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Governor

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

INDIGENT LEGAL SERVICES BOARD

September 20, 2019

Association of the Bar of the City of New York

AGENDA

- I. Appreciation of Governor Cuomo's former Counsel Alphonso David (appreciation attached)
- II. Approval of Minutes of June 14, 2019 Meeting (to be sent on Wednesday)
- III. Congratulations to Patricia Warth, Melissa Mackey and Nora Christenson on their appointments
- IV. ILS plan to increase the efficiency of our contracting process (Patricia)
- V. Allocation of FY 2019-20 Aid to Localities Appropriation **(vote)** (memo attached)
- VI. ILS Budget Request for FY 2020-21 **(vote)** (memo attached)
- VII. Update on status of Statewide HH Implementation (Joanne Macri)
- VIII. Update on status of Parental Representation (Angela Burton)
- IX. Highlights Letter to *Hurrell-Harring* Parties and NYLJ article (attached)
- X. September, 2019 Raise the Age Task Force report (attached)
- XI. Upcoming ILS Criminal Defense Advisory Committee meeting (agenda attached)
- XII. Next Meeting of the Board **December 6, 2019**

Minutes for the Indigent Legal Services Board Meeting

June 14, 2019

11:00 A.M.

City Bar of the Association of New York

Board Members Present: Chief Judge Janet DiFiore, Carmen Ciparick, Sheila DiTullio, Suzette Melendez, John Dunne (by telephone), Joe Mareane, Michael Breslin, Lenny Noisette

ILS Office Attendees: Bill Leahy, Matt Alpern, Joanne Macri, Melissa Mackey, Angela Burton, Cynthia Feathers

Minutes taken by: Mindy Jeng

I. Chief Judge's Remarks

The Chief Judge stated that Counsel to Governor Cuomo, Alphonso David, was called away for an emergency meeting. He will be invited back at a later meeting so that the ILS Board can express its gratitude and appreciation.

II. Thank You and Best Wishes to Former ILS Counsel Joe Wierschem and Director of Research Andrew Davies

Bill Leahy read into the record Chief Judge DiFiore's letter to Joe Wierschem. The letter was also read at the celebration for Joe in Albany.

Various board members shared their appreciation of Joe's work. Joe Mareane stated that the ILS mandate could have been a disaster. It was through the hard work of Joe and Bill in building bridges that made the work of ILS so dynamic. They formed an incredibly productive relationship with the counties. There was a transformational nature to the work of ILS with the counties. The counties could have been left in the dust with the developments from Albany. It was the work of Joe and Bill that ensured that counties were treated with respect and dignity. Joe Mareane has a tremendous personal admiration for Joe. He put a huge effort into the organization, and the Board really appreciates his dedication.

John Dunne expressed his feelings of appreciation for Joe at the farewell party. He points out at this formal meeting, that he has a conflict of interest as a member of the Board of Prisoners' Legal Services. John welcomes Joe to Prisoner's Legal Services with open arms.

Mike Breslin mentioned that he also spoke at Joe's farewell gathering. As a former county executive, Mike knew that Joe had to go extra lengths to getting the support and cooperation of the counties. Mike is amazed at how well the counties have responded, and he credits that to the work of Joe and Bill. Joe always does things meticulously. Mike noted that

people who needed assurances, got assurances. Joe knew the legislative process, and he did magnificent work. Mike said that Joe was also a role model to others and elevated the work of his colleagues because they “couldn’t let Joe down.”

Sheila DiTullio could not attend the gathering in Albany but spoke to Joe personally upon his transition. She appreciates the deep sacrifices he made. She acknowledged that he sacrificed his time and family life. She has deep respect for Joe and his work.

Bill Leahy said that he was very happy for Joe. The transition was the right thing for him and his family. He is back working with clients which is where his legal career began.

Dean DeFruschio (Division of the Budget) expressed gratitude for Joe’s contributions. He said that he will miss Joe on a professional and personal level.

III. Approval of Minutes

The Board unanimously approved the minutes from the April 2019 meeting.

IV. Approval of ILS Standards for Establishing and Administering Assigned Counsel Programs

Matt Alpern presented the ILS Standards for Assigned Counsel Programs (“Standards”). The State Bar’s Committee on Mandated Representation and Committee on Family Law also submitted comments, many of which were incorporated into the Standards. Matt noted that the Standards are comprehensive and have a multi-tiered approach. They are also specific to New York State. The Standards are instructive and flexible and provide a roadmap for next steps for the counties. Some counties don’t have an administrator, and the standards have many examples on what has been done in other jurisdictions. The Standards are intended to improve the quality of representation. The Standards also state that Assigned Counsel Programs (ACP) should also be involved in efforts to improve the justice system.

Cynthia Feathers described three provisions that generated debate: whether judges may serve on the boards of ACP, whether the plan administrator must be an attorney, and whether panel attorneys must have malpractice insurance. Section 3.2.1 states that judges may serve on the board of Assigned Counsel Programs, but may not constitute a majority. This departs from the NLADA standard that prohibits judges as members, but ILS saw benefits of judges serving on the boards. The Standards include commentary about the undue influence of judges in small counties. If there are future problems with this guideline, it may be revisited.

Section 3.3.A states that the plan administrator “shall” be an attorney. The drafters concluded that the administrator should be skilled in the law. Section 8.1.G states that panel

attorneys “should” get malpractice insurance. The drafters used the term “should” instead of “shall” because malpractice insurance is cost-prohibitive for some attorneys in certain counties.

Bill Leahy provided further information about why the Standards permit judges to serve on boards. ILS had positive experiences with judges on the board of ILS and several county ACPs have had the same experience.

A board member commented that the Standards should think about recommending inclusion of previous clients as board members, to encourage client-centered lawyering. The participation of previous clients may provide community support. Other board members supported this suggestion. A board member noted that judges on the ACP board in Onondaga County were instrumental in effecting change.

A motion was made to approve the Standards, with the additional reference to client participation on boards. The motion was seconded and unanimously approved.

V. Approval of the Seventh Annual Report of the ILS Board

Bill stated that Cynthia Feathers and Patricia Warth wrote the director’s summary for the ILS Seventh Annual Report. A motion was made to approve the report, and seconded. The report was unanimously approved by the board.

VI. Hiring Updates

Bill stated that ILS posted the open position for Counsel. They have been receiving applications and will report back periodically until a selection has been made.

Andy Davies will soon be leaving for his new position in Texas. Bill said a job description for the Director of Research will be updated and posted shortly on the State jobs website.

VII. Progress Reports – Parental representation, HH implementation, Statewide Implementation, RTA Task Force and Bail Reform Implementation Task Force

Parental Representation

Angela Burton provided an update on parental representation developments. She stated that the court system and ILS both share interest in improving the quality of parental representation. Angela noted that there is a potential opportunity for New York to access federal funding under Title IV (E) for parental representation and child welfare proceedings.

Angela noted that the Commission on Parental Legal Representation recommended that there be uniform standards for financial eligibility in Family Court cases. ILS is working with OCA to hold four public hearings. ILS board members will be at the hearings, as well as Commission members. A board member noted that people provided useful perspectives at the first hearing

for eligibility standards and that getting community perspective is valuable. The future hearings will occur throughout the summer and will include Suzette Melendez, Judge Carmen Ciparick, and others.

Angela said that ILS was working with OCA to create a research plan for a caseload study. Angela said that they are in the preliminary stages but hoping to issue a caseload recommendation by the end of the year.

The Request for Proposals for an Upstate Model Family Representation Office has been re-issued, with a deadline of mid-July for submission of proposals. It is the same RFP issued in 2017 but with some modifications to reference the Commission.

Chief Judge DiFiore noted to the board that Angela recently received the Howard Levine Award for Excellence in Juvenile Justice and Child Welfare, and Angela gave a beautiful and moving acceptance speech.

Hurrell-Harring Implementation

Melissa Mackey presented on *Hurrell-Harring (HH)* implementation progress, as Patricia could not attend the meeting today. The HH team has completed two more reports: a follow-up eligibility report and a caseload study. The eligibility report found that the five counties have utilized the ILS Eligibility Criteria and Procedures to simplify eligibility determination, and the providers say that the criteria have been effective.

The caseload study, issued in April, was a very important report. Every provider succeeded in complying with the ILS caseload standards. Melissa stated that ILS works with the providers and makes sure they are equipped with the tools they need to meet the standards. ILS collects data for reporting, but also gives data back to the providers to help them make data-informed decisions. The data inform them of services available, help them to assess quality, help them to anticipate staffing issues, etc.

Bill added that the integration of research into the reform process has improved quality. Data has helped to decrease caseloads and improve the quality of representation.

Statewide Implementation

Joanne Macri presented to the board regarding the progress of statewide implementation efforts. Joanne said that their team has capitalized on the relationships that Bill and Joe have started. They have received budgets from every single county. Seventeen contracts for defense services have been approved. A few counties are starting to get reimbursements from the State. The counties are also starting to put together budgets for the second year of implementation.

Many counties are thinking ahead to the resources necessary for the upcoming years. They are looking into expanding their use of space and looking to hire new attorneys and staff. Joanne reported that 38 counties will have an administrator for their ACP. New York City is also

adding administrators to their ACP. Four counties are looking to create regional panels. Some counties are also providing arraignment training to attorneys. ILS is collecting data from every county through the data officers. ILS is also preparing training webinars and an Assigned Counsel summit.

Joanne noted that one of the challenges for the counties is recruitment. Rural counties have difficulty bringing people into public defense. One solution may be to regionalize panels. Many ACPs are planning to create second chair and mentoring programs. ILS may develop a curriculum to train new lawyers.

Bill stated that there was an amazing amount of progress made by the statewide implementation team, and that he was proud of Joanne's leadership.

Raise the Age Task Force and Bail Reform Implementation Task Force

Bill reported that there has been an impressive amount of activity on the RTA listserv that Nora Christenson created as our RTA liaison. Lawyers throughout the state participate and ask each other questions and learn from one another. Cynthia Feathers has expanded her weekly decisions of interest to include RTA decisions.

Bill was invited to participate in the Governor's Bail Reform Implementation Task Force. OCA is well-represented on the Task Force, as well as the executive and probation. There was vibrant discussion at a recent meeting, and Bill will keep the Board updated.

Bill also stated that ILS is seeking approval to create an assistant counsel position. ILS now has the responsibility to approve ACP and Conflict Defender office plans, and some have not been updated since 1965.

VIII. Next Meeting – September 20, 2019

A motion was made to adjourn the meeting and seconded. The meeting was adjourned at 12:46 p.m.

Public Appreciation of Alphonso David

Meeting of Indigent Legal Services Board – June 14, 2019

It is my privilege to open today's meeting by publicly recognizing Alphonso David,-- Counsel to Governor Andrew Cuomo. On behalf of the Indigent Legal Services Board, I want to express our deep gratitude and appreciation to Mr. David,-- for his extraordinary contributions to improving the quality of mandated representation in New York State,-- and for his invaluable support of the Office of Indigent Legal Services.

As many of you are aware, it was not even a decade ago that indigent New Yorkers accused of crimes were forced to rely on an overloaded and underfunded public defense system that in many cases failed to provide the level of legal representation guaranteed to them by the Constitution.

Today, New York State is setting the national standard for a well-funded, high-quality public defense system.

And the credit for that historic transformation goes, of course, to Governor Andrew Cuomo,-- for his vision and leadership,-- and to Alphonso David,-- for guiding and advising the Governor,-- and working successfully to achieve his vision in Albany.

**Mr. David's knowledge of our criminal justice system,--
and astute understanding of New York State politics,--
enabled him to negotiate and achieve bipartisan support in
the Legislature for the historic legislation which Governor
Cuomo proposed in January 2017:--**

- Extending the key terms of the Hurrell-Harring settlement to all 62 counties in our state; and**
- Authorizing the Office of Indigent Legal Services to establish and uphold standards requiring the presence of counsel at a criminal defendant's first court appearance;**

- **Setting reasonable limits on the caseloads that public defense attorneys can carry, in order to ensure that they have enough time to mount an effective defense in each case;**
- **And providing for proper training, supervision, and support staff for attorneys; as well as access to support services and special resources needed to mount an effective defense.**

Of course, these critically important reforms would have been meaningless without the State's commitment to provide the necessary funding support. And here, again, Mr. David played a key role in negotiating with the Legislature to make sure that our State would not only make the necessary fiscal investment in public defense reform,-- but would reimburse

counties and cities for the cost of complying with these new standards,-- shifting the fiscal burden of public defense from the counties to the State.

Having known Mr. David since I was the District Attorney of Westchester County, it comes as no surprise to me that he was able to shepherd through these critical reforms. As soon as we met, we bonded over our passion for criminal justice reform,-- and our strong desire to make our criminal justice system fairer; . . . more efficient; . . . and more effective.

I was immediately impressed by Mr. David's knowledge and understanding of criminal justice issues. And I found him to be intelligent and thoughtful,-- but also practical and politically astute,-- the exact right combination of skills for the important position of Counsel to the Governor.

In fact, Mr. David has proven himself to be an excellent lawyer and exceptional advocate for the Governor's reform agenda. His work ethic and preparation are unmatched -- and there is no detail that escapes him,-- no angle or possibility he doesn't consider,-- and he is always accessible, direct and straightforward in his dealings,-- a man of his word.

We are truly fortunate to have someone of his caliber as a public servant,-- occupying one of the most influential positions in New York State Government.

I know that we as a Board,-- and Bill Leahy as the head of the Office of Indigent Legal Services,-- are proud to be able to work with Governor Cuomo and Alphonso David in carrying out our mission of building a strong, effective and efficient

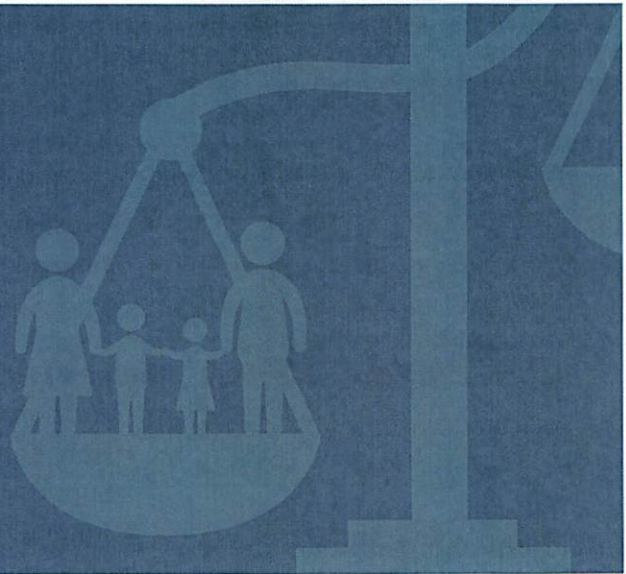
public defense system that safeguards the rights of every person charged with a crime who is legally entitled to an attorney but cannot afford one.

Thank you, Mr. David, for everything you have done to improve the fairness and effectiveness of our criminal justice system.

And before I turn it over to Bill Leahy, I want to thank everyone in the audience today for taking the time to be here,-- and for your demonstrated interest in our shared public business of maintaining a well-functioning criminal justice system.

NATIONAL JUDICIAL LEADERSHIP SUMMIT IV

September 24–25, 2019 | Minneapolis, MN



Tuesday, September 24

7:00am – 8:00am Breakfast and Registration
Ballroom and Foyer

8:00am – 9:00am Minnesota Welcome Remarks
Ballroom Justice Anne McKeig, Minnesota Supreme Court

Color Guard and National Anthem

Tribal Ceremony

Summit Opening and Call to Action

*The Role of State Judicial Leaders and the Conference of Chief Justices and
Conference of State Court Administrators' Charge to the Teams*

- Chief Justice Mark Cady, Iowa Supreme Court and President, Conference of Chief Justices
- Corey Steel, State Court Administrator of Nebraska

[Insert Title]

- Jerry Milner, D.S.W., Associate Commissioner at the Children's Bureau, the Acting Associate Commissioner at the Family and Youth Services Bureau, and the Acting Commissioner for the Administration on Children, Youth and Families.

The Trauma of Removal

- Dr. Amelia Frank Meyers, Founder and CEO of Alia Innovations

9:00am – 9:30am **Incorporating the Voice of Kids and Families in the Court Process: Constituent Fishbowl with Former Foster Youth, Birth Parents, and Kinship Parents**
Ballroom

- Zoe Jones-Walton, Texas
- Melissa Gutierrez, California
- Robyn Wind, Oklahoma
- Teresa Nord, Minnesota
- Shrounda Selivanoff, Washington

9:30am – 10:30am **Theme #1: Incorporating the Voice of Families in the Court Process**
Ballroom *Introduction of the Theme and its Importance to Our Transformation Efforts*

- Hon. Kathleen Quigley, Presiding Judge, Juvenile Bench, Pima County Superior Court
 - Jennifer Rodriguez, J.D., Executive Director, Youth Law Center
- Examples and Strategies from the Field*
- Judge Anita Fineday (ret.), Managing Director of Indian Child Welfare, Casey Family Programs
 - Cindy Bricker, Court Improvement Program Director, Washington

10:45am – 12:30pm **Team Action Planning: Theme 1 and Lunch with Team**
Ballroom and Atrium Rooms
(see assignments)
Teams will meet and discuss this theme and develop action steps. See the Action Planning Template and Instructions.

12:30pm - 1:30pm **Theme #2: Delivering High Quality Legal Representation to Families in Child Welfare**
Ballroom

Introduction of the Theme and its Importance to Our Transformation Efforts

- Hon. Dawn Beam, Associate Justice, Mississippi Supreme Court
- Vivek Sankaran, Director, Child Advocacy Law Clinic, University of Michigan Law School

Examples and Strategies from the Field

- Jey Rajaraman, Chief Counsel, Legal Services of New Jersey
- Angela Olivia Burton, Director of Quality Enhancement, Parent Representation
- Dan Wilde,
- David P. Kelly, Special Assistant, Administration for Children and Families

1:30pm – 2:45pm **Team Action Planning: Theme 2**
Ballroom and Atrium Rooms
(see assignments)
Teams will meet and discuss this theme and develop action steps. See the Action Planning Template and Instructions.

3:00pm – 4:00pm **Theme #3: Safely Preventing the Unnecessary Entry of Children into Foster Care Through Meaningful Initial Hearings**
Ballroom

Introduction of the Theme and its Importance to Our Transformation Efforts

- Hon. Ingrid Gustafson, Associate Justice, Montana Supreme Court
- Christopher Church, Staff Attorney, CHAMPS Clinic, University of South Carolina School of Law Director,

Examples and Strategies from the Field

- Judge Leonard Edwards (ret.), Santa Clara, California
- Hon. Trent Favre, Hancock County Court and Youth Court, Mississippi
- Sandy Moore, Administrator for the Office of Children & Families in the Courts, Administrative Office of Pennsylvania Courts
- Jennifer Renne, Director, Court Projects, American Bar Association Center on Children and the Law

4:15pm – 5:00pm **Team Action Planning: Theme 3**

*Ballroom and
Atrium Rooms
(see assignments)*

Teams will meet and discuss this theme and develop action steps. See the Action Planning Template and Instructions.

5:30pm – 6:15 pm **Reception**

Garden Court

6:15pm– 6:45 pm **Move to Ballroom for Dinner Program**

6:45pm– 9:00 pm **Dinner & Program Celebrating the 25th Anniversary of CIP**

Ballroom

- Welcome by Joseph Baxter, Rhode Island State Court Administrator and President of the Conference of State Court Administrators
- Youth Chorus
- *The History, Growth, and Impact of the 25 Years of the Court Improvement Program: A Fireside Chat, featuring Mark Hardin, Joan Ohl, and David Kelly, and moderated by William DeLisio*

Wednesday, September 25

7:30am – 8:30am **Breakfast and Affinity Groups**

*Ballroom and
Atrium Rooms*

Grab breakfast and join a table discussion with your respective professional affinity groups.

- Chief Justices, Justices, State Court Administrators, CIP Directors, and other AOC Leadership [Atrium Room ____]
- Child Welfare Agency Leadership [Atrium Room ____]
- Trial Court Judges [Atrium Room ____]
- Parent, Child, and Agency Attorneys [Ballroom]

- 8:30am – 9:30am** **Team Action Planning: Revisiting Day One & Further Developing Action Steps**
Ballroom and Atrium Rooms
(see assignments)
Teams will meet and discuss Day One Theme and further develop and refine those action steps. See the Action Planning Template and Instructions.
- 9:45am – 10:45am** **Theme #4: Courts Ensuring Procedural Fairness, Equity and Access to Justice for All Families**
Ballroom
Introduction of the Theme and its Importance to Our Transformation Efforts
- Judge William Thorne, (ret.)
 - Robert Wyman, Co-Director, Court Improvement Training Academy, Washington
- Examples and Strategies from the Field*
- Shannon Smith, Executive Director, ICWA Law Center, Minnesota
 - Hon. Edwina Mendelson, Deputy Chief Administrative Judge, Office for Justice Initiatives, New York Courts
 - Kevonne Small, Attorney Advisor, United States Department of Justice, Civil Rights Division
- 10:45am – 11:30am** **Theme #5: Leading Child Welfare Reform from the Supreme Court and AOC**
Ballroom
This session will feature a “fishbowl conversation” among several state court leaders.
- Tina Amberboy, Court Improvement Program Director, Texas
 - Justice Max Baer, Associate Justice, Pennsylvania Supreme Court
 - Sarah Jacobs, Court Improvement Program Director, New Mexico
 - Chief Justice Amy Nechtem, Massachusetts Juvenile Court
 - Dawn Marie Rubio, State Court Administrator, Washington
 - Deborah Taylor Tate, State Court Administrator, Tennessee
- 11:30am – 1:30pm** **Lunch and Team Action Planning: Themes 4 & 5 and Finalizing Action Plan**
Ballroom and Atrium Rooms
(see assignments)
Teams will meet and discuss Themes 4 & 5 and further develop and refine those action steps. See the Action Planning Template and Instructions.
- 1:30pm – 2:00pm** **Closing Remarks, Next Steps, and Final Call to Action**
Ballroom
- Dr. David Sanders, Vice President, Systems Improvement, Casey Family Programs
 - Sandra Gasca-Gonzalez, Vice President, Center for Systems Innovation, Annie E. Casey Foundation
 - Chief Justice Mark Cady, Iowa Supreme Court and President, Conference of Chief Justices
 - Corey Steel, State Court Administrator of Nebraska