when Lucy McCarthy was elevated to Director of Parent Representation. The Grants Unit also added much-needed new positions, and ILS hired a second IT position. All the hiring was done to help ILS do a better job pursuing the mission of

improved quality mandated representation and toward ensuring that ILS can work effectively with counties and New York City.

Director Warth said that all this change in a relatively short amount of time can be hard on an office and unsettling. For 2024, ILS will focus more on our current staff and cultivating an office culture of collaboration – and one in which all people feel that their experiences and contributions are honored. Director Warth said that she is looking forward to this attention on office culture because she is confident that every person in the office feels a sense of mission and commitment to the low-income people who are arrested for criminal offenses and caught up in the Family Court system.

Mr. Doyle asked about the status of remote versus in person at the office. Director Warth said that ILS has a policy that allows staff to work up to 50% remotely, and it is working well for the office. Remote work can have downsides because the informal meetings and communication that come with in-person work often generates some of the best problem solving. But remote work gives people much needed flexibility and tends to make staff feel that leadership is respectful of their personal responsibilities. Fifty percent remote work seems to be the sweet spot in realizing the benefits of both in-person and remote work, and staff feedback has been that the current policy works well.

A Board member asked if there was enough physical space for the employees. Director Warth said we currently have enough space, though the current space is not ideal as ILS is spread out over three floors in the Alfred E. Smith building: the 11<sup>th</sup>, 29<sup>th</sup>, and 30<sup>th</sup> floors.

Judge Ciparick asked about office morale. Director Warth said it is not bad but feels that there is work she can do to improve it and better ensure that staff feel their contributions are important. Director Warth said she wants to be fully attentive to the various concerns that people have raised. She said she is always impressed by the sheer talent and commitment of people in the office, and the work ethic and work product of staff. There is a lot of energy and excitement to do the work.

Mr. Doyle moved to approve the report. Judge Ciparick seconded the motion. The Board unanimously approved the annual report.

## **V. Competitive Grant Updates from 2023 (Burton Phillips)**

Director Warth said that one of the Board's responsibilities under the Executive Law is approving the allocation of funds that are appropriated each budget year, and the following is an update on the three competitive grants that were issued pursuant to the Board's allocation of funds for FY 2023-24.

Mr. Phillips shared that the first is the Third Regional Immigration Assistance Center (RIAC) grant awards. These grants are intended to ensure that all non-citizen clients are provided accurate advice about the immigration consequences of their cases. ILS issued an RFP

in July for the six regions. For one region, New York City, the grant is non-competitive since there is only one possible awardee (New York City). The RFP was for the five other regions. ILS issued the awards to Ontario, Suffolk, Albany, Onondaga, and Westchester Counties. Those contracts will run through the end of 2026.

The second was the third Family Defense (Child Welfare) Quality Improvement & Caseload Reduction grant awards. Mr. Phillips said that these grants are for the purpose of encouraging counties to create programs that improve the quality of parent representation. This was the third round of RFPs for this purpose. To get state funding to as many counties as possible, ILS limited eligibility to counties that did not receive grants in the first two rounds, and ILS opened this grant up to New York City. ILS issued a total of eight contracts of up to \$750,000 over three years, which will run through December 31, 2026. The grant awardees are Allegany, Chemung, Livingston, Madison, New York City, Schuylar, Sullivan, and Washington Counties.

The third was for the Third Upstate Model Family Representation Office grant award to set up a model office for family representation. It included one single award of \$870,000 a year for three years. Westchester County is the tentative awardee, pending State Office of the Comptroller's approval of the procurement record. They previously received the First Upstate Model Family Representation Office grant, so this will allow a seamless continuation of what they have built up over the years.

ILS had three consecutive RFPs, which was the most they have ever done in a particular year. There is significant work that goes into developing the proposals, and ILS appreciates the work that the counties and providers invested in the RFP process. Mr. Phillips expressed appreciation for the ILS staff. He recognized Assistant Counsel Jami Blair, who worked to assemble scoring teams and quarterbacked the scoring process to ensure that ILS was objective and adhered to the finance requirements that come with issuing competitive funding.

Mr. DeBolt also echoed that ILS had never done three RFPs in one year. He noted that the counties and providers were overwhelmed by having to consider and submit proposals for three RFPs in such a short amount of time. Despite the many competing demands of their time, the fact that so many counties submitted proposals for this funding is indicative that the providers feel that there is a ton of need for additional state funding. Mr. Doyle added that ILS has developed goodwill with the providers over the years, so they believe that if they spend the time and attention on their RFP proposal, it will be seriously considered by ILS.

Ms. Paperno stated that there is an institutionalization of a change in culture. In the past, the counties did not want the money for indigent defense because it would displease organizations and agencies that were on the other side of it. Now that there are so many counties applying, it reflects how things are different. Director Warth agreed and stated that counties are now more open to new ideas and initiatives.

Mr. Phillips said that for counties that do not receive the award, ILS gives them the opportunity for a debriefing session to discuss why the proposal they submitted did not score

as high as the others. The providers and counties have appreciated that and better understand what is required in a successful proposal.

## **VI. Family Defense Grants – Overview and Updates on Implementation (Lucy McCarthy)**

Ms. McCarthy shared the work that ILS is doing to support family representation providers to capitalize on the funding (discussed above) that has been made available. There are two types of family representation grants: the Family Defense Quality Improvement and Caseload Reduction grants (Family Defense grants) and Model Family Representation Office grants (Model Family Office grants).

The Family Defense grants have limited funding, so in their proposals for this funding, the providers/counties can choose to prioritize using the funding to reduce caseloads, add other support staff for an interdisciplinary approach to representation, or provide representation during a Child Protective Services (CPS) investigation. The Model Family Office grants have significantly more funding, so proposals for this funding are expected to explain how the county/provider will achieve caseload relief, an interdisciplinary model of representation, and representation during the CPS investigation.

ILS was able to make awards in three waves. In January 2020, ILS awarded the first Model Family Office grant to Westchester County. The model office was implemented by Legal Services of the Hudson Valley (LSHV), and they started taking cases in April 2021. LSHV has longstanding relationships with community service providers, which they used as leverage for grant implementation and community outreach.

The Second Model Family Office grant was awarded in 2021 to Monroe County, which selected its Public Defender Office (PD) for implementation. The lingering impact of the Covid pandemic delayed implementation, and the Monroe PD had difficulty recruiting new staff and purchasing basic equipment such as desks, chairs, and computers. They persisted and by the end of 2022, the Model Office was fully staffed, and they turned their focus to intensive training, community outreach, and client representation.

Ms. McCarthy shared that the second wave of grants occurred in November 2021 with the first Family Defense grant awarded to five counties. One year later, ILS was able to award the second Family Defense grant to 17 counties. To illustrate how the grants are working, Ms. McCarthy described how one awardee county, Erie, is using the funding to compensate attorneys for representing parents during a CPS investigation, making social workers immediately available to consult with attorneys and the parents they represent, and engaging in an innovative community outreach campaign so parents know where to turn for guidance during a CPS investigation.

Ms. McCarthy stated that the implementation of the grants has been impacted by the lingering effects of the pandemic. The typical experience for grant implementers is that they could not take their first case until about a year after they received the grant contract.

Ms. McCarthy said that last year, ILS hosted a consortium for all the providers in the counties that have been issued either a Family Defense grant or a Model Family Office grant. The consortium was a forum for identifying the common barriers to implementation and exploring solutions and shared perspectives.

Ms. McCarthy said the third wave of the Family Defense grants were issued this past year, and ILS awarded grants to New York City and seven counties. With all these grants, ILS now has parent representation funding presence in 27 upstate counties.

Ms. McCarthy said ILS plans to host a second consortium that will include the newest grantees. Ms. McCarthy also noted that ILS is working with grantees to collect data about implementation to show the impact these grants are having on the quality of representation. The data from the first Model Family Office is striking - out of 162 cases in which parents were represented during the child welfare investigation, only two resulted in the filing of an Article 10 petition in Family Court, and of these two cases only one involved a child being removed from the home.

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

Mr. Phillips shared that many new staff members have joined ILS since the last office update at the September 2023 meeting, including Wahidullah Attahi (Contracts Manager), Dai Nguyen (Family Court Program Associate), Enrico Purita (Criminal Defense Representation Counsel – Region G), Ketienne Telemaque (Criminal Defense Representation Counsel – Region A), Carolyn Walther (Appellate Counsel, Western New York Regional Support Center), Jill Crist (Administrative Assistant, Western New York Regional Support Center), and Nathan Baum (Grants Manager 2). Additionally, Claudia Trupp (in attendance at the Board meeting), will be starting with ILS the following week as Director of Appellate & Post-Conviction Representation.

Mr. Phillips said they are thrilled to have the new team members on board, and everyone has been a wonderful addition to the office. There are five positions that are vacant, and ILS is posting for these positions.

## **VIII. Adjourn**

The meeting was adjourned at 12:02 P.M. on a motion from Chief Judge Wilson.