



Andrew M. Cuomo
Governor

STATE OF NEW YORK
OFFICE OF INDIGENT LEGAL SERVICES

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William J. Leahy
Director

Joseph F. Wierschem
Counsel

Improving the Quality of Mandated Representation Throughout the State of New York

INDIGENT LEGAL SERVICES BOARD

AGENDA

June 9, 2017

Association of the Bar of the City of New York

- I. Approval of Minutes of the April 21, 2017 Meeting
- II. Discussion of Improvements in the Provision of Parental Representation
- III. NYSBA Committee on Mandated Representation Award presentation today
- IV. Status of Hurrell-Harring Implementation
- V. Status of Statewide Extension of Hurrell-Harring Reforms
- VI. Status of RFPs: CAFA #2 and Upstate Model Parental Representation Office
- VII. Staffing Update:

Director of Appellate and Post-Conviction Representation: Cynthia Feathers
Statewide Chief Implementation Attorney: Joanne Macri
Additional Statewide Implementation Unit Attorney hiring: in progress
Additional Statewide Implementation Unit positions
Additional ILS Staff positions

- VIII. **Other Activities:** Governor's Pretrial Detention Symposium (May 18, 2017)
Empire Justice Center Meeting (June 27, 2017)
- IX. **Schedule of Remaining 2017 Board meetings**
 - Friday September 22
 - November/December meeting to be scheduled

Minutes for the Indigent Legal Services Board Meeting
April 21, 2017
11:00 A.M.
New York City Bar Association

Board Members Present: Chief Judge Janet DiFiore, Michael G. Breslin, Carmen B. Ciparick, Judge Sheila DiTullio, John Dunne, Joe Mareane,

ILS Office Attendees: Bill Leahy, Joseph Wierschem, Patricia Warth

I. Approval of minutes of December 9, 2016 meeting

A motion to approve the minutes was made and seconded. The Board voted to approve the minutes of its meeting of December 9, 2016.

II. Discussion of Hurrell-Harring implementation and new statewide responsibilities under FY 2017-2018 State Budget

Patricia Warth, Chief Hurrell-Harring Implementation Attorney, reported on the completion of plans in November 2015 to ensure availability of counsel at all arraignments within the five counties (Onondaga, Ontario, Schuyler, Suffolk, Washington) covered by the *Hurrell-Harring* settlement. This was a large, complicated task requiring plans with multiple components for Town and Village Courts, City Courts and District Courts, as well addressing off-hours arraignments in each county. In addition, criteria and procedures for determination of financial eligibility were drawn up to promote consistency from county to county. The process began in the summer of 2015 with surveys, public hearings, interviews and collection of extensive written testimony. ILS also conducted training programs for judges and providers in all five counties.

ILS also finalized plans in November 2015 to improve the quality of representation in the five counties. The plans address, among other issues, the supervision, training, qualifications and experience of attorneys. Implementation of the plans has gone well. Intensive multi-day training sessions have been held and mentoring programs have been established. These efforts have been very well received by all participants

Patricia Warth reported on ILS's efforts to address the caseload relief provisions of the *Hurrell-Harring* settlement, including issuance of an RFP in 2016 for a study to determine the appropriate numerical caseload/workload standards for providers of mandated indigent defense representation in the five settlement counties. The RAND corporation, which conducted the study, received extensive input from panels of stakeholders in the five counties, leading to the delivery of caseload relief standards last December. The State has allocated \$19 million to support caseload relief for providers of mandated representation in the five counties. There has been a focus on data collection, maintenance and reporting, which is critical to understanding both qualitative and quantitative issues. The ILS caseload relief attorney has been working

closely with the affected counties to enhance their data collection and reporting capacities. A Board member asked what types of data are being collected. Ms. Warth gave examples, including tracking missed arraignments and the reasons why counsel could not be present, as well as the specific outcomes of arraignment coverage, including whether bail was granted, orders of protection issued, or dispositions made. All providers are required to report such data on written instruments, such as "closing forms," which are entered into a database. A Board member stated that the Office of Court Administration has purchased a case management system for the Town and Village Courts; it is important that ILS coordinate with OCA to ensure that there is a proper interface between the case management and data collection systems

A Board member observed that the *Hurrell-Harring* settlement appears to be producing cost savings for the counties. The number of persons sitting in county jails appears to be going down in recent months, because the presence of counsel at arraignments has resulted in the provision of more relevant information to Town and Village Justices, who then feel more comfortable about releasing defendants on their own recognizance. Bill Leahy stated that defense counsel also report that fewer defendants are being jailed at first appearances. A Board member added that there are broader public benefit and social service savings when primary breadwinners are able to return home and continue supporting their families without prolonged and unnecessary absences. Bill Leahy added that defense counsel report that the quality of client relationships is improved when they are able to meet and represent them at the first court appearance.

Joseph Wierschem and Bill Leahy reported that the fiscal year 2017-2018 State budget authorizes ILS to prepare plans (counsel at arraignment; caseload standards; quality of representation) for every county in New York that replicate the plans developed for the five lawsuit counties. The budget includes a commitment by the State to fund 100% of the costs associated with extending *Hurrell-Harring* statewide. This is a very important development for the future of mandated representation in New York. It will be a huge responsibility for ILS, but the Board and ILS staff are prepared and excited to meet the challenges of statewide implementation.

The plans have to be developed by December 1, 2017, with full compliance required by 2023. ILS will be responsible for the content of the plans, subject to the fiscal oversight of the State Division of Budget. Approximately \$1.25 has been set aside to support a new ILS unit dedicated to statewide *Hurrell-Harring* implementation, an RFP has been issued for a lead attorney in this area, and office space has been identified for the new unit. ILS has already begun the implementation process by scheduling a statewide meeting and webinar for all affected stakeholders at the New York State Bar Association headquarters on May 2nd, at which time ILS will outline for the counties how it intends to pursue statewide implementation, the various steps that have to be taken, and relevant timetables. ILS will emphasize the importance of a collaborative approach, and participants will be able to ask questions.

Working groups for each of the three plan areas were established and have been meeting on a weekly basis. Needs assessment surveys will be sent to each county to determine what each county needs to do in order to develop a plan that addresses the three plan areas of counsel at

arraignment, caseload standards and quality representation. Followup meetings will take place after the surveys have been analyzed.

The counsel at arraignment working group will have to coordinate closely with OCA to ensure that the ILS plans are consistent with ongoing efforts to implement the recent OCA legislation authorizing the creation of Off-Hours Arraignment Parts.

The caseload standards working group will rely on the new standards issued by ILS last year. The greater challenge will be ensuring that all counties are able to collect data in ways that are consistent with the different case categories set forth in the caseload standards.

The quality of representation working group will also build on the work that has been done in this area with the five settlement counties.

III. Consideration of future improvements in the provision of parental representation

Bill Leahy said that he has been meeting with ILS Parental Representation Director Angela Burton to ensure that ILS and the Board remain focused on improving the quality of mandated representation in family court. One-quarter of all mandated representation takes place in family court. An RFP for a model parental representation plan was issued recently by ILS. One Board member observed that frequent adjournments and lack of continuous trials is a continuing problem for litigants in family court. Bill stated that he would place the issue on the June meeting agenda for further discussion.

IV. Report on status of counsel at first appearance RFP #2

Bill Leahy stated that the RFP for counsel at first appearance has generated 37 responses, and the successful bidders should be identified by the end of April.

V. Report on "Implementing Gideon's Promise" conference (April 7)

Bill Leahy attended the Gideon's Promise conference hosted by the Indiana Law Review in Indianapolis and gave a presentation on the progress that has been made in reforming public defense representation in New York State. There was a great deal of national interest in the New York experience, and he will be writing a related law review article.

VI. Staffing update

Bill Leahy discussed staff issues, including the hiring of a new Assistant Grants Manager, Ronald Foster, who starts on May 1st. The deadline for applications for the position of Director of Appellate Representation closed on April 17 and candidates are being selected for interviews. Applications for the new position of Statewide Chief Implementation Counsel will close on May 5th.

VII. Schedule of 2017 Board Meetings

The next two meetings of the ILS Board are scheduled for June 9 and September 22, 2017.

To: Wentworth'
Cc: 'Burton, Angela (ILS) (Angela.Burton@ils.ny.gov)'
Subject: Request for your advice and ideas

Dear colleagues,

A week from today, on **Friday June 9** at the next meeting of the Indigent Legal Services Board, Angela and I will engage the Board membership in a discussion of what specific additional steps we – the Office and the Board -- can take to improve the quality of legally mandated parental representation throughout the state. We undertake this important discussion, knowing full well that parental representation was not included in the foundational 2006 Kaye Commission report; nor was it included in the 2007 filing or the 2014 Settlement of the *Hurrell-Harring* lawsuit; nor was it a component of the 2017 amendments to the County Law and the Executive Law that extended the HH criminal defense reforms statewide.

Speaking of the law, there is nothing in our enabling legislation that separates parental representation and relegates it to a second-class status. As we see it, our fundamental obligation to “make efforts to improve the quality” of that representation is unaffected by its unfortunate omission from recent reports, lawsuits and statutory changes. We must move forward. Both the law and the protection of our clients demand that we do no less. That is why we have introduced this topic for discussion by the Board; and it is why we seek your advice.

If you can, please send us up to three specific ideas or proposals for actions that the Office and Board might take to improve the quality of parental representation. Your top three priorities, or your three most brilliant concepts: however you choose to label them, we are eager to hear them. They may be proposals that can be implemented without additional funding, or they may be ideas for which we can request additional funding. We would like to hear from as many of you as possible. Please respond either via email to both of us, or by calling Angela at 518-474-4859.

Many thanks,

Bill and Angela

Leahy, Bill (ILS)

From: Leahy, Bill (ILS)
Sent: Friday, June 02, 2017 2:53 PM
To: 'Amy Dona (adona@stlawco.org)'; 'Andrea Schoeneman'; 'Andrew Kossover'; 'Andy Correia (acorreia@co.wayne.ny.us)'; 'Angelo Scaturro'; 'Archana Prakash (aprakash@ndsny.org)'; 'Barbara DiFiore'; 'Barbara Kelley'; 'Bill Martuscello'; 'Bob Convisar'; 'Bob Nigro'; 'Brandon Boutelle'; 'Brenda J Smith Aston'; 'Bruce Chambers'; 'Bruce Maxson'; 'Chad DeFina'; 'Charlie O'Brien'; 'Clare Degnan (cjd@laswest.org)'; 'cppisciotta@legal-aid.org'; 'Daniel A. Russo'; 'Dave Besso (admin@suffolk18b.org)'; 'Dave Squirrel'; 'David Farrugia'; 'David Savlov'; 'David Schopp'; 'Dawn Ryan'; 'Dennis McEvoy'; 'Dianne Lovejoy (yateslawpy5@gmail.com)'; 'Donald DeAngelus'; 'Ed Brockman'; 'Eric Dadd'; 'Erin Leary'; 'Faith St. Hilaire'; 'Frank Furno'; 'Frank Nebush'; 'Gary Abramson'; 'George Awad'; 'Harriet Weinberger'; 'Irene Graven'; 'Irwin Shaw'; 'J. Gerard McAuliffe Jr. '; 'James E. Walsh'; 'James Kernan'; 'Jane Schreiber'; 'Jay Wilber'; 'Jeannie Michalski (jeannie@jdmattorney.com)'; 'Jeffrey Aumell'; 'Jeffrey Reed (JReed@lawny.org)'; 'Jerry Ader'; 'Jessica Saks'; 'Jill Dyer (jdyer@co.franklin.ny.us)'; 'Jim Licata'; 'Joel M. Proyect (avocatjmp@gmail.com)'; 'John Brennan'; 'John C. Turi'; 'John Cameron'; 'John Leonardson'; 'Jonathan Gradess'; 'Joseph Pelych'; 'Joseph Vaccarino'; 'Joy McLaughlin LaFountain (lafountainj@warrencountyny.gov)'; 'Julia Hughes'; 'Julie Hutchins (jhutchins@co.jefferson.ny.us)'; 'Justin Meyer (jmeyer@staffordowens.com)'; 'Justine Olderman (justineo@bronxdefenders.org)'; 'Karen Howe'; 'Karen Murtagh'; 'Karen Needleman'; 'Kathleen A. Kugler (kathleen.kugler@niagaracounty.com)'; 'Kathleen Dougherty'; 'Katie M. Smith'; 'Keith Bowers (keithbowerslawoffice@gmail.com)'; 'Keith Braunfotel'; 'Keith Dayton'; 'Keith McCafferty'; 'Kellie King'; 'Kent Moston'; 'Kimberly Czapranski'; 'Lance Salisbury'; 'Larisa Obolensky'; 'Larry Rosen (lrosen50@hotmail.com)'; 'Laura Aylward'; 'Laura Fiorenza'; 'Lauren Shapiro'; 'Leanne Lapp'; 'Lenore Lefevre'; 'Linda Gehron'; 'Lisa Schreibersdorf'; 'Lloyd Hoskins'; 'Lorelei Smith Miller'; 'Lorette Mulry (ldmulry@optonline.net)'; 'Lyn Manning'; 'Lynn Fahey'; 'Marcea Clark Tetamore'; 'Marcy Flores'; 'Marie Drost'; 'Mark D. Funk (MarkFunk@monroecounty.gov)'; 'Mark Stern (lawoffice@mdsternlaw.com)'; 'Mark Williams'; 'Mary Withington (mwithington@lasnny.org)'; 'Michael Alperstein'; 'Michael Mercure'; 'Michael Mirras'; 'Michael Young'; 'Michelle Finn'; 'Mike Coleman'; 'Ned Barone'; 'Nicholas A. DiCerbo (tawilliams@cattco.org)'; 'Norm Effman'; 'Oscar Schreiber'; 'Paul Corradini'; 'Paul Hadley (PaulHadley33@gmail.com)'; 'Peter H. Jones'; 'Phil Roche (philr@co.steuben.ny.us)'; 'Richard Rothermel'; 'Rick Jones'; 'Robert Dean'; 'Robert Linville'; 'Robin Steinberg'; 'Rosemary Herbert'; 'Sandra McCarthy'; 'Sanford Church'; 'Sara Davis'; 'scaturrolaw@aol.com'; 'Scott Banks'; 'Scott Fiero'; 'Scott Goldie'; 'Sean Lally (Spl324@aol.com)'; 'Seymour James'; 'Sherri Brooks (Sherri.Brooks@albanycounty.com)'; 'sjacobs@cfmny.org (sjacobs@cfmny.org)'; 'Stan German'; 'Stephen D. Button (sbutton@co.st-lawrence.ny.us)'; 'Stephen Herrick'; 'Stephen Schick'; 'Stephen Signore'; 'Steve Ballan'; 'Steve Pechenik'; 'Suzanne Graulich'; 'Thomas Cioffi'; 'Thomas Soucia'; 'Tim Donaher'; 'Tim Embser (embserwoltag@yahoo.com)'; 'Tim McClusky'; 'Timothy Rountree'; 'Tina Luongo'; 'Tom Angell'; 'Wayne County LAS'; 'Wesley A. Roe (wroe@co.schuyler.ny.us)'; 'William Martuscello'; 'Adam Koch'; 'Adele Fine'; 'Alice Decker (Adecker@wnylc.com)'; 'Ann Meyer Dunton'; 'Charles Thomas'; 'Daniel Howard'; 'David Rynkowski'; 'Dolores Fogarty'; 'Emma Ketteringham'; 'Eric Knapp'; 'Glenn Kroll'; 'Jared Hart'; 'Jimmy Farrell'; 'John Ferrara'; 'Jon Alan Kosich'; 'Kate Woods'; 'Kathryn Dell (Attorneydell@nycap.rr.com)'; 'Kelly Donohue Burns'; 'Lauren Broderick'; 'Lauren Praske'; 'Leah Casey'; 'Mari Townsend'; 'Mary Nori'; 'Matt Hughson'; 'Michele Cortese'; 'Patrick Brophy'; 'Rylan Richie'; 'Sarah Schellinger'; 'Scott Colbert'; 'Sheila Hyde'; 'sjacobs@cfmny.org (sjacobs@cfmny.org)'; 'Stacy Charland'; 'Thomas Sartain'; 'Yvonne Vertlieb'; 'Zack



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Andrew Kossover.

Chair, Committee on Mandated Representation
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May 11, 2017

William Leahy, Executive Director
NYS Office of Indigent Legal Services
Alfred E. Smith Bldg.
80 S. Swan Street
Suite 1147
Albany, NY 12210

Dear William:

As Chair of the Committee on Mandated Representation of the New York State Bar Association, I am pleased to inform you that your Organization has been selected as a recipient of the 2017 Award for Outstanding Achievements in Promoting Standards of Excellence in Mandated Representation.

This award acknowledges those individuals or organizations that have demonstrated consistent adherence to the highest professional standards in providing mandated representation, have engaged in innovative efforts to improve the overall quality of mandated representation, or have promoted steps by the legislature, executive branch or judiciary to ensure the provision of high quality mandated representation.

The award will be presented during a luncheon ceremony to be held in conjunction with a free continuing legal education program on Family Court representation at the New York State Bar Center, One Elk Street, Albany, New York on Friday, June 9, 2017. We invite you and two members of your office to be present when you receive the award. Kristen Wagner, Esq., staff liaison to the Committee and Director of the Department of Pro Bono Services, will be in touch with you about the details.

At your earliest convenience, please provide us with a high resolution color photograph of your staff and a description of your work so that we may include it in the program brochure and other media releases about the award recipients. The photograph should be in jpeg format and may be emailed to ebencke@nysba.org.

Please accept my personal congratulations. I am familiar with your organization's work and know that the award is richly deserved.

Very truly yours,

Andrew Kossover

Leahy, Bill (ILS)

From: Leahy, Bill (ILS)
Sent: Thursday, May 18, 2017 3:30 PM
To: ils.dl.all.users
Subject: Symposium on Pre-Trial Detention
Attachments: Pretrial Detention Agenda 5 18 17.pdf; Pretrial Detention Nationwide 5 18 2017.pdf; Pretrial Detention Data NY 5 18 2017.pdf

The Pretrial Detention Symposium hosted by Alphonso David today was informative and robust. The NY detention data presented was dramatic. In response to the Discussion question “what does the data say?”, I spoke to the disparities between NYC (18% of detainees charged with misdemeanors) and the upstate counties (58%); between upstate county arrest rates (decreasing) and detention totals (increasing); and between the ROR rate for NYC (70%) and upstate counties A,B and C (38-49%). In response to the question as to what the experience says, I spoke to our six years of experience with the justice courts and the magistrates and the impossible logistics. Finally, in response to the request for solutions, I offered four proposals:

1. A statutory presumption of ROR for most offenses.
2. A statutory ban on imposing bail unless the defendant is represented by counsel and has been heard on the issue of bail.
3. A statutory right to a de novo bail hearing before an OCA judge on the same day or the next day, in any case where a person has been detained on bail or in lieu of bail.
4. The establishment of pretrial services and risk assessments, once counties have established centralized arraignment parts.

There was a surprising amount of support for these proposals, especially given that Mike Green, Tony Jordan (DA Washington) and Kate Hogan (DA Warren) were present. Mark Williams, Rick Jones and Clare Degnan supported my proposals and offered much else on their own. Rick noted the dramatic evidence of racial bias in the nationwide report, and proposed both protections against it and training to prevent it. After the meeting, DA Jordan offered to work with me toward the amelioration or decriminalization of aggravated unlicensed operation offenses.

Alphonso said the Governor wants to file a bill but not in the current legislative session. He said he would schedule additional meetings, and identified three tasks going forward:

1. Develop the framework of proposed legislation
2. Consider solutions to statewide training needs and structural issues (citing the OCA’s involvement)
3. Continue to develop the data, especially as to racial and geographical/jurisdictional disparities.

Bill

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Leahy, Bill (ILS)

From: Anne Erickson <AErickson@empirejustice.org>
Sent: Friday, June 02, 2017 9:08 AM
To: Leahy, Bill (ILS)
Subject: Please join us for a strategic conversation

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Please Join Us for a Strategic Conversation

Dear Bill:

On behalf of the Board and staff of the Empire Justice Center, we are writing to invite you to join us in a Strategic Conversation on Tuesday June 27th at Renaissance Hotel, 144 State Street, Albany, NY 12207 from 8:00-10:00 AM. We are gathering a targeted group of policy leaders to help us plan forward in this changing world of ours and as a leader in the community, we hope you will join us for this conversation. A light breakfast will be served, there will be a brief overview of the key issues we are working on and then we will open the conversation to hear from you about the critical and emerging issues impacting your work and the communities you serve.

Clearly, we are at a crucial moment in our country, in our state and in our communities. The rhetoric of intolerance that now pours forth from our nation's capital is too often matched and amplified in our schools and neighborhoods. The policy changes being crafted and adopted in Washington will have a profound impact on what we will need to do at the state level – in our courts and with our state policymakers. The Federal underpinnings of law, rule and regulation may well be dismantled, making the legal protections of state law afforded to those in need all the more critical.

As many of you know, the Empire Justice Center is a statewide organization focused on Making the Law Work for all New Yorkers. We do this through a dynamic combination of litigation, legislative advocacy and legal education across a host of substantive law areas, including health, welfare, foreclosure, disability, immigration and domestic violence to name but a few. As we plan our work at the state level, we'd like to hear from you about how you see the these changes in Washington impacting our collective work. What do you see as the key issues confronting New York policy-makers and how might the

work of the Empire Justice Center help advance needed protections for those we serve? What are the legal challenges you see on the horizon? Are their partnership we can build or deepen? How can we be most helpful in advancing a positive agenda? We need your advice in these challenging times; we promise not to ask you for money.

We hope you can join us for this Strategic Conversation. Please [RSVP to Anne](#) today and feel free to give us a call should you have any questions.

All the best,

JoAnn M. Smith
Chair, Board of Directors

Ray Brescia
Chair, External Affairs

Anne Erickson
President and CEO

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