

## **Minutes for the Indigent Legal Services Board Meeting**

September 20, 2024

11 A.M.

In person at the New York City Bar Association

**Board Members Present:** Chief Judge Rowan Wilson, Diane Atkins, Hon. Carmen Ciparick, Christopher DeBolt, Vince Doyle (virtual), Suzette Meléndez, Lenny Noisette, and Jill Paperno

**ILS Office presenters:** Patricia Warth, Burton Phillips, Ian Harrington, Tammy Smith

**Minutes taken by:** Mindy Jeng

### **I. Approval of Minutes of June 7, 2024 Board Meeting (attachment) (vote)**

Judge Ciparick moved to approve the minutes. Jill Paperno seconded the motion. The Board voted unanimously to approve the minutes.

### **II. ILS Budget Request for State Fiscal Year 2025-26 (Patricia Warth & Burton Phillips) (attachment) (vote)**

Director Warth discussed ILS' fiscal year (FY) 2025-26 budget request with the Board. Every year, ILS finalizes the budget request documents for submission to the Division of Budget (DOB). DOB works with the Governor's office to prepare the Executive budget. In October, the budget director sends state agencies a call letter that sets forth the Governor's budget priorities. For the past several years, DOB has requested that state agencies limit their budget requests. Last year, DOB asked state agencies to keep their budget requests flat and to request no more than what was appropriated in the current fiscal year.

Director Warth continued to say that the creation of the ILS Board was intentional. The Board affords ILS the independence that was called for by the 2006 Commission on the Future of Defense in New York. ILS' guiding principle in developing the agency budget is improving the quality of public defense, and the ILS Board is integral to developing an ILS budget proposal that is true to that mission even if doing so is contrary to what the budget director calls upon state agencies to do.

Ms. Warth went on to note that ILS' total budget is divided into two bills, the State Operations budget bill (which includes the funding needed to run the ILS office) and the Aid to Localities budget bill (which includes the funding that ILS is authorized to disburse to the counties and NYC).

### *State Operations Budget*

Director Warth said that for FY 25-26, ILS proposes a State Operations budget of \$8.5 million. This includes salaries, fringe, travel, supplies, contract services, etc. This amount is \$500,000 over the current year budget appropriation. Most of the increase is a 3% cost of living increase that the state has approved. In addition, ILS is requesting two new positions. One is an organizational development specialist. There has been significant change within the office, and some staff members have felt that the change was not sufficiently inclusive or transparent. Director Warth said that ILS needs in-house expertise in navigating and strategic planning for growth and change that is transparent and inclusive and that is consistent with our diversity, equality, and inclusion goals. The second additional position is an administrative assistant for the Research Team so team members can devote their time to data collection and analysis and other research priorities, and not have to spend a lot of time on clerical and administrative work. A new administrative staff member can manage communications and help update training for data maintenance.

Ms. Paperno raised the concern that it is difficult to hire DEI staff, like the proposed organizational development specialist, because private companies can pay a higher salary. Ms. Meléndez agreed that the proposed salary range for this position needs to be higher. Mr. DeBolt also agreed that a higher salary range is important, and he gave kudos to ILS for taking the initiative to seek an organizational development specialist. He stated that it is a brave and important request.

Ms. Atkins asked if the position is a long-term position or a contract position. Director Warth said they are all long-term positions.

### *Aid to Localities Budget*

Director Warth gave an overview of the proposed Aid to Localities budget. The ILS Grants/Distributions portion of the budget has remained at \$81 million since fiscal year 2013-14, but salaries, fringe, and other space and equipment costs have increased. ILS is requesting a modest 6% cost of living increase. This is consistent with inflation rates and will result in a \$85 million request for next fiscal year.

ILS is also proposing to combine into one the *Hurrell-Harring* settlement program with the statewide implementation program for all counties in New York State. It makes sense to have one program for all the counties, now that the *Hurrell-Harring* settlement period is over. This will also be easier to manage administratively. The budget for the consolidated program is \$273.9 million. ILS is not seeking an increased appropriation from the current budget year (\$250 million for statewide implementation and \$23.9 for the HH settlement). Instead, ILS reached an agreement with the Division of Budget about using unspent reappropriated funding to increase the current statewide and settlement implementation contracts.

Mr. Noisette asked what the unspent money was originally supposed to be used for. Director Warth said ILS will be able to use unspent funding to reallocate it to the counties and

to New York City to increase their current contracts. That money was originally intended for statewide and settlement implementation. The reason that the money wasn't spent in a previous year is because it takes time to hire and build a program. There is always a gap between when the funding is appropriated and when it can be fully spent.

Chief Judge Wilson asked if the money was spent but unclaimed. Director Warth said the money was not spent at all.

Ms. Paperno asked how this reallocation is represented in the budget. Director Warth said the budget won't reflect the reallocation but does show total reappropriation.

Mr. Phillips said that ILS is initiating the plan in consultation with the Division of Budget. DOB will be aware of what is needed. Mr. DeBolt said that the professionals at DOB will understand about the lag in spending appropriations, but ILS needs to make sure that the Executive branch doesn't have an argument that ILS does not need an increase. Director Warth agreed.

Director Warth stated that the enacted budget for FY 2023-24 amended County Law § 722-b to increase the assigned counsel hourly rates. The counties and NYC were left to pay for the increase. The enacted budgets for FY 2023-24 and FY 2024-25 included an appropriation of \$92 million for ILS to disburse to the counties and New York City for reimbursement of 50% of their expenditures related to the increase. There is language in the budget allowing ILS to reimburse counties and NYC via a certification rather than a contract. This certification process allows ILS to collect data on the rate increase, and we anticipate in one or two years there will be more complete information to allow us to estimate the full cost of the rate increase. At that time, there should be discussion on whether the state should pay for the full increase, which ILS has historically supported.

Mr. Phillips said that all counties have submitted claims for the first two fiscal quarters. Most counties are regularly submitting claims shortly after the close of each fiscal quarter, thanks to the process being streamlined.

Mr. Noisette asked if the \$92 million is sufficient to cover 50% of the costs. Director Warth said yes, it has been more than enough.

For parent representation under the Aid to Localities proposed budget request, the state has not made the same fiscal commitment to improvements as it has made to improving criminal defense. The current appropriation is \$19.5 million. It is not enough to disburse to every county and New York City. ILS has been disbursing through competitive grants, which is burdensome on the counties and ILS. Last year, ILS surveyed public defense providers around the state to see how much funding is needed to comply with caseload standards issued by ILS. Caseload standard compliance is the major driver of the funding and a prerequisite to quality improvement. What ILS concluded after the survey is that, conservatively, \$150 million is

needed to address the crisis in parent representation. ILS proposes that the \$150 million be phased in over three years, starting with \$50 million in FY 2025-26.

Ms. Atkins asked how many counties there are outside of New York City. Director Warth said there are 57 counties. There is currently funding for only 26 counties plus New York City. The increased funding will allow ILS to reach out to the whole state.

Mr. Noisette asked how many people would the \$50 million reach? Director Warth said they would be able to jumpstart programs in every county if they receive the \$50 million in funding.

Judge Ciparick asked if the funding would go to New York City. Director Warth said yes, it would go to the NYC.

The Chief Judge asked if the increase in funding would help the people who are unrepresented. Director Warth said the people who are in Family Court and are unrepresented are not counted in current caseloads, which is the information ILS used to estimate the \$150 million needed for caseload standards compliance. This is another feature of the conservative nature of the estimate. But having enough funding to disburse to every county is an important first step and will allow ILS to work more closely with public defense providers to get more information about their Family Court practice.

Ms. Meléndez said that ILS still needs to make clear that even if the \$150 million is disbursed, it won't fully resolve the need. Ms. Meléndez said that there needs to be a growth mindset. We need to think about how our conceptualization of the issue can be expanded. Money needs to be managed in a forward-looking way. Director Warth agreed and said that the \$150 million is a start that will also be useful to collect information from counties as they are implementing programs. There are a lot of unknowns that we cannot currently budget for, but so we need to start with what we know.

Ms. Paperno said that they have a difficult time staffing up in counties outside NYC, and asked what the plans are for increasing recruitment. Director Warth said that at a recent consortium that ILS hosted, providers discussed building a pipeline to public defense work, starting in law schools and colleges and even earlier. Indeed, one public defense leader talked about going into elementary schools to talk about public defense. ILS supports these efforts, and ILS funds can be used for internship programs and law graduate programs. Director Warth said that ILS will need to be flexible in how the funding is spent, including allowing it to be used for positions other than attorneys that can help alleviate the workloads like social workers, paralegals, family advocates, etc.

Mr. DeBolt echoed Ms. Paperno's comment about recruitment. Mr. DeBolt used to work in Washington County. The county employed almost the entire bar. There will not be enough attorneys in certain areas. He said it is a good idea to start incrementally with \$50 million. It would not be wise for the state to appropriate the money, and then the counties are unable to spend it because they cannot hire. In Ontario County, Mr. DeBolt said they try to have the public defender's office and the social services department work together. The first time a CPS investigation is conducted, they are bringing in intensive functional family therapy. Mr. DeBolt stated they try to work with preventative services upfront.

The Board voted to approve the budget request, with the change that the funding for the State Operations budget should be adjusted up by \$50,000 to accommodate a higher salary range for an organizational development specialist, given how important this position is. Judge Ciparick moved to vote on the budget request. Ms. Meléndez seconded the motion. The Board unanimously approved the budget request with the \$50,000 adjustment.

### **III. Western New York Regional Support Center Updates (Ian Harrington)**

Ian Harrington, the attorney in charge of the Western New York Regional Support Center, introduced himself to the Board. He shared his legal career background and spoke about the other five employees who work in the WNY Regional Support Center. All the staff have experience with public defense. Mr. Harrington noted that the Support Center has been open for about a year.

Mr. Harrington said the Support Center has worked to cultivate strong, supportive relationships with public defense providers in the eight counties the Support Center covers. They have made regular contact and are responsive to them, working to try to identify and resolve issues. The providers all report the challenges of recruitment and retention. He noted the problem is most acute for Family Court representation where caseloads are overwhelming and shared the story of an attorney in a provider office who recently quit, saying in his resignation letter that he really wanted to do the work but is just too overwhelmed. To support recruitment and retention, the Support Center is partnering with the University of Buffalo Law School to develop a course in public defense, inviting public defense providers as guest lecturers to connect them to students interested in public defense.

Mr. Harrington spoke about the challenges of developing strong Assigned Counsel Programs, which prior to the statewide expansion of the settlement, did not have adequately funded administrative infrastructures. The Support Center is working on strategies to use ILS funding to build these important infrastructures, including strategies for regional assigned counsel programs.

Chief Judge Wilson said it is good to get information to first year law students. He emphasized the shortage of Family Court attorneys and said that Family Court judges are eager to go into schools to discuss the value of Family Court representation to interest students into

taking Family Law courses. Chief Judge Wilson said he can help facilitate that. Ms. Meléndez said she has been talking about this idea in Onondaga County. It is important for students to hear from the judges. Mr. Doyle said he also teaches a criminal law class at UB. He offered to assist Mr. Harrington if he needs anything.

#### **IV. ILS Grants Unit Updates (Tammy Smith & Burton Phillips)**

Mr. Phillips shared with the Board updates relating to the ILS Grants Unit. The Grants Unit is the backbone of ILS, and their work underpins all the public defense reform work. The Grants Unit has updated policies and protocols to better serve the counties and NYC. A key change has been ILS' updated cost manual for the counties, which streamlines the fiscal backup documentation that ILS requires counties to submit to ILS with claims for reimbursement. Previously, ILS required counties to submit detailed backup documentation for every single expenditure for which they were seeking reimbursement. As the amount of funding ILS disburses increased, this process became untenable. ILS consulted with other state agencies and the office of the state comptroller to settle on best practices to ensure that ILS adheres to fiscal controls but also makes the claim reimbursement process smoother.

Mr. Phillips then introduced Tammy Smith, who is the Assistant Grants Manager overseeing the claims review process at ILS.

Ms. Smith said that the updated cost manual significantly streamlines the claim process. For one county, a claim under the previous policy would have been 130 pages. Based on the updated guidelines, the claim can be reduced to 30 pages. ILS has gotten a lot of positive feedback from the counties.

Ms. Smith stated that another initiative within the Grants Unit was enabled by hiring new staff. The Grants Unit used to review claims on a first in, first out basis. Now there is a specific point person for each county. This helps ILS to build better relationships with the counties, and ILS can gain a better understanding of their different needs. It allows ILS to have a more collaborative approach and provides more clarity to the counties. Ms. Smith said the counties are now more proactive on the front end. They ask more questions up front, and it helps ILS to resolve claims more quickly.

Ms. Smith said the Grants Unit also took an inventory of all the steps during the claims process. They had multiple points in the process where they were collecting the same information. They were able to eliminate the redundancies and eliminate unnecessary steps. They also added the ability to share documents so multiple employees can review it at the same time. The Grants Unit also migrated from a paper-based system. Previously, most counties were mailing in their claims. Now 80-90% are emailing their claims. Electronic submission allows employees to access documents when they are working remotely. It saves costs, space, and time. The Grants Unit was also previously sending paper documentation to the state's Business Service Center for final payment to counties and NYC. Now they are

sending this information electronically, which facilitates quicker final payment. Ms. Smith said that it previously would take a month for the county to get paid. Now claims are getting processed faster: in two weeks or less.

Ms. Smith handed out a chart showing total claims paid in the first eight months of 2024 compared to claims paid during the same period in 2022 and 2023. In 2024, there was a significant increase in the number and dollar amount of claims paid. The number of current pending claims has also been reduced. Previously, the Unit would have 150-180 pending claims. Now they only have 50-60 pending claims. Ms. Smith said she is proud of the improvements that have been made. Ms. Smith said she has established weekly one-on-one reviews with her staff. This allows her to stay on top of issues and for staff to share questions and concerns.

Director Warth said that when she started at ILS, there were a lot of complaints about how long it took to get an executed contract and how long it took to get claims paid. Now, she goes to chief defender meetings and hears about how accessible, efficient, and supportive the Grants Unit is.

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

Mr. Phillips provided the Board with ILS office updates. Since the last board meeting, ILS has hired some new employees and promoted others. Elizabeth Isaacs has been promoted to Supervising Appellate Attorney. Nicole Manico has been hired as Assistant Director of Information Technology. A new attorney has also been hired as a new Assistant Appellate Attorney within the Statewide Appellate Support Center. ILS is also in the process of hiring a new Special Assistant for Mitigation. ILS is also recruiting for a few vacant positions for Assistant Counsel, Family Representation, an Appellate Attorney position, and Criminal Defense Representation Counsel for the north country region. ILS is also interviewing for the Grants Administrator position. They are also in the process of creating positions to further bolster the Grants Unit with an additional Auditor, Contract Manager, and Assistant Grants Manager.

#### **V. Adjourn**

Chief Judge Wilson adjourned the meeting at 12:30 p.m. The next ILS Board meeting will be December 13, 2024.