

Commentary

ILS Announces Publication of Assigned Counsel Program Standards

Publication of these Standards is an important milestone in the ongoing efforts to elevate the quality of public defense representation in New York.

By **William J. Leahy** | June 27, 2019 at 11:00 AM

In response to *Gideon v. Wainwright*, 372 U.S. 335 (1963), New York created a county-based system of representation for criminal defendants, as well as Family Court litigants, who are entitled to counsel paid for by the government. See County Law article 18-B. In counties throughout the state, a significant component of the public defense system is an assigned counsel program (ACP). Bar associations administer the programs, and private attorneys provide the representation. However, the statute provides no details as to how to establish and administer an ACP. So, for four decades, counties and bar associations have created and maintained such programs with little guidance. That is changing, due to several developments.

First, in 2015, a court-approved settlement in *Hurrell-Harring v. State of NY*—a case addressing the state’s failure to support a system that ensured effective assistance to indigent criminal defendants—led to criminal defense

reform in the five counties named in the lawsuit. Second, in 2017, these reforms were expanded statewide, at state expense, pursuant to Executive Law §832(4). The State Office of Indigent Legal Services (ILS) was charged with implementing the *Hurrell-Harring* settlement and its statewide expansion. Third, effective April 1, 2019, ILS was also given the authority to approve ACPs. See County Law §772(3)(b), (c).

Finally, ILS has published ACP Standards that are effective as of July 1, 2019. The Standards were developed by a public defense working group led by Matthew Alpern, our Director of Quality Enhancement for Criminal Defense Trials, with significant contributions by his ILS colleague Cynthia Feathers and Mardi Crawford of the New York State Defenders Association. The State Bar Committees on Mandated Representation and Families and the Law reviewed the draft Standards, and many of the committees' suggestions were incorporated in the final version, which was unanimously approved by the ILS Board on June 14, 2019.

The Standards are comprehensive, covering all aspects of the ACP program structure. Geared toward the unique features of our state's public defense system, the standards are organized by county, program, and individual attorney responsibilities. They are instructive but flexible, providing in-depth guidance, as well as examples of successful applications of the principles contained in the Standards. The core goal is to provide quality representation to criminal defendants and Family Court litigants who cannot afford to retain counsel.

To meet that goal, the Standards seek to professionalize ACPs and place them on a par with the best institutional providers. For example, ACPs are called upon to provide panel attorneys with training and supervision, as well as mentoring, consultation, and second-chair programs. Further, assigned

attorneys are to be provided with access to non-attorney professionals needed to deliver effective representation, including investigators, experts, and social workers. Finally, through implementation of the Standards, ACPs will have a voice in efforts to improve the justice system.

The ACP Standards [Black Letter](#) (18 pages) and [Black Letter With Commentaries](#) (37 pages) are available at www.ils.ny.gov.

Publication of these Standards is an important milestone in the ongoing efforts to elevate the quality of public defense representation in New York. Sufficient guidance and resources must be provided, so that lawyers can remain independent, meet their ethical obligations, and deliver meaningful representation. ILS and its Board will continue to work with stakeholders to secure the funding necessary for compliance with the Standards. This includes funding to increase the long-stagnant hourly rates paid to assigned counsel attorneys. At the same time, we are also striving to achieve statewide reform of parental representation, as recommended by Chief Judge Janet DiFiore's Commission on Parental Legal Representation in its recent Interim Report.

William J. Leahy *is the director of the New York State Office of Indigent Legal Services*