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

October 11, 2017

John W. McConnell, Esq.
Counsel, Office of Court Administration
25 Beaver Street, 11th Floor
New York, NY 10004

**Re: Request for Comment on Proposed Increases in
Compensation Rates for Court-Appointed Experts**

Dear Mr. McConnell:

This submission is in response to your request for comments on proposed increases in the hourly rates of compensation paid to experts appointed by the court, pursuant to Judiciary Law § 35 and County Law § 722-c. The Office of Indigent Legal Services applauds the proposal, and endorses and adopts the comments of the New York State Defenders Association. NYSDA supports the proposed increases and recommends additional reforms that would advance our mission—improving the quality of mandated representation in this State.

As NYSDA states, the proposed increase in hourly rates of compensation will encourage more experts to participate in public defense cases, cause defense counsel to make more applications for experts, and improve the quality of representation to clients. The proposed increase is also consistent with ILS Standards regarding the use of experts, social workers, and investigative and other services (Standards and Criteria for the Provision of Mandated Representation in Cases Involving a Conflict of Interest, Standards 3, 4; Standards for Parental Representation in State Intervention Matters, Standards F-5, G, O-1, O-7). ILS also supports OCA's proposed legislative amendment to the statutory caps, so that extraordinary circumstances will not need to be shown when experts provide services for more than several hours at the increased rates.

We agree with NYSDA that additional reforms should be implemented. The guidelines should state that they do not enumerate an exclusive list of possible experts, given the wide spectrum of experts often needed to provide effective representation. Further, we are in accord with NYSDA that the hourly rate guidelines should provide for a full cost-of-living increase for physicians, psychologists, and social workers, and that the new rates for psychiatrists should similarly increase so that they are aligned with physician rates. In addition, trial courts should be reminded by the Administrative Board of the Courts that the hourly rates are not ceilings. As our Office has found, although the 1992 Guidelines have not been updated, the rates stated therein are often applied (Implementing the Quality Improvement Objectives in the *Hurrell-Harring v. State of New York Settlement*: 2016 Update, at 32-33). Finally, to ensure that the rates do not remain stagnant going forward, the amended guidelines should provide a mechanism for regular adjustments.

Very truly yours,


Cynthia Feathers

**ILS Director of Quality Enhancement for
Appellate and Post-Conviction Representation**