

Minutes for the Indigent Legal Services Board Meeting

June 5, 2020

11 A.M.

Virtual Meeting by WebEx

Board Members Present: Chief Judge Janet DiFiore, Judge Carmen Ciparick, John Dunne, Mike Breslin, Judge Sheila DiTullio, Suzette Melendez, Lenny Noisette, Joseph Mareane

ILS Office and Other Presenters: Bill Leahy, Patricia Warth, Cynthia Feathers, Matt Alpern, Angela Burton, Drew DuBrin, Terri Rosenblatt

Minutes taken by: Mindy Jeng, Jeffrey Hazelton, Sophie Copenhaver

I. Chief Judge's Remarks

The Chief Judge addressed the death of George Floyd and the events going on around the country. The Chief Judge hopes that this tragedy and the sustained protests across the United States will represent a turning point for the nation. She hopes that this will serve as an acknowledgement for the need to eliminate bias and will drive our elected officials to muster the courage and humanity to address the inequalities in the United States. The Chief Judge stated that she admires the individuals on the call who work tirelessly to pursue justice in New York State.

II. Approval of Minutes of April 24, 2020

A motion was made to approve the minutes and seconded. The board unanimously approved the April 24, 2020 minutes.

III. The Work of the ILS Appellate Defender Council

Cynthia Feathers discussed her work at ILS and stated that ILS founded the ILS Appellate Defender Council in 2018 to improve the quality of appellate representation for criminal and Family Court defendants. The Appellate Defender Council, which meets several times a year, has focused on proposed legislation, training, Appellate Division rules, and ILS data collection and standards. Cynthia discussed a recent amendment to County Law § 722 that is momentous for post-conviction attorneys. Lawyers assigned to a direct appeal can now investigate and file a CPL Article 440 motion without pre-approval and will receive compensation. The Council is developing best practices regarding the amended law.

Cynthia noted that ILS has also made extensive efforts on matters related to the Domestic Violence Survivors Justice Act (DVSJA), including in responding to inmate inquiries; ensuring that eligible persons have counsel for CPL 440.47 resentencing applications; working with Brooklyn Law School to track cases; and helping to launch and supporting the DVSJA Task Force. Cynthia also stated that the "Decisions of Interest" weekly listserv feature that she prepares is a resource for appellate and trial criminal and parental defense attorneys.

Cynthia introduced Drew DuBrin, the Chief of Appeals at the Monroe County Public Defender and the co-chair of the Working Group on Appellate Training for the Appellate Defender Council. Drew stated that the Working Group aims to improve the quality of training for appellate defense. He and co-chair Skip Laisure of Appellate Advocates decided to be aspirational in their efforts and to focus on the highest levels of practice in order to improve quality, not just to settle for nuts-and-bolts training. Drew and his colleagues created a two-day pilot program and presented it in Albany in the spring and fall of 2019. They chose Albany because it would attract people from all over New York, and many of the appellate defenders there are assigned counsel. They covered topics such as: harmless error, mode of proceeding error, waivers of appeal, matters that do not appear in the record, CPL Article 440 motions, implicit bias, SORA, and ethical questions. The training also included guidance on oral arguments and brief writing. Over 100 people attended each training. Because the programs were a great success, Drew and his colleagues will present the program again in Western New York and other areas of the state.

A board member asked if the program was taped. Drew said the sessions in Albany were not taped, but the presentations in Buffalo will be taped and made available to others.

IV. The Work of the ILS Forensic Practice Work Group

Matt Alpern discussed his work with the Forensic Practice Group. Matt noted that his work stemmed from his time at the Capital Defenders Office, when he was introduced to the importance of DNA testing. Matt noted that he has been trying to build a base of knowledge at ILS regarding issues with DNA evidence, particularly how poor forensic practice leads to wrongful convictions. Matt discussed his prior training, including training at the National Forensic College which helps individuals bring improved evidentiary practices back to communities that need it. Matt noted that while there are many well-staffed and well-trained forensic offices in New York, there are many small offices around the state that lack similar resources. The smaller offices may not know how to organize files for a complicated murder case, may not know what resources or support they need to be successful in making their case, etc. Matt stated that he has attempted to redistribute resources and training to those offices that especially need it. Matt stated that the better-resourced offices, such as the Legal Aid Society, Bronx Defenders, NY County Defenders, are models for the rest of the state.

Matt stated that we have begun to see forensic practice units opening in upstate New York. The Forensic Practice Group is also looking to work on changes in discovery. The goal is to coordinate what discovery is needed in every case so that lawyers may have access to it. They are coordinating all their resources in a chronological way to establish how a case proceeds. Matt stated that Terri Rosenblatt (Supervising Attorney, DNA unit at the Legal Aid Society) has initiated creating ILS standards and best practices for the Forensic Practice Group. Matt stated that these types of standards have a major impact, citing the impact of the Assigned Counsel Program standards this Board approved in 2019.

Terri Rosenblatt stated that standards are important because they provide guideposts, help to secure funding, and send a message about values. Forensics is a very standards-governed field.

However, there is a gap between the knowledge and resources available to indigent defense and private defense providers. Good forensic practice depends on outside experts and funding. Prosecutors have access to the expertise of the crime lab at no additional cost. The hope is that by issuing standards, we will be able to close some of these gaps.

Terri explained that appellate courts have reversed convictions due to ineffective assistance of counsel because prosecutors have misstated evidence and public defenders have failed to object or to refute that misstatement. The growth in the use of forensics is exponential requires the creation of standards. The guidelines are to be used by everyone in New York State. The group working on the Forensics Standards is comprised of Matt, Terri, members of the Innocence Project, Professor Erin Murphy at NYU, and a senior policy person who is also a scientist, among others. The group will also consider the minimum amount of training necessary before lawyers can take on cases involving forensic issues and will examine the impact of racial bias in forensics.

A board member thanked Terri and expressed the Board's support and admiration. The Forensics Practice Group is set to meet next Monday.

V. Strengthening Mandated Representation in New York Through Collaborations with the Chief Defenders Association (CDANY) and the New York State Defenders Association (NYSDA)

Bill Leahy brought the Board up to date on the work of the New York State Defenders Association (NYSDA) and the Chief Defenders Association (CDANY). Susan Bryant from NYSDA, as well as David Schopp (the Executive Director of Legal Aid at Buffalo and President of the CDANY) and Laurette Mulry (Attorney-in-Charge at Legal Aid Society of Suffolk County and President-Elect of CDANY), and others participate in a weekly meeting of public defenders. The regular meeting is a way for everyone to stay connected. Through the meetings, ILS hears directly what the issues are and what efforts are being made to improve communication. The main issues discussed recently have been the technological changes, difficulty of remote representation, and the gradual reopening of courts and defender offices. There is communication and collaboration reflected in the ongoing efforts.

The defender organizations circulated a letter to Judges Marks and Caruso requesting that defense attorneys be involved in the opening of the courts. As a result, many of the administrative judges have reached out to public defenders and invited them to participate in discussions on how to reopen courts. The goal is to break down communication barriers, and as everyone emerges from the virtual court system into an in-person court system, effective and respectful communication is very important.

Patricia Warth shared that CDANY allowed her to present two trainings to the defenders around the state on grants. The first training was called: "The Art of Good Grant Proposals," which discussed how to develop a grant proposal with a sound budget and good program. The second training, on June 10th, will focus on the back end or the "claims for payment" process. The first ever ILS written guidelines for the claims process is being finalized.

VI. ILS Office Reopening Plan

Bill stated that the twelve members of the ILS management team are overseeing the reopening of the ILS office. Christine Becker has taken the lead on researching and determining what is appropriate for the ILS office, and developing a written re-opening plan. The State has been very receptive to and has approved this plan. Most of the staff will continue to work effectively from home.

A board member noted that Christine did a wonderful job in coming up with a plan to reopen the office.

VII. Westchester County Upstate Model Family Representation Office

Bill reported that he signed the contract for the Westchester Model Upstate Family Representation office on June 1.

Angela Burton said that she wanted to celebrate signing the contract for the Westchester office, as it has been a long and arduous journey. She thanked the Chief Judge for recognizing the times that we are in. Angela noted that it is a time of great promise and hope, but it is also a very distressing and painful time. She said that ILS has been working for many years to highlight the importance of a family representation component of public defense. The office will serve as a demonstration of a client-centered interdisciplinary approach to child welfare proceedings. New York City has had great success with the interdisciplinary approach. Marty Guggenheim, a professor at NYU Law, has published a report showing the benefits of this type of representation. It accelerates the time to permanence for kids, children achieve reunification and guardianship more quickly, and children spend less time in foster care. It also saves government dollars.

The money devoted to establishing the Model Family Representation Office was at one point awarded to Monroe County, but the Department of Social Services convinced the county to reject it. A new Request for Proposals was issued, and the grant has been awarded to Westchester County and Legal Services of the Hudson Valley. They submitted an impressive proposal. There will be data collection and evaluation done as to the efficacy and effectiveness of the program. The Casey Family Programs and the American Bar Association Alliance for Parental Legal Representation has offered technical assistance.

Various partners and groups are collaborating to lay the groundwork for a statewide and state-funded Office for Family Representation. This Office would be in charge of creating a network of institutional offices and contract attorneys across the state and ensure that parents have timely access to interdisciplinary team representation throughout any contact with CPS and Family Court, starting at the first point of involvement with CPS as recommended by the DiFiore Commission on Parental Legal Representation. ILS has been working with members of the Commission on drafting language for presumptive financial eligibility for child-welfare involved parents, and with the Office of Court Administration on caseload standards.

A board member asked Angela if she has spoken with Judge Kevin Carter about these efforts. Angela noted that Judge Carter is a member of the Commission on Parental Legal Representation and participated in the hearings on these matters. Judge Carter is a strong

supporter of the recommendations of the commission and he has offered his services whenever they may be needed.

Another board member asked Angela what the status of additional offices are and whether there were other compelling applications. Additionally, the board member asked what work is being done to secure the federal funding. Angela stated that both times that the Model Office RFP was issued, ILS received very strong applications. Additional offices are the plan, as recommended by the DiFiore Commission, the hope is that the centralized Office of Family Representation will be authorized to oversee the expansion across the state of this ideal model. There were other good proposals, but the RFP was only available for one office. She and Bill explained the efforts to work with OCFS, OCA and NYSAC to secure federal funds for child welfare representation.

Another board member stated that the establishment of this office is very welcome news and that the forensic work Matt and Terri spoke about would be crucial for family representation.

VIII. Next Meeting – September 25, 2020

A motion was made to adjourn and seconded. The board meeting was adjourned to September 25.