

ILS Funding - General Information

QUALITY ENHANCEMENT (“DISCRETIONARY”) DISTRIBUTIONS

At its first meeting following the hiring of a Director for ILS, the Board approved the distribution of \$4.4 million in funds to the counties of New York, and the City of New York, for the purpose of improving the quality of representation for persons who are legally entitled to counsel but cannot afford to hire an attorney. The motivation for this distribution of funds was to assure every county that the amount of its state funding would not decrease at a time when the counties were being asked to improve the quality of their representation.

Many of the initiatives ILS is funding have gone unaddressed for many years, or were at one time funded and then discontinued. All contribute to improving the quality of representation in furtherance of ILS’s statutory mandate. ILS has also promoted an unprecedented amount of collaboration between city and county governments and their indigent legal services providers, by requiring such consultation as a precondition of these funds. Through this collaborative approach, ILSF funds are being better targeted toward improving the quality of legal representation.

Since 2012, the Board has approved five more distributions (Distributions 2-6), with funds for each distribution again sufficient to restore every county to the level of funding they received in 2010. Counties are utilizing these funds for a variety of purposes, including hiring additional staff to reduce caseloads, providing additional expert or investigative assistance, improving access to alternatives to incarceration, enhancing attorney training, and purchasing much-needed computer equipment and case management systems.

The Board also authorized grant funding in furtherance of three specific goals: (1) to bring New York closer to the goal of providing counsel at every criminal defendant's first court appearance, which is a critical moment when his or her liberty may be at stake; (2) to support local initiatives aimed at supporting improvements in quality of representation in upstate indigent legal service provider programs; and, (3) to

establish six Immigration Assistance Centers responsible for ensuring that providers of indigent legal services within each region have access to the training and legal support necessary to provide competent advice to a noncitizen client as to potential immigration consequences of a criminal conviction in compliance with legal obligations established by the Supreme Court in *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010). This initiative also provides training and legal support needed by counsel representing a parent or other adult in a mandated family court matter to competently advise such clients on immigration issues that may impact their parental rights.

STATUTORY DISTRIBUTIONS

In 2003, State Finance Law Section 98-b created the Indigent Legal Services Fund, under the joint custody of the Office of State Comptroller and the Commissioner of Tax and Finance. Section 98-b also specified that the primary purpose of the Fund is to assist counties to provide legal representation for persons unable to afford it.

Prior to 2010, money from the Indigent Legal Services Fund was distributed annually to the counties by the Office of State Comptroller, according to a formula based on net local expenditures and maintenance of effort, giving each county a relatively nondiscretionary and unchanging level of support from year to year. In 2010, the Office and Board of Indigent Legal Services were created by Executive Law Sections 832 and 833. The Office and Board replaced the Office of State Comptroller as the entities responsible for making distributions to each county to support its indigent representation capability. The Office and Board are empowered to establish criteria for the distribution of these funds, to ensure that they are used to improve the quality of indigent legal services.

In addition, the 2010 legislative changes to State Finance Law Section 98-B(3)(c) altered the nondiscretionary dollar amounts which each county would receive from the Indigent Legal Services Fund. Under the new schedule, counties would receive an annually declining percentage of their nondiscretionary 2010 support level: 90% in 2011, 75% in 2012, 50% in 2013, 25% in 2014 and 0% in 2015 and thereafter. Money remaining within the Fund following these nondiscretionary payments would be distributed by the ILS in accordance with the provisions of Executive Law Sections 832 and 833.

COMPETITIVE GRANTS

Competitive grants differ from statutory distributions and discretionary distributions in that they are designed to encourage indigent legal services providers to develop solutions to specifically designated needs or shortcomings in the statewide provision of indigent legal services. Specifically, Executive Law sections 832 (3)(a) and 833 (7)(c) authorize the Office and Board to “target grants in support of innovative and cost effective solutions that enhance the provision of quality indigent legal services” and to incentivize counties through the use of “incentive grants.”

Typically, competitive grants are distributed through the use of an RFP (Request for Proposal) process, where awards are made based on proposals submitted by bidders that offer solutions to the objectives, problem or need specified in the RFP, and the bidder specifies how it intends to meet (or exceed) the RFP requirements.

To date, the Board has authorized the development of three competitive grants: (1) providing counsel at first appearance, (2) upstate caseload reduction for institutional providers and the development of quality control measures in upstate assigned counsel programs, and (3) the establishment of Regional Immigration Resource Centers to ensure attorney compliance with the requirements set forth in *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010).

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