

Minutes for the Indigent Legal Services Board Meeting

June 7, 2024

11 A.M.

In person at the New York City Bar Association

Board Members Present: Chief Judge Rowan Wilson, Hon. Carmen Ciparick, Vince Doyle (virtual), Suzette Meléndez, and Jill Paperno

ILS Office presenters: Patricia Warth, Burton Phillips, and Claudia Trupp

Minutes taken by: Mindy Jeng

I. Approval of Minutes of April 5, 2024 Board Meeting (attachment) (vote)

Ms. Paperno made a motion to approve the minutes, and Judge Ciparick seconded the motion. The board unanimously approved the April 5, 2024 minutes.

II. Overview of Enacted State Fiscal Year (SFY) 2024-25 Budget (Burton Phillips) (attachment)

Mr. Phillips provided an update on the enacted state fiscal year 2024-25 budget for ILS. ILS' state funding is in two buckets: 1) State Operations; and 2) Aid to Localities. For the State Operations budget, the final enacted budget is just under \$8 million, which is what was in the Executive's proposed budget. This is an increase of \$750,000 over the FY 2023-24 budget and will allow ILS to add three positions to the Grants Unit and provide for a 3% general salary increase for all ILS staff.

The ILS Aid to Localities budget totals \$466,470,000, which includes the following:

- \$81 million is appropriated to finance ILS distributions and grants. This funding amount does not include the 3% COLA increase in the ILS proposed budget.
- \$23.97 million is for *Hurrell-Harring* settlement implementation, with an increase of \$160,000 over last fiscal year's funding levels. The appropriation does not include the 3% COLA increase in the ILS proposed budget.
- \$250 million is to extend the *Hurrell-Harring* reforms statewide, which is the same as last year and does not include the 3% COLA increase in the ILS proposed budget.
- \$19.5 million for the representation of parents in Family Court (Family Court representation). This is a \$5 million increase compared to last fiscal year's budget, but \$30.5 million less than the \$50 million in ILS' proposed budget.
- \$92 million to reimburse counties and NYC 50% of their expenditures for the Assigned Counsel rate increase. This is the same amount that was in the Executive budget and last year's enacted budget.

The final enacted Judiciary budget includes \$47 million sub-allocated to ILS for caseload relief for the six trial level public criminal defense providers in New York City. This is the same amount in last year's enacted budget.

The final enacted budget also authorizes the Division of Budget to transfer (sweep) up to \$234 million from ILS Fund to the General Fund.

Chief Judge Wilson asked if ILS anticipates that the entire \$234 million will be swept from the ILS Fund. Mr. Phillips said it is hard to predict. Last year's final budget included an authorization to transfer up to \$114 million from the ILS Fund to the General Fund to pay the costs of reimbursing counties and New York City for the Assigned Counsel rate increase. At the end of last fiscal year, the Division of Budget transferred an amount from the ILS Fund to the General Fund that closely mirrors what was claimed for the increase in the Assigned Counsel rates. The amount that was transferred was less than the amount authorized.

III. SFY 2024-25 Aid to Localities Budget Allocation (Patricia Warth) (attachment) (vote)

Director Warth said that under Executive Law § 833, it is the Board's responsibility to vote on and authorize the disbursement of ILS' appropriated Aid to Localities funding each year. She then discussed, for each program in the ILS Aid to Localities budget, ILS' proposal for disbursing the funds.

1. The ILS Program - \$81 million appropriated
 - a. \$40 million goes directly to New York City by virtue of State Finance Law § 98-b.
 - b. \$30.2 million is used for ILS distributions.

Director Warth proposed that \$7.3 million be for the third year of Distribution #13 and \$15.4 million for the second year of Distribution #14. This leaves \$7.3 million, but instead of using it for a new Distribution, ILS proposes that it be added to Distribution #14 to allow ILS to begin the process of consolidating contracts. Currently, each county manages three Distribution contracts each year, which makes contract management more challenging. This is the first step toward ILS consolidating contracts to make it easier to follow the money and to facilitate sound fiscal management. ILS has previewed this plan with the public defense leaders, and they have embraced it.
 - c. \$10.8 million is dedicated to Quality Enhancement grants. Director Warth said that there are two grants ILS proposes allocating for FY 2024-25: 1) \$7.4 million for the second and third years of the Quality Improvement and Caseload Reduction grants. 2) \$3.3 million for the third year of the Regional Immigration Assistance Centers, a network of six centers throughout New York state.
2. Implementation of the *Hurrell-Harring* (HH) settlement - \$23.9 million appropriated
This funding is for ongoing HH settlement implementation in the five settlement counties. In prior years, each county had three contracts of settlement

implementation, but ILS has consolidated these contracts so now each county has one.

3. HH Statewide Program - \$250 million appropriated

This money is to continue building the programs needed for caseload relief, counsel at first appearance, and quality improvement as required under Executive Law § 832(4).

4. ACP Rate Increase – \$92 million appropriated

This funding will be disbursed to counties and New York City to reimburse them for 50% of the expenditures they incur for the increased hourly rate paid to Assigned Counsel Program attorneys. Director Warth said ILS has worked effectively to get the reimbursement funding out the door as quickly as possible, and to date nearly all counties and New York City have claimed this reimbursement funding.

5. Article 18-b Family Court Representation (Parent Representation) - \$19.5 million appropriated

Director Warth noted that FY 2021-22 was the first time there was funding (\$2.5 million) appropriated in the ILS Aid to Localities budget for parent representation. Since, each final enacted state budget has slightly increased the appropriated funding, but it has never been enough to disburse to all the counties and New York City, so ILS has disbursed the funding via competitive processes. To date, ILS has issued three competitive grants: the First Family Defense grant, the Second Family Defense Grant, and the Third Family Defense grant.

ILS proposes that the \$19.5 million appropriated in the FY 2024-25 budget be used for two things. First, to fully fund the existing grant recipients through December 31, 2027. We need about \$6.9 million for this purpose. Second, we propose disbursing the remaining \$13.6 million by issuing a fourth competitive grant (i.e., the Fourth Family Defense Grant). The grant awards would be \$250,000 for three years, or \$750,000 in total. Eligibility for these grants will be limited to counties that do not currently have an ILS Family Defense grant. We anticipate issuing 18 to 19 grants. With the previous Family Defense grants, ILS would reach a total of 45 or 46 counties.

Ms. Paperno asked Director Warth if there was any thought to making the grant amounts variable depending on the need and the size of the county. Director Warth said we had but could not arrive at a way to do so (i.e., a fair formula), via a competitive process. That is precisely why ILS we need more funding – so we can reach the entire state based on each county's particular need.

Chief Judge Wilson asked if there are some counties that have not applied for the Family Defense grant funding. Director Warth said yes. For the Fourth Family Defense Grant, we anticipate working to ensure all eligible counties know of the grant opportunity and how to apply for it.

Ms. Meléndez commented that some counties don't have the bandwidth to apply for the grants. Plus, counties struggle to recruit attorneys to provide parent representation. In Onondaga County, there are ongoing recruiting problems, partly because the compensation for this work is too low. Ms. Meléndez said they are thinking of possible ways of conducting programs with law students to drum up interest in the family law area. Family law is not for the faint of heart. Ms. Meléndez pointed out that given the salaries, it is difficult to recruit new attorneys to the field.

Director Warth noted that starting recruitment in law schools is proving to be an effective strategy for criminal defense as well. A board member suggested that maybe clinics can help create interest in the field of family law. Director Warth agreed but noted that some law schools have cut back on clinical programs. Therefore, ILS is working with public defense providers to make money available to pay interns as another way of getting law students interested in the work.

Ms. Paperno said that at the Monroe County Public Defender's Office, they used to only hire attorneys who had already passed the bar and been admitted to practice. Now with HH Statewide funding they have begun hiring incoming classes of attorneys who have taken the bar exam and are awaiting results. They have big classes coming in now. By allowing the Office to hire law graduates awaiting their bar exam results, ILS funding has greatly expanded their pool of potential applicants.

Chief Judge Wilson made a motion to approve the ILS allocation of the FY 2024-25 Aid to Localities appropriation, and Judge Ciparick seconded the motion. The budget allocation was unanimously approved by the board.

IV. Statewide Appellate Support Center, First Year of Operation Report (Claudia Trupp) (attachment)

Claudia Trupp provided an update on the Statewide Appellate Support Center (SASC). Ms. Trupp said that the SASC opened in October 2022. It has appellate in its title, but SASC supports attorneys in all aspects of litigation from indictment to post-litigation.

She discussed the recent Court of Appeals decision in *People v. Watkins*. The issue before the Court of Appeals was whether counsel was constitutionally ineffective for failing to request a cross-racial identification charge to the jury. In a concurrence, Chief Judge Wilson made the point that constitutionally "effective assistance" is a very low standard and that we all should strive for far more. But this is not possible with overwhelming caseloads and limited resources.

Ms. Trupp noted that the SASC staff do not have case-related burdens, so they can carefully read the case decisions and watch appellate arguments to develop a deep knowledge of the law. They can then take this deep knowledge and experience they have and spread it

throughout the state. They do this in three ways: creating resources, conducting trainings, and consulting on individual cases.

Creating resources - The SASC reached out across the state in conjunction with the Appellate Defender Council (a group of 30 appellate defenders from across the state who act as advisors to ILS) and asked attorneys what would be most helpful to do in their practice. The responses they received has guided the SASC in creating resources that target the thorniest and most common appellate issues. SASC created a brief bank with resources for a various issues including appeals of guilty pleas, waivers of the right to appeal, excessive sentence, etc. SASC also issues a weekly Decisions of Interest email, which summarizes the most relevant reported case in New York State.

Conducting trainings - Ms. Trupp shared that in conjunction with the ILS Appellate Defender Council, SASC pioneered an intensive brief writing training during which attorneys attended lectures in the morning and then broke out into individual groups in the afternoon to work on writing skills. To date the Appellate Defender Council and SASC have conducted two such trainings, and SASC hopes to replicate it again and to expand it to include oral advocacy skills. SASC also worked with the Regional Immigration Assistance Centers to put on a training to those representing non-citizens facing deportation because of past criminal convictions.

Individual consultations – Ms. Trupp said that SASC also consults with attorneys on their cases and that there is a deep appetite for this across the state. In 2023, SASC received 120 requests for consultation, and in the first six months of 2024, they have already received 150 consultation requests. SASC also offers attorneys an opportunity to moot their appellate cases as a means of better preparing for oral argument. In 2023, SASC provided this service to an attorney arguing a novel discovery issue before the Court of Appeals. It was this attorney’s first time arguing before New York’s highest court. SASC’s moot program helped her to prepare, and she did an outstanding job and achieved a great result.

Going forward, the SASC will be more focused on helping attorneys to work towards an interdisciplinary model or representation, which leads to better outcomes by leveraging the expertise of people from different disciplines and with different experiences. Toward that end, members of SASC’s interdisciplinary team (an attorney, a special assistant for investigations, and a special assistant for mitigation) will be discussing the interdisciplinary model at the next ILS Assigned Counsel Program Summit later in June 2024. SASC will also be integrating the model in their resources, trainings, and in consultations. The SASC has already issued materials produced by the SASC special assistant for mitigation on trauma-informed interviewing and effective mitigation storytelling. SASC’s special assistant for investigations is also playing the lead role in working with other ILS staff to develop and issued Standards for the Investigation Function of Public Defense, which would be the first such standards nationally and which is part of the effort to cultivate a strong defense investigation community.

The last thing SASC is focusing on is access to counsel. In New York, people who were deemed financially eligible for assigned counsel at the trial level are not presumed eligible at

the appellate level and must reapply for assigned counsel. The ILS Appellate Defender Council has convened a working group to identify strategies for ensuring access to counsel at the appellate level.

Chief Judge Wilson asked, what fraction of the inquiries that SASC receives are at the trial level? Ms. Trupp said that 20% of questions are at the trial level. The Chief Judge said that the name of SASC might be a bit misleading, and that they may receive more inquiries at the trial level if the name was different. Ms. Trupp said they are advertising by going out to meetings, doing presentations about their services, and conducting active outreach. They have an in-person and virtual presence.

Chief Judge Wilson commented that in many cases that come before the Court of Appeals, the issues are not preserved. Ms. Trupp agreed that enhanced expertise in issue preservation is necessary and that SASC is focusing on issue preservation both in the creation of materials, trainings, and case consultations. She noted that New York City public defenders had a program where an appellate attorney would serve as a second chair at the trial level – fully integrating trial level and appellate skills. Ms. Paperno said that we need to let the trial-level attorneys know that they can call the SASC about their cases. Ms. Meléndez suggested that at some of the trainings, a seasoned trial attorney and an appellate attorney can present together.

Mr. Doyle commented that in the Appellate Division Fourth Department, often appellate attorneys waive oral argument and rely solely on their written briefs. He asked if SASC is doing anything to encourage public defenders to engage in oral argument. Ms. Trupp noted that ILS' Appellate Standards specifically say that appellate attorneys should orally argue every case unless there is a strategic reason not to do so. She said that SASC, in conjunction with the Appellate Defender Council, needs to start training more on the Appellate Standards. Chief Judge Wilson said it may be useful to have a Fourth Department justice speak at such trainings to emphasize the importance of oral argument.

V. ILS Office Updates (Burton Phillips & Patricia Warth)

Mr. Phillips provided updates on staffing and personnel. Since the last Board meeting, Ms. Trupp, ILS' new Director of Appellate and Post-Conviction Representation, is the only new addition to the ILS office. ILS is currently interviewing and hiring for positions with the Statewide Appellate Support Center, as well as an Assistant Director of Information Technology and an attorney to join the Criminal Defense Representation Team.

Director Warth said that when she joined ILS in 2015, she was the 13th staff member, and ILS was responsible for disbursing just \$81 million per year. Now, ILS is responsible for disbursing more than \$500 million and has 50 staff members. Director Warth said that ILS' fiscal responsibility and the number of staff have grown dramatically in a short amount of time. For that reason, now is the opportune time to pause and to reflect on the ILS office culture to reaffirm ILS' commitment to diversity, equity, and inclusion. For ILS, this means, among other

things, an office culture that values diverse perspectives and experiences and where everyone feels that they have a fair chance at succeeding and that they play an important role in advancing ILS' mission.

To effectuate the goal of a healthy office culture, ILS has contracted with Chrysalis Training & Development, an organization with expertise in diversity, equity, and inclusion. The first step is conducting a culture survey. To do this, Chrysalis has subcontracted with the Center for Human Capital Innovation, which has expertise in such surveys. Director Warth said that ILS anticipates conducting the survey in late June or early July as a means of learning of the experiences and perspectives of everyone in the office. Director Warth said she hopes the survey elicits responses and ideas of how ILS can improve. She said that she is prepared to hear some difficult things but believes that staff will offer not just criticism but also excellent suggestions. Chrysalis will work with ILS to compile a final report with information about the survey responses and recommendations for next steps toward the goal of making sure everyone feels valued.

Ms. Meléndez said that she thinks the survey is a great idea. Director Warth said that if you really care about something, you need to always work to improve it and make it the best that it can be. That is the attitude ILS has with the survey, and she feels confident that all the survey responses, even the critical ones, will be coming from a place of wanting ILS to be the best that it can be.

VI. Adjourn

Judge Ciparick made a motion to adjourn. Ms. Meléndez seconded the motion. The meeting adjourned at 12:11 pm.