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# **Criteria and Procedures for Determining Assigned Counsel Eligibility**

## **Report on Implementation in the *Hurrell-Harring* Counties**

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April 4, 2017

Submitted by the New York State Office of Indigent Legal Services in accordance with  
Section VI(C) of the *Hurrell-Harring v. The State of New York* Stipulation and Order of Settlement

**NEW YORK STATE  
OFFICE OF INDIGENT LEGAL SERVICES**

**Criteria and Procedures for Determining Assigned Counsel Eligibility**

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- Exhibit A: Schedule of Provider Trainings
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- Exhibit F: Ontario County Modified Intake Form and other Eligibility Documents

- Exhibit G: Advisory Committee on Judicial Ethics Opn. 16-68
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- Exhibit I: Suffolk County Probation's Amended ROR Form
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## I. INTRODUCTION

In February 2004, the Commission on the Future of Indigent Defense Services (“Kaye Commission”) was convened by then-Chief Judge Judith Kaye to “examine the effectiveness of public criminal defense services across the State and to consider alternative models of assigning, supervising and financing assigned counsel compatible with New York’s constitutional and fiscal realities.”<sup>1</sup> In 2006, the Kaye Commission issued its Final Report in which it described New York’s public criminal defense system as “severely dysfunctional” and one that “has resulted in a disparate, inequitable, and ineffective system for securing constitutional guarantees to those too poor to obtain counsel of their own choosing.”<sup>2</sup> Amongst the many problems facing New York’s public criminal defense system was the lack of statewide, uniform standards for determining eligibility for assigned counsel. Thus, noted the Kaye Commission, “a defendant may be deemed eligible for appointment of counsel in one county and ineligible in a neighboring county or even in a different court within the same county.”<sup>3</sup>

In 2007, on the heels of the Kaye Commission Report, the New York Civil Liberties Union (“NYCLU”) sued New York State alleging that the State had structurally and systematically denied meaningful and effective representation to defendants entitled to assigned counsel. Subsequently, five counties - Onondaga, Ontario, Schuyler, Suffolk, and Washington - were included as defendants to this lawsuit, captioned *Hurrell-Harring v. The State of New York*. In October 2014, the *Hurrell-Harring* parties agreed to an Order of Stipulation and Settlement (“Settlement”), which was approved by the Albany County Supreme Court in March 2015. The New York State Office of Indigent Legal Services (“ILS”) accepted the responsibility of implementing the Settlement.

Section VI of the Settlement requires that ILS “issue criteria and procedures to guide courts in counties outside of New York City in determining whether a person is eligible for Mandated Representation.” The original deadline for issuing these criteria and procedures was September 2015. However, the Settlement was subsequently amended to set forth the following timeline: ILS would submit preliminary criteria and procedures to the parties by December 11, 2015; the parties would have until January 11, 2016 to submit comments to ILS; and ILS would finalize the criteria and procedures by February 12, 2016. It was also agreed that ILS would publish and distribute the criteria and procedures on April 4, 2016, with implementation dates of October 3, 2016 for the five *Hurrell-Harring* counties and April 1, 2017 for the non-*Hurrell-Harring* counties.

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<sup>1</sup> Commission on the Future of Indigent Defense Services, FINAL REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK, June 2006, at 1 (hereinafter “Kaye Commission Report”). This report is available at: [http://www.courts.state.ny.us/ip/indigentdefense-commission/IndigentDefenseCommission\\_report06.pdf](http://www.courts.state.ny.us/ip/indigentdefense-commission/IndigentDefenseCommission_report06.pdf).

<sup>2</sup> Kaye Commission Report, at 3.

<sup>3</sup> Kaye Commission Report, at 15-16.

ILS complied with the above deadlines, and on April 4, 2016, published and distributed the criteria and procedures (“Eligibility Standards”) in a full report entitled, *Criteria and Procedures for Determining Assigned Counsel Eligibility*, which is available on the ILS website.<sup>4</sup> This report describes the steps that ILS took to develop the Eligibility Standards, which included: a survey of providers, county officials and judges in the counties outside of New York City; public hearings in all of the Judicial Districts outside of New York City to elicit oral testimony and written submissions; legal research; and a review of professional standards and state and national reports about assigned counsel eligibility standards. ILS also issued an accompanying report entitled, *Determining Eligibility for Assignment of Counsel in New York: A Study of Current Criteria and Procedures and Recommendations for Improvement: Final Report*, which describes what we learned about the practices for determining assigned counsel eligibility and the various recommendations we received.<sup>5</sup>

### **Steps ILS Has Taken to Implement the Eligibility Standards**

After issuing the Eligibility Standards, ILS took a variety of steps to implement them in the five *Hurrell-Harring* counties. Implementation necessarily required the participation of mandated providers, who are often involved in screening and making recommendations about assigned counsel eligibility; and the courts, which have the ultimate authority for determining financial eligibility for assignment of counsel.<sup>6</sup> Thus, ILS’ implementation steps have fallen into two general categories: 1) working with the providers of mandated representation and any other entity involved in screening for assigned counsel eligibility; and 2) working with the judiciary.

#### *1) Working with providers*

To facilitate implementation, ILS developed a curriculum and materials for training providers. This included the creation of a Power Point presentation and the following documents: a blackletter version of the Eligibility Criteria and Procedures (available in English and Spanish); a Sample Application for Assignment of Counsel with instructions (also available in English and Spanish); a chart to easily assess whether an applicant’s income meets the income eligibility presumption; a Sample Notice of Eligibility Recommendation (available in English and Spanish); a Sample Notice of Right to Seek Review; and a Sample Notice of a Judge’s Ineligibility Decision. ILS has updated and adapted these materials as needed. Additionally, ILS has created and regularly updates a “Frequently Asked Questions” (FAQ) webpage, which incorporates and responds to the various implementation questions that have been posed since April 2016.<sup>7</sup>

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<sup>4</sup> See <https://www.ils.ny.gov/files/Hurrell-Harring/Eligibility/Final%20Eligibility%20Standards/Eligibility%20Criteria%20and%20Procedures%20FINAL%20FULL%20April%204%202016.pdf>.

<sup>5</sup> This report is available at: <https://www.ils.ny.gov/files/Hurrell-Harring/Eligibility/Final%20Background%20Study/Background%20Study%20Full%20FINAL%20021216.pdf>

<sup>6</sup> See, e.g., *Matter of Stream v. Beisheim*, 34 A.D.2d 329, 333 (2<sup>nd</sup> Dept. 1970).

<sup>7</sup> This is available at: <https://www.ils.ny.gov/files/Hurrell-Harring/Eligibility/FAQs%20REVISED%20010917.pdf>.

On April 4, 2016, ILS Executive Director Bill Leahy emailed a copy of the Eligibility Standards to public defense leaders in the counties outside of New York City. A meeting with these leaders followed on April 27, 2016 in Albany, New York, at which each could participate in person or by web. A web link to a video of this meeting was subsequently disseminated to the public defense leaders. During this meeting, ILS provided an overview of the Eligibility Standards and presented a plan to work with the providers across the state to implement the Standards. ILS also devoted over an hour to answering provider questions and responding to the concerns they had about the Eligibility Standards. Following this meeting, ILS began the process of training providers, focusing initially on the *Hurrell-Harring* counties. As part of these trainings, ILS gives each provider a thumb-drive that includes the Power Point program and other training materials so that providers can conduct on-going trainings for staff as needed. Attached as Exhibit A is a schedule of the provider trainings that ILS has conducted.

## 2) *Working with the judiciary*

Consistent with the Settlement, ILS has consulted with the Office of Court Administration (“OCA”).<sup>8</sup> ILS met with and elicited the assistance of Hon. Michael V. Coccoma, Deputy Chief Administrative Judge for Courts Outside of New York City. Judge Coccoma has been instrumental in facilitating ILS’ work to implement the Eligibility Standards, and has designated Hon. Nancy M. Sunukjian, Director of OCA’s Office of Justice Court Support (“OJCS”) to work with ILS on a training program for justice court magistrates. Together, ILS and OJCS re-formatted the Power Point presentation that ILS had prepared for providers to target the specific concerns and role of magistrates. ILS and OJCS also agreed upon the materials that judges and magistrates would receive, including a “bench card” that ILS developed at the request of Judge Coccoma. Attached as Exhibit B is a schedule of the joint OCA-ILS trainings that have occurred thus far and that are currently scheduled for this year. ILS is grateful to the efforts of Judge Coccoma and Judge Sunukjian to train magistrates and judges on the Eligibility Standards.

## **Data Collection, Maintenance and Reporting**

Procedure XVI of the Eligibility Standards identifies the data that should be collected and maintained regarding the assigned counsel application process. We worked with the providers in the *Hurrell-Harring* counties, and with the New York State Defenders Association (“NYSDA”) for those providers who utilize the Public Defense Case Management System (“PDCMS”),<sup>9</sup> to develop a system to collect, maintain, and report data on eligibility determinations. ILS requested that the data be provided on a quarterly basis, with the first reporting period being the last quarter of 2016 (i.e., October 1, 2016 through December 31, 2016).

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<sup>8</sup> See Settlement, § VI (A) (specifying that ILS may request OCA’s assistance to develop and distribute the Eligibility Standards).

<sup>9</sup> On October 3, 2016, NYSDA updated PDCMS to accommodate the new eligibility data collection requirements. This update was accompanied by the related data entry instructions. Subsequently, NYSDA provided the data export instructions to allow providers to transmit to ILS an Eligibility Report on a quarterly basis.

The providers sent the data to ILS, and we evaluated it for accuracy. Every data collection process requires that resulting data reports be reviewed carefully - especially the initial reporting cycles - so that unforeseen problems can be identified and resolved. As anticipated, the reports received for the first reporting period revealed some problems and inconsistencies. Some of the problems were related to data entry; others to differences in how each provider uses PDCMS. This meant that in some circumstances, ILS had to consult with the providers on the information in their reports, and ask them to reconcile any inconsistencies. This allowed us to obtain up-to-date and accurate information for this report. ILS will continue to assess incoming data and work with NYSDA and the providers to refine the reporting practices under Procedure XVI.

### **ILS' Efforts to Gauge the Costs of Implementing the Eligibility Standards**

In developing the Eligibility Standards, ILS started with the premise that under County Law § 722, financial inability to afford counsel is “not synonymous with destitution or a total absence of means,” but is instead determined by a person’s inability to pay the costs of retaining a private lawyer and the other costs associated with a defense.<sup>10</sup> This principle is captured in Criteria I of the Eligibility Standards. Yet, as recognized by the Kaye Commission and by individuals who presented during ILS’ public hearings, it is county budget pressures rather than inability to pay for private counsel that have, at times, influenced decision-making as to who is deemed eligible for assignment of counsel. Thus, some decision-makers have used restrictive eligibility standards, deeming a person eligible for assigned counsel only if the person is impoverished. Not surprisingly, some non-*Hurrell-Harring* providers and county officials have expressed a concern that implementing ILS’ Eligibility Standards – which use an inability to pay rather than an

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<sup>10</sup> See County Law § 722 (“providing counsel to persons . . . who are financially unable to obtain counsel.”). See also 1977 Memorandum written by Richard J. Comiskey, the then-Director of the Third Judicial Department, regarding, “Assignment of Attorneys to Represent Individuals who are Financially Unable to Obtain Counsel,” (hereinafter, “1977 Third Department Memo and Guidelines”), at 1, available at: <https://www.ils.ny.gov/content/eligibility-public-hearings>; see also *People v. King*, 41 Misc.3d 1237(A) (Bethlehem Justice Ct, Albany County 2013) (noting that it is a defendant’s “financial inability to retain counsel and not indigency which governs the determination of eligibility for court-appointed representation”); New York State Defenders Association, *Determining Eligibility for Appointed Counsel in New York State: A Report from the Public Defense Backup Center*, at 3 (hereinafter, “1994 NYSDA report”) (noting that the constitutional right to assigned counsel applies to those unable to afford counsel, and stating that “New York’s parallel statutory authority implementing the constitutional right to appointed counsel likewise emphasizes that it is financial inability to retain counsel and not ‘indigency’ which governs the determination of eligibility for court-appointed representation.”); Brennan Center for Justice, *Eligible for Justice: Guidelines for Appointing Defense Counsel*, Guideline 4, pp. 12-21; see also *Commentary*, ABA Standards for Criminal Justice: Providing Defense Services, Standard 5-7.1 (3d ed. 1992) (hereinafter, “1992 ABA Standards”) (“The fundamental test for determining eligibility for counsel should be whether persons are ‘financially unable to obtain adequate representation without substantial hardship’”); National Study Commission on Defense Services/NLADA Guidelines for Legal Defense Systems in the United States (1976) (hereinafter, “1976 NLADA Guidelines for Legal Defense Systems in the United States”), Section 1.5 (“Effective representation should be provided to anyone who is unable, without substantial hardship to himself or his dependents, to obtain such representation”). Notably, this standard for assignment of counsel is nearly identical to the federal standard. See United States Judicial Conference, *Guide to Judiciary Policy, Vol. 7-Defender Services, Part A: Guidelines for Administering the CJA and Related Statutes*, Ch. 2, § 210.40.30(a) (hereinafter, “CJA Guidelines”).

impoverishment standard – will result in more people being deemed eligible for assigned counsel.<sup>11</sup>

At the time that ILS issued the Eligibility Standards, there was a dearth of data available to accurately predict the extent to which the Eligibility Standards would impact the number of people deemed eligible for assigned counsel, and thus impact provider caseloads. To provide a more informed estimate, ILS has sought data from the five *Hurrell-Harring* counties about the impact the Eligibility Standards have had on provider caseloads. This data is discussed in our January 2017 report entitled, *The Impact of Eligibility Standards in Five Upstate New York Counties*.<sup>12</sup> As stated in the report, the data provided and any conclusions drawn should be considered preliminary in nature, and ILS will continue to assess the impact of the Eligibility Standards in provider caseloads.

Notably, the data provided in this report is different from that set forth in *The Impact of Eligibility Standards in Five Upstate New York Counties*, because the reporting periods are different and because, as discussed below, the focus of this report is different.

### **The Focus of This Report**

ILS submits this report pursuant to § VI (C) of the Settlement, which requires ILS to submit annual reports assessing the criteria and eligibility being used in the five *Hurrell-Harring* counties, and identifying the extent to which, if at all, the criteria and procedures being used deviate from the Eligibility Standards. Put simply, the focus of this report is on implementation of the Eligibility Standards in the five *Hurrell-Harring* counties.

In this report, we discuss each of the five counties separately, outlining for each the following:

- The criteria and procedures used prior to implementation of the Eligibility Standards
- Steps taken to implement the Eligibility Standards
- Assessment of compliance with the Eligibility Standards since implementation
- Barriers and ongoing challenges to implementation

We encourage individuals interested in fully understanding implementation of the Eligibility Standards to read this report in conjunction with ILS' January 2017 report, *The Impact of Eligibility Standards in Five Upstate New York Counties*.

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<sup>11</sup> In the year since issuance of the Eligibility Standards, ILS has heard a range of opinions on this issue. Many providers have told ILS that they do not anticipate any change in the number of people who are assigned counsel; others have said that they anticipate some increase, though not a significant one; while others have stated that they anticipate a significant increase.

<sup>12</sup> This report is available on ILS' website at: <https://www.ils.ny.gov/files/Hurrell-Harring/Eligibility/Research/The%20Impact%20of%20Eligibility%20Standards%20in%20Five%20Upstate%20New%20York%20Counties%20-%20ILS%20report%20January%202017.pdf>. A Suffolk County addendum to this report, dated March 2017, is also available here: <https://www.ils.ny.gov/files/Hurrell-Harring/Eligibility/Research/The%20Impact%20of%20Eligibility%20Standards%20-%20Suffolk%20County%20Addendum%20-%20March%202017.pdf>.



## II. IMPLEMENTATION IN THE *HURRELL-HARRING* COUNTIES

### Onondaga County

Onondaga County, located in central New York, is approximately 35 miles long and 30 miles wide with a total area of 806 square miles. In 2015, 15.4% of the County’s population of 468,463 lived below the poverty line. The County’s median household income was \$55,092, which is about 93% of the state average. In 2015, the New York State Division of Criminal Justice Services (“DCJS”) recorded a total of 10,669 criminal cases as being disposed of that year. Almost a third were felonies; 9.5% were violent felonies.<sup>13</sup>

Thirty different courts handle criminal cases in Onondaga County: Onondaga County Court, Syracuse City Court, and 28 town and village courts (“justice courts”). Syracuse City Court is by far the busiest court in the County, handling the vast majority of criminal cases. The City Court and the justice courts are typically involved in the initial decision regarding assigned counsel eligibility since most defendants have their first appearance in one of these courts.

Onondaga County’s primary provider of mandated representation is the Onondaga County Bar Association’s Assigned Counsel Program (“ACP”). Onondaga County’s judiciary has delegated to the ACP the responsibility of screening defendants and making an assigned counsel eligibility recommendation. Judges typically question defendants at their first court appearance as to whether they want assigned counsel. Those defendants who respond affirmatively are provisionally assigned an attorney. This attorney must then obtain the information needed from the defendant to complete the ACP’s assigned counsel application. Once completed, the attorney submits this application to the ACP for review. Three things can then happen: first, the ACP can send the attorney a “pending” notice identifying missing information or documentation; second, the ACP can inform the attorney that the defendant is eligible for assigned counsel and the attorney should continue on the case; or third, the ACP can notify the attorney that the defendant is not eligible and the attorney must submit a motion to withdraw as counsel. The court decides whether to grant motions to withdraw. If the motion is granted, the defendant is instructed to retain counsel. If the motion is not granted, the attorney is ordered to continue to represent the defendant.

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<sup>13</sup> For the information in these introductory paragraphs for each of the five counties, ILS retrieved county populations, median income and poverty rates from these sources: U.S. Census Bureau, March 2016. See *Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2015*. Retrieved January 12, 2017, from <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>; U.S. Census Bureau. (2016, March). *2011-2015 American Community Survey 5-Year Estimates*. Retrieved January 12, 2017, from [https://factfinder.census.gov/faces/nav/jsf/pages/community\\_facts.xhtml](https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml). We also reviewed basic crime statistics for each county, found here: <http://www.criminaljustice.ny.gov/crimnet/ojsa/dispos/all.pdf>. When reporting ‘violent felony’ statistics, we follow the DCJS definition of ‘violent felony’ found in Appendix A of this report: <http://www.criminaljustice.ny.gov/crimnet/ojsa/nys-violent-felony-offense-processing-2015.pdf>.

Since implementation of the Eligibility Standards, this general process has not changed. What has changed is the criteria that the ACP uses in screening for eligibility and the barriers to applying. This is discussed further below.

**A. The criteria and procedures used in Onondaga County prior to implementation of the Eligibility Standards**

To get a full picture of Onondaga County’s former eligibility determination process, it is important to not only understand the criteria and procedures the ACP used to make its eligibility recommendations, but also how the courts tended to respond to the ACP’s ineligibility recommendations.

*1. The criteria and procedures the ACP used*

The ACP’s former criteria and procedures are detailed in a document the ACP previously provided to ILS, which is attached as Exhibit C. The following are worth highlighting:

- *Burden of the application process:* Defendants were required to provide extensive documentation to verify their financial information. As indicated in the application form, defendants were required to provide two recent paystubs, recent bank statements, verification of self-employment income, and verification of any other source of income. The ACP reserved the right to request additional documentation. Defendants were also required to affirm to the truthfulness of the financial information they provided, as were parents of applicants under 21 years of age. They were warned that the information they provided “may be investigated.” Bold language warned defendants that if they failed to “fully cooperate” with the assigned counsel application process, “including providing additional documentation as requested by the Assigned Counsel Program,” they would be deemed ineligible for assigned counsel and required to pay for a private attorney. Panel attorneys have told ILS that the ACP frequently deemed defendants “uncooperative.”
- *Confidentiality:* Defendants were required to sign a statement waiving the confidentiality of the information they provided and to authorize any of the following entities to release information to the assigned attorney, the ACP, the Court, and Onondaga County: “the Department of Social Services, any employer, any other income payer, and any other individual or agency providing me with income, support or benefits, as well as any bank, trustee, financial institution, or asset holder.”
- *Partial payment orders:* The ACP prompted judges to issue orders for partial payment at the point that counsel was assigned. Specifically, if the ACP deemed a defendant ineligible for assignment of counsel, the ACP would instruct the provisionally assigned attorney to move the court to withdraw as counsel and, as part of this motion, submit a form “Order Upon Request to Withdraw as Assigned Counsel.” The form order gave judges the option to order that the provisionally assigned attorney continue as assigned

counsel *and* to simultaneously order that the defendant (or her parents) reimburse the County in an amount to be specified by the court.<sup>14</sup>

- *Eligibility presumptions:* The ACP deemed as presumptively eligible defendants who could verify receipt of need-based public assistance by providing either a copy of a current benefits card or a public assistance budget form. Presumptively eligible defendants were still required to complete and sign the entire assigned counsel application form.
- *Income guideline:* The ACP used an income guideline of 125% of the Federal Poverty Guidelines (“FPG”) in determining eligibility for assignment of counsel. This was used as a strict guideline; if a defendant’s income exceeded this guideline, the ACP would deem the defendant financially able to retain private counsel and would instruct the provisionally assigned attorney to move to withdraw from the case. Additionally, the ACP used gross rather than net income (or take home pay) in assessing this income guideline.
- *Third-party income:* The ACP considered as available to the defendant the financial resources of third parties, including the resources of parents, spouses, and “any other person in the household” who was employed. For defendants under 21 years of age, the assigned counsel application would not be considered complete until both parents completed and signed a “Statement of Financial Status.” In determining if the defendant’s income exceeded the 125% income guideline, the ACP considered the “total gross income, from all sources, for all members of the family.”
- *Income:* The ACP considered a wide range of sources of income, including need-based public assistance, child support, alimony, pensions, worker’s compensation, unemployment benefits, savings, SSI, and SSD. For married defendants, not only was their spouse’s income considered, but also any child support the spouse received for care of his or her children.
- *Non-liquid assets:* The ACP also considered non-liquid assets, including the defendant’s primary residence and automobile.
- *Financial obligations:* Except for payments of child support and spousal support, the ACP did not consider the defendant’s financial obligations.
- *Ability to pay bail:* If the defendant could pay cash bail the ACP considered sufficient to retain private counsel, then the defendant was deemed ineligible for assigned counsel. This was true even if a third party supplied the cash needed for bail.

The information we received from the ACP and from panel attorneys reveals several negative consequences that flowed from these criteria and procedures. First, the amount of information required, the warnings about being investigated, and the broad waiver of confidentiality created

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<sup>14</sup> ILS was not able to obtain data on how often these partial payment orders were actually issued.

barriers for defendants applying for assigned counsel. Second, the provisionally assigned attorneys typically had to devote a significant amount of time and effort to obtain all the financial information and documentation required to complete the application; they were not compensated for this time. Third, these criteria and procedures resulted in the ACP deeming a significant number of defendants ineligible for assigned counsel, either because the defendant was deemed to be “uncooperative,” or because the ACP determined that his or her gross household income was above 125% of the FPG. Finally, it is likely that a significant number of defendants “dropped out” of the assigned counsel application process because of how burdensome it was, and either entered a quick guilty plea or tried to find a lawyer who would accept a very low retainer for the case – one that was not sufficient for quality representation.<sup>15</sup>

## 2. *How courts historically responded to the ACP’s recommendations*

In Onondaga County, courts have traditionally played a critical role in honoring defendants’ rights to assigned counsel. While judges have typically followed the ACP’s recommendations that a defendant is eligible for assigned counsel, they have historically declined to follow the ACP’s recommendation that a defendant is not eligible. As noted in ILS’ January 2017 report, *The Impact of Eligibility Standards in Five Upstate New York Counties*, whereas on average, the ACP historically deemed over 40% of defendants ineligible for assignment of counsel, the courts declined to follow these recommendations more than 80% of the time. This means that judges seldom granted a provisionally assigned attorney’s motion to withdraw, and instead ordered that the attorney continue representing the defendant. This occurred so often that the motions to withdraw are now commonly referred to as “orders to continue.”

The result is that most defendants were ultimately deemed eligible for assigned counsel; historically, after judicial intervention, only about 5 to 6% of defendants were ultimately denied assigned counsel.<sup>16</sup> This data is consistent with the information the former ACP Executive Director, Renee Captor, reported to ILS during an August 24, 2016 meeting, when she acknowledged that approximately 40% of the ACP’s current caseload was “judge ordered” (i.e., cases in which the judge had overturned the ACP’s ineligibility recommendation).

### **B. Steps taken to implement the Eligibility Standards**

On August 24, 2016, ILS met with the ACP (Renee Captor and then ACP Assistant Director Fran Walters), and the County Attorney’s Office (Kathy Dougherty and Carol Rhinehart) to discuss implementation of the Eligibility Standards. The meeting focused on implementing the new criteria and eliminating needless barriers to applying for assigned counsel. During the meeting, the ACP agreed to do the following: substantially revise its assigned counsel application form in consultation with ILS; use the ILS criteria, including the presumptions of eligibility, in determining eligibility; and require verifying documentation only when necessary,

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<sup>15</sup> It is impossible to know how many defendants dropped out of the assigned counsel application process, because the ACP traditionally did not enter a case into its data base system until after receiving the assigned counsel application.

<sup>16</sup> See *The Impact of Eligibility Standards in Five Upstate New York Counties*, at p. 14. The information for this report is based on data ILS received from the ACP for 2015 and 2016.

such as instances in which there is missing information or reason to believe that the applicant might have more financial resources than are reported on the application. It was also agreed that the ACP would begin implementation on September 19, 2016.

The revised application form was finalized in early September 2016. ILS drafted a memorandum to be sent to ACP panel attorneys setting forth instructions for using this revised application. On September 14, 2016, the ACP emailed panel attorneys the revised application, the memorandum, the Eligibility Standards, and a link to the eligibility page on ILS' website.

On September 15, 2016, ILS and OCA conducted a joint Eligibility Standards training for Onondaga County judges and magistrates. Hon. James P. Murphy, Supreme Court Justice and Supervising Town and Village Court Justice, and Hon. David S. Gideon, Dewitt Town Court Justice, presented on behalf of OCA. Lisa Robertson and Patricia Warth presented on behalf of ILS. Approximately 42 City Court judges and Town and Village Court magistrates attended the training. During this training, judges and magistrates expressed their hope that the new Eligibility Standards would reduce the frequency with which they must issue orders to continue.

On November 10, 2016, ILS conducted an open forum with panel attorneys to obtain their feedback on implementation of the Eligibility Standards. Fran Walters and Hannah Bartlett, the ACP Eligibility Specialist, attended on behalf of the ACP. Approximately 14 panel attorneys attended. The participating attorneys were very positive about implementation, stating that the new assigned counsel application process had eliminated needless barriers to applying for assigned counsel, and that attorneys themselves were spending far less time gathering the information needed to submit the application. The attorneys also stated that, for two reasons, they were submitting far fewer motions to continue: first, fewer defendants were being deemed "uncooperative"; and second, more defendants were being deemed eligible for assigned counsel.<sup>17</sup> During this forum, the panel attorneys identified several aspects of the new procedures that required clarification. For example, previously the ACP had required that the attorneys mail or hand-deliver the original application. At ILS' urging, the ACP agreed to accept emailed or faxed applications. Additionally, previously attorneys were not permitted to conduct screening over the telephone. The ACP also agreed to change this policy. The need for clarification resulted in a revised instruction memo which ILS sent to the panel attorneys on November 18, 2016.

On November 30, 2016, after Renee Captor had resigned as Executive Director of the ACP, ILS had a phone conversation with Hannah Bartlett. During this conversation, ILS became aware that the ACP had not yet implemented the procedure requiring that applicants be notified in writing of ineligibility decisions. ILS was not able to address this issue until the new ACP Executive Director, Kathy Dougherty, commenced her employment on January 17, 2017.

On February 17, 2017, ILS met with Ms. Dougherty and Hannah Bartlett. This meeting provided an opportunity for ILS and the ACP to fully assess implementation of the Eligibility Standards, to identify shortcomings, and to problem-solve. Ms. Dougherty and Ms. Bartlett used this meeting to develop a plan to resolve the issue of written notification of ineligibility decisions;

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<sup>17</sup> Of interest, the attorneys agreed with the statement of their fellow panel attorney that many of the motions to continue resulted because the ACP had characterized the defendant as "uncooperative."

they also identified several changes that needed to be made to the various eligibility forms that they had been using. These included the following:

- The form Order upon Request to Withdraw as Assigned Counsel needed to be substantially revised to ensure, among other things, that judges are not prompted to issue partial payment orders at the time of assignment.
- The “pending eligibility” notice sent to panel attorneys indicating problems with the submitted application needed to be revised to omit categories that are no longer relevant. Of note, Ms. Bartlett stated that she is sending this notice far less frequently, and most often because the attorney has inadvertently omitted important information on the application, such as the charges or the defendant’s name.
- The assigned counsel application itself needed to be revised so that the ACP would, instead, have two applications: one for criminal cases, in which eligibility decisions are guided by the new Eligibility Standards; and one for Family Court matters, in which the ACP must use the same criteria as those used by the Hiscock Legal Aid Society, the County’s primary provider of Family Court representation.

The ACP provided these updated forms to ILS almost immediately following this meeting. The revised assigned counsel application for criminal cases and these forms are attached as Exhibit D.

### **C. Assessment of compliance with the Eligibility Standards**

To assess the County’s compliance with the Eligibility Standards, ILS obtained feedback from panel attorneys, met with the ACP staff involved in the assigned counsel application process, and conducted some court observations.<sup>18</sup> As of September 19, 2016, the ACP had substantially revised its policies to comply with the Eligibility Standards, and as previously noted, the ACP further updated and refined its policies in February 2017 to ensure full compliance. A brief assessment of each Criteria and Procedure is as follows:

- *Criteria I (core eligibility standard)*: The ACP is no longer deeming defendants ineligible for assignment of counsel merely because their gross household income exceeds 125% of the FPG. Now, defendants are deemed ineligible only when it is evident that they can afford to retain private counsel. During our February 17, 2017 meeting, Ms. Bartlett emphasized that, in close cases, she is conferring with Ms. Dougherty.
- *Criteria II (eligibility presumptions)*: The ACP is using the four delineated presumptions of eligibility and finding that most applicants meet one of these presumptions. Additionally, the ACP now applies the income guideline to the applicant’s net, rather than gross, income. The panel attorneys report that these presumptions have significantly streamlined the assigned counsel application process.

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<sup>18</sup> ILS observed assigned counsel practices in Syracuse City Court and two of Onondaga County’s larger justice courts – Clay and Dewitt Town Courts.

- *Criteria III (ability to post bond or pay bail):* The ACP no longer deems defendants ineligible for assigned counsel merely because they have paid cash bail. The ACP continues to collect information about defendants' release status because this information is relevant for other purposes, including assessing the quality of representation.
- *Criteria IV (third-party resources):* The ACP no longer obtains information about or considers the financial resources of third parties. The ACP has discontinued the requirement that parents submit a statement regarding their finances. The panel attorneys report that for applicants under the age of 21, this has dismantled the biggest hurdle to applying for assigned counsel.
- *Criteria V (non-liquid assets):* The ACP is obtaining information about non-liquid assets, but no longer asking about or considering applicants' primary residences, or vehicles used for basic life necessities. Ms. Bartlett and Ms. Dougherty report that very few applicants have non-liquid assets. In the few cases in which applicants have reported such assets, the ACP has not used these assets as a reason to "automatically" deny eligibility for assigned counsel, but has instead inquired further as to the asset's value and equity.
- *Criteria VI (child support and public assistance):* The ACP no longer asks about or considers receipt of child support. Receipt of public assistance is not considered as a resource available to retain private counsel, but is used as a presumption of eligibility.
- *Criteria VII (financial obligations):* The ACP asks about and considers applicants' financial obligations, and the application itself prompts the applicant to identify several possible financial liabilities and obligations.
- *Criteria VIII (cost of retaining counsel):* For applicants who are not presumptively eligible, Ms. Bartlett is considering the seriousness of the charges and conferring with Ms. Dougherty to determine if the applicant has the resources to retain private counsel.
- *Procedure X (responsibility for screening):* Onondaga courts have long delegated to the ACP the responsibility of screening for and making a recommendation regarding assigned counsel eligibility, though as the data discussed below reveals, courts are still active in ensuring defendants' right to assigned counsel.
- *Procedure XI (confidentiality):* The ACP no longer requires applicants to waive the confidentiality of the information they provide. The ACP has also established office procedures to protect the confidentiality of the financial information provided. Additionally, if an applicant is deemed ineligible, the ACP concisely identifies the reasons why on an "ineligibility" notice, which is sent to the judge. With regards to the information revealed in open court, ACP staff have told ILS that courts are generally not asking defendants detailed questions about their financial status in open court, but instead are limiting the inquiry to whether the defendant would like to apply for assigned counsel. This information was corroborated by ILS' observations of assigned counsel practices.

- *Procedure XII (timeliness of decision)*: Historically, courts have provisionally assigned counsel at arraignment, thus, there is no gap in representation. Ms. Dougherty has instructed office staff to refer to her any calls from individuals seeking assignment of counsel because they are being investigated, even though no charges have been filed, and where appropriate, she assigns counsel. During the February 17, 2017 meeting, Ms. Dougherty also said that she would implement a process to ensure that eligibility screening is conducted for individuals who call the ACP and state that they have been issued an appearance ticket and cannot afford to retain counsel.
- *Procedure XIII (burden of application process)*: The ACP has made great strides in ensuring that the assigned counsel application process is not unduly burdensome. Applicants are no longer told that the information they provide will be investigated and that they can be prosecuted for providing inaccurate information, they no longer are asked to waive the confidentiality of the information they provide, and they no longer are required to provide unnecessary documentation. The ACP does occasionally ask for verification, most often when there is missing information or reason to believe that the applicant may have more financial resources than reported on the application.
- *Procedure XIV (written notice of ineligibility decision)*: If the ACP deems a defendant ineligible for assigned counsel, the ACP will send the provisionally assigned attorney an Ineligibility Notice, stating the reasons for the decision, and a statement of the defendant’s rights to request reconsideration or appeal to the judge. The attorney is instructed to share these documents with the defendant.
- *Procedure XV (reconsiderations)*: The ACP has revised its form Order to Withdraw to ensure that judges are not prompted to issue orders for partial payment at the time counsel is assigned.

Regarding Procedure XVI, which requires the collection, maintenance and reporting of data pertaining to the assigned counsel eligibility process, in March 2017, ILS received updated information from the ACP on the eligibility status of cases which the program received in the months September-December 2016. Figure 1 below depicts the number of applications submitted for the months of January 2015 through December 2016. Notably, in this figure, the number of applications submitted does not include “pending” applications, since the ACP does not typically count these “pending” applications as submitted until the application is finalized. As previously stated, a “pending” application is one in which there is missing information.

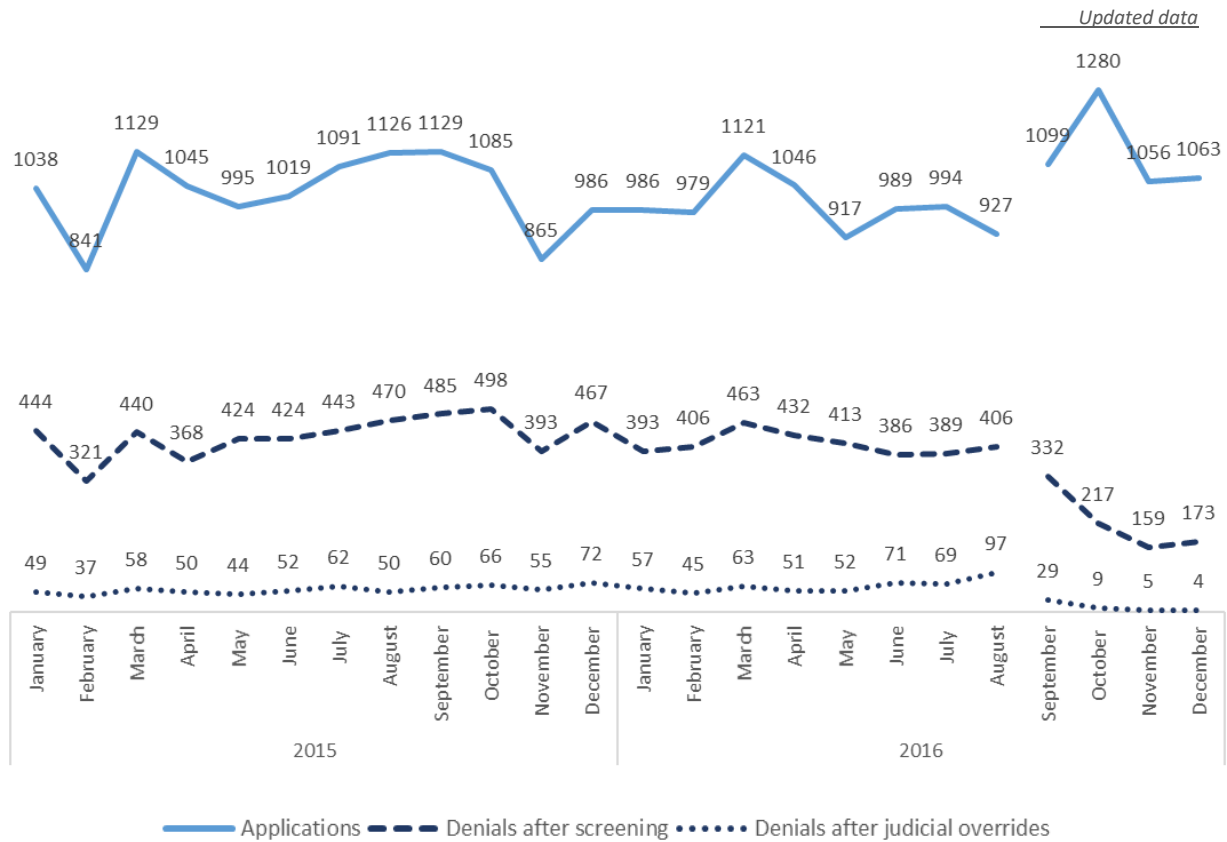
As illustrated in Figure 1 below, the data clearly show that, while application numbers peaked directly after the implementation of the Eligibility Standards, they declined thereafter to levels similar to historic norms.<sup>19</sup>

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<sup>19</sup> Data shown here for the period January 2015-August 2016 were provided to ILS in December 2016, and appeared in ILS’ report, *The Impact of Eligibility Standards in Five Upstate New York Counties*. Application counts for these months may be understated due to the resolution of “pending” eligibility cases since the date of that extract.



Figure 1: Assigned Counsel Applications Submitted, January 2015 through December 2016



For a more complete understanding of how implementation has impacted the assigned counsel application process in Onondaga County, ILS also reviewed this updated data to assess ineligibility rates after the ACP had reviewed the applications submitted and ineligibility rates after the judge made a final decision. This information is set forth in Table 1 below.

Table 1: Rates of Ineligibility by ACP and After Judge Override

	Total # of applicants (C)	ACP Eligible	ACP Ineligible (A)	Ineligibility rate by ACP (A)/(C)	Judge override	Ineligible after judge override (B)	Ineligibility rate after judge override (B)/(C)
Sept. 1-18	481 <sup>20</sup>	289	192	39.9%	176	15	3.1%
Sept. 19-30	618	477	141	22.8%	127	14	2.3%
October	1,280	1,063	217	17.0%	208	9	0.7%
November	1,056	897	159	15.1%	154	5	0.5%
December	1,063	890	173	16.3%	169	4	0.4%

<sup>20</sup> The numbers of eligible and ineligible applicants in this row do not total 481 because there is one applicant for whom eligibility status was uncertain.

When compared to the data in the ILS report, *The Impact of Eligibility Standards in Five Upstate New York Counties*, the above data suggests the following:

- Since implementation of the Eligibility Standards, the ACP is making fewer ineligibility recommendations. Immediately prior to implementation, the ACP's ineligibility rate was 39.9%.<sup>21</sup> For the last quarter of 2016, this rate dropped to 15.1% in November 2016 and 17% in December 2016.
- Judges are still protective of defendants' Sixth Amendment right to counsel and will override the ACP's ineligibility recommendation and assign counsel in appropriate circumstances.
- The initial surge of applications immediately following the September 19, 2016 implementation of the Eligibility Standards is starting to level off, and the number of applications in November and December 2016 resembles the monthly number of applications prior to implementation (which ranged from a low of 841 applications in February 2015 to a high of 1,129 applications in September 2015). As set forth in ILS' report, *The Impact of Eligibility Standards in Five Upstate New York Counties*,<sup>22</sup> we suspected that the surge in applications immediately after implementation occurred because the Eligibility Standards significantly reduced the amount of documentation required to submit a complete application to the ACP. We theorized that immediately after September 19, 2016, realizing that these burdensome documentation requirements no longer existed, attorneys responded by submitting a significant number of applications which had previously been backlogged because of the difficulty in obtaining the required documents. Thus, we anticipated that the number of applications submitted per month would level off to pre-implementation numbers.

This data is consistent with the anecdotal information Ms. Dougherty and Ms. Bartlett provided to ILS. Since implementation, they continue to receive "judge ordered" cases, but could not think of one instance in which a court had denied assigned counsel eligibility after the ACP had determined that a defendant was eligible for assignment of counsel.

#### **D. Barriers to implementation and ongoing challenges**

The former ACP leadership posed the most significant barrier to implementation, taking only minimal steps to implement and even then, only after prodding from ILS and the Onondaga County Attorney's Office. The ACP was unwilling to communicate effectively with the panel attorneys (ILS had to draft the instruction memo to the panel attorneys); the ACP was also unwilling to conduct a training session for the panel attorneys, all of whom are engaged in screening. The November 2016 forum with the panel attorneys occurred only because ILS scheduled it in cooperation with the County Attorney's Office. Still, with the urging of ILS and

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<sup>21</sup> This is consistent with the trend described in ILS' report, *The Impact of Eligibility Standards in Five Upstate New York Counties*. As depicted in Figure 3 on p. 14 of this report, from January 2015 through August 2016, monthly ineligibility rates ranged from as low as 35% to as high as 47%.

<sup>22</sup> See p. 13, above.

the County Attorney's Office, and because of the cooperation of the judiciary and Hannah Bartlett, the ACP Eligibility Specialist, the Eligibility Standards were substantially implemented by October 2016. By February 2017, under new leadership, the ACP took additional steps to ensure that ineligible applicants are provided written notification and to ensure that courts are no longer prompted to issue partial orders for repayment at the time counsel is assigned.

Because of the sudden departure of the former ACP Executive Director, Deputy Director, and Quality Specialist, the ACP is short-staffed, and over the past several months has had to prioritize payment of attorney vouchers. As such, ILS has not been able to work with the ACP on determining what, if any, changes are necessary to update its case management and data collection program to ensure that important data about the assigned counsel application process are collected and maintained. ILS is working with the ACP on a caseload relief spending plan that will resolve staffing issues and enhance in-house capacity to collect and maintain data. A priority in this coming year is to enhance the ACP's capacity to collect, maintain, and report on data regarding all aspects of the *Hurrell-Harring* Settlement, including the Eligibility Standards.

### Ontario County

Ontario County is located in New York's Finger Lakes Region. The county, which includes two cities (Geneva and Canandaigua), 16 towns, and 8 villages, is surrounded by Monroe and Wayne Counties to the north, Steuben County to the south, Seneca and Yates Counties to the east, and Livingston County to the west, and has a total area of 662 square miles (644 square miles of land; 18 square miles of water). Canandaigua is the county seat, but Geneva is the largest city.

In 2015, the population in Ontario County was 109,561, 10.4% of which lived below the poverty line. The median household income was \$57,416, approximately 97% of the state average. Also in 2015, DCJS reported that 1,766 criminal arrests were disposed of in Ontario County: 69% were misdemeanors, and 31% were felonies, of which 5% were violent felonies.

Twenty different courts handle criminal cases in Ontario County: Ontario County Court, Geneva and Canandaigua City Courts, and 17 town and village courts ("justice courts").

Ontario County has three providers of mandated representation in criminal cases: a Public Defender Office, headed by Leanne Lapp; a Conflict Defender Office, headed by Andrea Schoeneman; and an Assigned Counsel Program (ACP), which is also administered by Ms. Schoeneman. The Public Defender Office was created in 2010, and became fully operational in 2011. The Ontario County Conflict Defender Office handles cases in which the Public Defender Office is conflicted, and will either provide direct representation on those matters or assign them to one of the Assigned Counsel Program panel attorneys.

#### **A. The criteria and procedures used in Ontario County prior to implementation of the Eligibility Standards**

Prior to the creation of the Public Defender Office in 2010, all financial screening of applicants for assigned counsel eligibility was performed by the Administrator of the ACP. In a July 10,

2007 letter addressed to the New York State Unified Court System, John R. Kennedy, the then-Administrator of the ACP, detailed the eligibility assessment process the ACP used. (This letter and the Affirmation of Financial Status Form referenced in the letter are attached as Exhibit E). The ACP Administrator visited the Ontario County Jail on a regular basis to interview defendants who had been incarcerated prior to their first court appearance. Each defendant would complete and sign an Affirmation of Financial Status Form. Sometimes, the jail would have the Affirmation completed and signed by the defendant, then faxed to the ACP office. In the vast majority of cases, the ACP office made the determination of eligibility after interviewing the defendant and reviewing the Affirmation, but the judges in the Geneva and Canandaigua City Courts preferred to make their own determinations after questioning the defendant, on the record, with respect to his financial circumstances. Mr. Kennedy stated that the ACP used an income guideline of 125% of the FPG, but also considered assets and debts to determine if the defendant could afford to pay a “reasonable retainer” to a private attorney. The ACP considered spousal income as well as parental income for un-emancipated minors. Bail was not considered. Receipt of public assistance was considered, but it did not render an applicant presumptively eligible for assigned counsel. There was no formal process by which applicants could appeal ineligibility determinations, though if such applicants insisted they could not afford to retain private counsel, the Administrator would personally review the Affirmation, request additional documentation, and, in some circumstances, reverse the ineligibility determination.

After the 2010 creation of the Ontario County Public Defender Office, the responsibility for assigned counsel screening was transferred to the Public Defender Office. In 2012, after Ms. Lapp was appointed Public Defender, she updated the office’s screening process and criteria, which allowed her to take advantage of the fact that her office is representing defendants at arraignment. The defense attorneys who are present at arraignments screen defendants for assigned counsel eligibility, informing the judge of the eligibility determination so that counsel can be assigned at that point. If the defense attorney is not able to complete the assigned counsel eligibility screening, then the defendant is instructed to contact the Public Defender Office to be interviewed for assigned counsel eligibility. This interview can occur by phone or in person. Additionally, each day, staff from the Public Defender Office check the jail logs to identify defendants who have been detained but were not represented at arraignment. If any, staff visit and interview those defendants that day. This interview is designed not only to determine eligibility for assigned counsel, but also to ascertain if there is a need to immediately calendar the case, for example, to argue that the defendant should be released. Finally, in the rare instances in which a defendant is arraigned without counsel and not detained, the judge will inform the defendant that he or she can contact the Public Defender Office to apply for assigned counsel.

Notably, since Ms. Lapp revised the Public Defender Office’s eligibility criteria and procedures, the assigned counsel eligibility interview has been used as a more comprehensive “intake” interview, and staff obtain information about the defendant’s criminal history, medical and mental health history, place of birth, and family. This interview is also used as an opportunity to obtain a complete picture of the defendant’s financial situation, which is important not only to determine eligibility for assignment of counsel, but also for bail arguments and plea negotiations.

Thus, it would be improper to refer to the form that is completed during this interview as an assigned counsel application. Rather, it is better characterized as an intake form.<sup>23</sup>

The following is a summary of the criteria and procedures Ms. Lapp initiated that were used until implementation of the Eligibility Standards and, where consistent with the Eligibility Standards, continue to be used:

- *Affirmations or attestations:* Applicants are not asked to sign, swear or affirm to the truthfulness of the information they provide.
- *Verifying documentation:* In borderline cases, or, “if something does not seem right” about an applicant’s financial circumstances, pay stubs, tax returns or other verification documents are requested. As Ms. Lapp has told ILS: “*If numbers don't add up, we will request additional materials. If a person has substantial debt, we will request verification. If there is any confusion as to a person's actual income, we will request verification. If a person owns his own business, [we] will typically request tax returns, as they show a good picture of net income after expenses.*”<sup>24</sup>
- *Partial payment orders under County Law § 722-d:* The Public Defender Office would occasionally recommend that a judge assign counsel contingent upon an order being issued for partial payment of defense costs.
- *Third-party income:* The Public Defender considered spousal income and parental income (for minors) in its eligibility assessments, but only if the defendants consented to having the Public Defender Office contact their spouse or parents.
- *Presumptions of eligibility:* The Public Defender Office used the following graduated income guidelines as presumptions of eligibility: 125% of the FPG for defendants charged with a misdemeanor or a violation; 140% of the FPG for defendants charged with a DWI or Class D or E felony; 185% of the FPG for defendants charged with a Class A, B, C felony or a sex offense. Defendants who received public assistance or who lived in public housing were also considered presumptively eligible for assigned counsel.
- *Ability to post bond or pay cash bail:* The Public Defender Office does not deny assignment of counsel just because a defendant can pay bail or post bond.
- *Non-liquid assets:* The Public Defender Office considered non-liquid assets, such as vehicles and cars. Owning these assets would not result in an automatic denial of counsel, but would instead be considered in the context of the defendant’s complete financial

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<sup>23</sup> Ms. Lapp has told ILS that it makes sense to obtain as much information as possible from a defendant during the eligibility interview, which is almost always the first meeting with the defendant. For that reason, the information included on the intake form is privileged information relevant not only for assigned counsel eligibility determinations, but also relevant to the effective representation of the defendant.

<sup>24</sup> Ms. Lapp stated this in response to a 2015 ILS survey of providers and judges regarding the criteria and procedures used to determine assigned counsel eligibility.

situation. For example, if the car was used for basic life necessities, owning a car might in fact be considered a financial liability, since car payments, car maintenance, insurance, and gas can be significant.

- *Other income:* The Public Defender Office considered as income unemployment benefits, child support received, and Social Security disability payments.
- *Financial liabilities:* The Public Defender Office has traditionally considered an array of financial liabilities, including: housing; utilities; transportation costs; child care and child support obligations; student loans; other debts; and any other financial hardships, such as the need to care for a loved-one, ongoing medical costs, etc.
- *Written notification of ineligibility determinations and reconsiderations:* Ms. Lapp personally reviews every “close call” or recommendation by her staff that a defendant be deemed ineligible for assignment of counsel. After this careful review, defendants are sent a letter informing them that they have been deemed ineligible for assignment of counsel.

## **B. Steps taken to implement the Eligibility Standards**

Ontario County staggered the implementation process, beginning to use the Eligibility Standards’ criteria in April 2016, soon after release of the Standards, and finalizing the implementation of certain procedures by October 1, 2016. The Public Defender Office amended the various forms used during the assigned counsel application process to bring them into compliance with the Eligibility Standards. The intake form was modified to make it clear that receipt of child support could not count as income, and to include a place to note the cost of retaining a private attorney for the category of crime for which the applicant is charged. (Exhibit F includes the updated intake form and all the other Public Defender Office assigned counsel eligibility documents). Although the intake form continues to note information pertaining to spousal and parental income and child support received, this information is no longer considered in the eligibility assessment process. Furthermore, the Public Defender Office no longer considers gross income in its assessment, but considers net income, in compliance with the Eligibility Standards.

It took longer to fully implement the Eligibility Standards’ procedures, particularly Procedure XI, which requires that steps be taken to protect the confidentiality of information disclosed during the assigned counsel application process. This is because in June 2016, the Advisory Committee on Judicial Ethics issued Opinion 16-68, which seemingly restricts the ability of courts to conduct assigned counsel eligibility inquiries off the record and to seal financial eligibility documents defendants submit. (This Advisory Opinion is attached as Exhibit G). As discussed further below in the Suffolk County section of this report, this Advisory Opinion does not have a significant impact on the counties in which a provider conducts the assigned counsel eligibility screening. However, upon learning of this Advisory Opinion, Ms. Lapp reached out to ILS with the concern that it could have implications for defendants who appeal an ineligibility recommendation to the judge, in which case the defendant might be asked to disclose financial information on the record or to provide financial documents that are then made part of the public court file. In consultation with ILS, Ms. Lapp made several significant changes to the ILS

Sample Notice of Right to Seek Review form that providers are asked to give to applicants whom they have deemed ineligible for assignment of counsel. The Sample Notice, in its original form, advised applicants that they may ask the provider to reconsider its ineligibility determination, or they may appeal to the judge, or do both. The form needed to be revised to alert applicants that if they appeal to the judge, the information they disclose during the assigned counsel application process might be made accessible to the public. ILS incorporated many of Ms. Lapp's suggested changes into our Sample Notice of Right to Seek Review, which was distributed to other providers and is available on the ILS website.

On May 9, 2016, ILS conducted its first Eligibility Standards training of providers, attended by representatives from the Ontario County Public Defender Office, the Schuyler County Public Defender Office and the Tompkins County ACP. Paul Chambers and Leah Morrow, who conduct the eligibility screening for the Ontario County Public Defender Office, attended on behalf of that Office.

On September 23, 2016, ILS and OCA conducted a training for the Ontario County judges and magistrates on the Eligibility Standards. Nancy Sunukjian and Anthony Rossi presented on behalf of OCA, and Lisa Robertson and Patricia Warth presented on behalf of ILS. Hon. Craig J. Doran, 7<sup>th</sup> Judicial District Administrative Judge, and Hon. Richard A. Dollinger, Supreme Court Justice and Supervising Judge for Town and Village Courts, were also present. Ms. Lapp and several staff attorneys from the Public Defender Office attended this program, as did Michael Reinhardt, Assistant County Attorney. Judge Doran introduced the program and remained to answer questions and provide commentary. In particular, he commented on the confidentiality issues raised by Judicial Advisory Committee Opinion 16-68, and acknowledged Ms. Lapp's efforts in protecting the confidentiality of information disclosed during the assigned counsel application process.

### **C. Assessment of compliance with the Eligibility Standards**

ILS has assessed the County's compliance with the Eligibility Standards through ongoing discussions with Ms. Lapp, a review of the data that has been sent to us, and what we learned from judges and magistrates during the September 2016 eligibility training, which occurred several months after implementation began. Below is our assessment:

- *Criteria I (core eligibility standard):* The County's assigned counsel eligibility standards are designed to ensure that defendants who cannot afford to retain private counsel are assigned counsel. The Public Defender Office obtains a complete picture of applicants' financial circumstances, including a full assessment of their financial liabilities and hardships. Additionally, the Public Defender personally reviews all potential ineligibility determinations so that in close calls, she can accurately assess whether the applicant lacks the ability to pay for counsel.
- *Criteria II (eligibility presumptions):* The Public Defender Office uses all four presumptions, and the income guideline now applies to defendants' net (rather than gross) income that is at or below 250% of the Federal Poverty Guidelines.

- *Criteria III (ability to post bond or pay bail):* A defendant's ability to pay bail or post bond is not used as a reason to deny assignment of counsel.
- *Criteria IV (third-party resources):* Income from third parties, including parents and spouses, is not considered in determining assigned counsel eligibility.
- *Criteria V (non-liquid assets):* The intake form requests information pertaining to the defendant's possession of vehicles and real property. The Public Defender explained that possessing a vehicle does not necessarily enhance a defendant's ability to retain counsel. Indeed, information about a defendant's vehicle is part of assessing financial liabilities, including transportation costs. In accordance with the Eligibility Standards, any real estate owned by a defendant is considered only after assessing the fair market value and the equity in the home. If both are significant and sufficient to retain private counsel, the applicant is encouraged to secure a home equity loan to retain an attorney.
- *Criteria VI (child support and public assistance):* In accordance with the Eligibility Standards, receipt of public assistance is used as a presumption of eligibility, but it is not considered to be income available to the defendant to pay for an attorney. Similarly, child support payments are treated as a financial liability, but receipt of child support is not considered as income available to the applicant to retain counsel.
- *Criteria VII (financial obligations):* The Public Defender Office's intake form lists several debts and obligations that are considered, and the list is not exclusive. The intake form invites applicants to identify other obligations that are not included in the list, as well as "[a]ny other hardship factors that should be considered." Ms. Lapp explained that she considers as a hardship the costs to the applicant of taking care of another individual, including those who are elderly or disabled.
- *Criteria VIII (cost of retaining counsel):* Although, prior to implementation, the intake form did not specifically take into account the actual cost of retaining an attorney, this factor was nonetheless considered by the Public Defender Office in deciding whether applicants had the financial resources to retain a private attorney. A notation regarding the cost of retained counsel is now included on the intake form. As for assessing the actual cost of retainers, Ms. Lapp stated that she has informally polled the former private attorneys in her office to ascertain the amounts that attorneys are requesting as retainers.
- *Procedure X (responsibility for screening):* For the past several years, Ontario County courts have delegated to the Public Defender Office the responsibility of screening for, and making a recommendation regarding, assigned counsel eligibility. Ms. Lapp reports that the courts generally accept the Public Defender Office's recommendations regarding assigned counsel eligibility, and as of the writing of this report, could not think of an instance since implementation in which a court has disagreed with the Office's recommendation.
- *Procedure XI (confidentiality):* Because courts delegate the assigned counsel screening function to the Public Defender Office, defendants are not required to disclose their financial information in open court and on the record. The Public Defender Office also



takes steps to guard the confidentiality of information disclosed during the intake interview, treating this information as privileged and confidential. However, when the interview is done at arraignment, it is not always possible to do so in a confidential setting, either because one is not available or because law enforcement officers will not leave the defendant alone with the attorney. Public Defender Office staff take steps to protect the client's confidentiality under those circumstances by, for example, limiting the interview to ensure that there is no discussion about the substance of the charges.

- *Procedure XII (timeliness of decision)*: Currently, the Public Defender Office has programs in place to provide full arraignment coverage throughout the county. Thus, in most instances, attorneys can screen defendants at arraignment to determine eligibility for assigned counsel. In those circumstances in which this is not possible, the defendants are instructed to contact the Public Defender Office, and they can be screened by phone or in person. Traditionally, if an applicant requests an assignment of counsel after learning that he is being investigated by law enforcement, even though no charges have yet been filed, the Public Defender would seek a court appointment before representing that individual. However, following the 2014 Monroe County Court's decision in *People v. Rankin*,<sup>25</sup> the Public Defender no longer waits for a court to assign, but immediately screens the applicant for eligibility and provisionally assigns an attorney to the case until the court chooses to act. The same procedure is applied for defendants who receive appearance tickets and contact the Public Defender Office to request assigned counsel.
- *Procedure XIII (burden of application process)*: The Public Defender Office requires verifying documentation only when necessary, such as when 1) the defendant's financial liabilities exceed the income reported; 2) the defendant's reported income seems sufficient to retain a lawyer, but the defendant reports excessive debts and financial liabilities; and 3) the defendant is self-employed and his or her net income is not easily discernible. The intake form used for assignment of counsel does not include an affirmation of attestation.
- *Procedure XIV (written notice of ineligibility decision)*: The Public Defender Office has always sent written notification of ineligibility determinations to applicants deemed ineligible for assigned counsel, even if the applicant was first notified orally. The Public Defender Office now also sends a written notice of the right to seek review by her office, or appeal to the judge, or do both. Ms. Lapp continues to personally review all recommendations of ineligibility prior to notifying the applicant of a determination.
- *Procedure XV (orders for partial payment)*: The Public Defender Office no longer recommends to courts that counsel be assigned contingent upon an order pursuant to County Law § 722-d that the defendant be required to partially pay for the costs of representation.

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<sup>25</sup> 46 Misc.3d 791, 811 (County Ct, Monroe County 2014) (holding that "the Public Defender, following a preliminary eligibility determination for a witness, suspect, or defendant, must have unconstrained liberty to act swiftly in defense of his clients, no different than attorneys in the private sector.").

Regarding the Eligibility Standard’s data collection requirements set forth in Procedure XVI, the Public Defender Office uses PDCMS, and took advantage of the updates made regarding eligibility data. ILS received the first eligibility report from the Public Defender Office on January 27, 2017. This report covers the last quarter of 2016 (October 1 through December 31). During that time, 682 individuals applied for assignment of counsel; 650 were found eligible and the remaining 32 found ineligible.<sup>26</sup> It is important to contextualize this data. The Public Defender Office utilizes a wider definition of “ineligible” than was intended when the PDCMS updates were created, to include “not only persons who had been screened and found financially ineligible, but also [for example] individuals who indicated during the screening process that they intended to retain private counsel.”<sup>27</sup> ILS clarified with the Public Defender Office that the 32 “ineligible” determinations included: 4 individuals who were found ineligible for financial reasons; 27 individuals who intended to retain private counsel; and 1 individual who declined to complete the interview. The Public Defender Office reported that there were no eligibility screening reconsiderations, appeals, or County Law § 722-d order requests.

Moving forward, ILS will work with NYSDA and the Public Defender Office to create a method to accommodate the various reasons for each “ineligible” screening determination (i.e., financially ineligible, statutorily ineligible, etc.).

#### **D. Barriers to implementation and ongoing challenges**

There have been no significant barriers to implementation. As stated previously, the Advisory Committee on Judicial Ethics’ Opinion 16-68, issued in June 2016, required amendments to the ILS Sample Notice of Right to Seek Review. ILS is grateful to Ms. Lapp for her thoughtfulness in consulting with us on this issue and offering suggestions for amending this notice.

Going forward, Ms. Lapp is interested in working with ILS to streamline the ineligibility determination notice. The Public Defender Office currently uses as a model the ILS Sample Reason for Ineligibility Recommendation, which informs the applicant of all the financial information that was considered in assessing the applicant’s eligibility for assigned counsel. However, Ms. Lapp finds the preparation of this document to be needlessly unwieldy and time-consuming and believes that it does not directly inform the applicant why he or she was deemed ineligible for assigned counsel. ILS will work with Ms. Lapp on developing a notice that is less cumbersome for the Public Defender Office, and more informative for the applicant.

### Schuyler County

Serving as the gateway to the 14-county Finger Lakes Region of Upstate New York, Schuyler County is surrounded by Yates and Seneca Counties to the north, Tompkins County to the east, Steuben County to the west, and Chemung County to the south. The county is rural, with a land mass of 328 square miles and 14 square miles of water, placing it amongst the geographically

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<sup>26</sup> Differences in the data reported here compared to data reported in *The Impact of Eligibility Standards in Five Upstate New York Counties* are attributed to the reporting of data spanning different date ranges.

<sup>27</sup> *The Impact of Eligibility Standards in Five Upstate New York Counties*, January 2017, p. 18.

smaller counties in New York State. In 2015, its population was 18,816, the second smallest in the State. The median household income was \$47,680, approximately 80% of the statewide average, and 14.5% of the population lived below the poverty level. Also in 2015, DCJS reported that 51% of the 119 criminal arrests disposed of were for misdemeanors, and 49% were for felonies, of which 5% were for violent felonies.

Criminal matters in Schuyler County are handled in the County Court and the 11 Town and Village Courts (“justice courts”). The courts located in Watkins Glen, Hector, and Montour Falls are the busiest. Watkins Glen is the county seat.

Until recently, Schuyler County had a Public Defender Office, a Conflict Defender, and an informal panel of attorneys who would take assigned counsel cases. Wesley A. Roe heads the Public Defender Office. In April 2016, as part of its initiative to improve the quality of public criminal defense, the County terminated its Conflict Defender program, and, through an inter-municipality cooperative agreement with Tompkins County, contracted for a regional Assigned Counsel Program (“ACP”) to be administered by the Tompkins County Assigned Counsel Program. This regional ACP handles those cases in which the Public Defender Office is conflicted or otherwise disqualified from representing a defendant.

#### **A. The criteria and procedures used in Schuyler County prior to implementation of the Eligibility Standards**

Prior to 2016, the Public Defender Office conducted all the financial eligibility screening for assigned counsel representation. Mr. Roe distributed to judges an application for assignment of counsel and asked the judges to provide it, at arraignment, to defendants who wished to apply for assigned counsel. Mr. Roe also provided this application to the Schuyler County Sheriff and asked that jail staff make it available to pretrial detainees who wished to apply for assigned counsel. Applicants were instructed to return completed applications to the Public Defender Office by in-person delivery or by mail; the Public Defender Office would then review them to determine eligibility for assignment of counsel. If the applicant was deemed eligible, the Office would assign an attorney and send a letter to the applicant notifying him or her of the decision, as well as the identity and contact information of the attorney. The Public Defender Office also sent letters to applicants who were deemed ineligible for assigned counsel, notifying them of the decision.

Starting in 2014, two developments impacted Schuyler County’s assigned counsel application process. First, and perhaps more importantly, in early 2014, the Public Defender Office initiated a program to provide defense counsel at all arraignments that occur during business hours; in 2015, the program was expanded to cover evening arraignments; and in 2016, it was expanded to cover weekend and holiday arraignments. At arraignments, the Public Defender Office attorneys explain to defendants that they have the right to assigned counsel if they cannot afford to retain private counsel. The arraigning attorneys also encourage and assist defendants in completing the assigned counsel application, particularly those defendants who are remanded to pretrial detention; the attorneys then take the application with them when they leave court so that defendants do not have to submit it themselves. Mr. Roe has told ILS that he believes the counsel at arraignment programs have resulted in more defendants exercising their Sixth Amendment

right and applying for assigned counsel. As set forth in ILS' report, *The Impact of Eligibility Standards in Five Upstate New York Counties*, preliminary data about assigned counsel eligibility determinations provide support for Mr. Roe's assessment.<sup>28</sup>

The second development is the County's decision to regionalize its assigned counsel panel with the Tompkins County ACP. The cooperative agreement between the two counties specifically addresses assigned counsel eligibility determinations, providing that in conflict cases, the ACP shall review assigned counsel applications and determine eligibility for assignment of counsel in accordance with any eligibility standards developed by ILS. The Public Defender Office still receives the assigned counsel application, but if it determines that there is a conflict, the application is forwarded to the ACP, which makes an eligibility determination before providing services on that case.

Below is more detailed information about the specific criteria and procedures used prior to implementation of the Eligibility Standards:

- *Barriers to applying:* The Public Defender Office generally did not require defendants to provide verifying documentation, but applicants were required to attest to the truthfulness of the information they provided. The assigned counsel application required applicants to provide the name and address of their bank, but the Public Defender Office did not investigate what was reported on the application.
- *Notification about right to seek reconsideration or to appeal:* Defendants deemed ineligible were notified in writing of the decision and told that they could appeal it to the court. Mr. Roe reports that judges often reversed the Public Defender Office's ineligibility determinations and assigned counsel. Defendants were not told that they had a right to ask the Public Defender Office to reconsider its determination.
- *Presumptions of eligibility:* The Public Defender Office used two eligibility presumptions: 1) income at or below 125% of the FPG; and 2) students or applicants who were 18 years or younger. In assessing income, the Public Defender Office considered gross rather than net income. While the Public Defender Office did not formally consider defendants on public assistance or in custody as presumptively eligible, in actual practice they were treated as such because they never had income sufficient to pay for an attorney.
- *Third-party income:* The Public Defender Office did not consider parental income, but it did consider the income of spouses living with the defendant (as long as the spouse was not a complaining witness).
- *Income:* Although the application requested the amount of public assistance received, the Public Defender Office did not consider this source as income available to retain counsel. However, it did consider as income other need-based benefits such as SSI, as well as unemployment benefits and child support received.

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<sup>28</sup> See *The Impact of Eligibility Standards in Five Upstate New York Counties*, at 24.

- *Ability to post bond or pay bail:* The Public Defender Office did not automatically deem defendants who had paid bail or posted bond as ineligible for assignment of counsel. Mr. Roe noted that in many cases, bail is paid by a friend or a relative, and hence ability to pay bail is not necessarily indicative of the ability to retain counsel. The application asked about bail, but did so for reasons other than for determining eligibility.
- *Financial obligations:* The former application did not provide defendants a chance to list their debts and financial obligations, except for child support obligations, which were deducted from gross income.
- *Non-liquid assets:* The application requested information pertaining to vehicles owned by the defendant, as well as the defendant's primary residence, but the Public Defender Office did not consider these assets when determining whether a defendant had the ability to pay for counsel. Mr. Roe told ILS that information was used as "a piece of the picture. We did not automatically deny someone just because they owned a house or a vehicle."

## **B. Steps taken to implement the Eligibility Standards**

Shortly after the Eligibility Standards were issued on April 6, 2016, Mr. Roe asked ILS to conduct a training for the Public Defender Office and ACP staff. The training occurred on May 9, 2016, and included the following people: Mr. Roe; Lisa Orr, Schuyler County Public Defender Office Manager; Lance Salisbury, Tompkins County ACP Supervising Attorney; Julia Hughes, Tompkins County ACP Administrator; Patricia Halstead, Tompkins County Administrative Assistant;<sup>29</sup> Mary King, Tompkins County ACP Administrative Assistant; Joe Mareane, Tompkins County Administrator; Paul Chambers, Investigator, Ontario County Public Defender Office; and Leah Morrow, Paralegal, Ontario County Public Defender Office.

Following the training, Mr. Roe consulted with ILS to update the Schuyler County assigned counsel application, using ILS' sample application as a template and modifying it where appropriate to address County-specific nuances. Mr. Roe began implementation on July 6, 2016 by sending a letter, with the new assigned counsel application and the presumption of eligibility income chart, to the Schuyler County Court Judge and all Schuyler County magistrates.

After sending this letter, and in advance of the Settlement's October 2016 implementation deadline, Mr. Roe also modified for his office's use the ILS Sample Notice of Eligibility Recommendation and Notice of Right to Seek Review.

On October 3, 2016, ILS and OCA conducted a joint training on the Eligibility Standards for the Schuyler County magistrates. Nancy Sunukjian and Anthony Rossi presented on behalf of OCA; Lisa Robertson and Patricia Warth presented on behalf of ILS. Ten magistrates attended, as well as the following individuals: Hon. Molly R. Fitzgerald, 6<sup>th</sup> Judicial District Administrative Judge; Hon. Gerald A. Keene, Tioga County Judge and Supervising Judge, 6<sup>th</sup> Judicial District Town and Village Courts; Lisa Daniel Smith, Counsel for the 6<sup>th</sup> Judicial District; Steven Getman, Schuyler County Attorney; and Seamus Donnelly, Schuyler County Assistant District

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<sup>29</sup> Ms. Halstead works in Schuyler County and is responsible for managing the assignment of counsel in Schuyler County and collecting, maintaining, and reporting on data pertaining to these assignments.

Attorney. On behalf of the mandated providers, Wes Roe, Lance Salisbury, Julia Hughes, and Patricia Halstead attended. During the training, a substantive discussion ensued about maintaining the confidentiality of information defendants disclose during the assigned counsel application process, and magistrates said that they would prefer that the Public Defender Office and ACP continue screening defendants so that magistrates would not have to do so in court and on the record. One magistrate, however, noted that the recently revised application included a line for magistrates to initial the application, and he suggested that doing so might result in an argument that the application should be made part of the court file which is available to the public. There was consensus that there is no reason for magistrates to initial the application and that this line should be removed.

Following this training, Mr. Roe consulted with ILS to make the necessary modifications to the Schuyler County assigned counsel application, which he then circulated to the magistrates. Attached as Exhibit H is the finalized application and other documents used in the eligibility determination process.

### **C. Assessment of compliance with the Eligibility Standards**

ILS has assessed Schuyler County's compliance with the Eligibility Standards by reviewing the application, engaging in on-going conversations with the Public Defender Office and ACP staff, and reviewing the data they have sent to us. We also learned quite a bit about implementation from the magistrates training conducted on October 3, 2016, which was several months after the July 2016 implementation. Our assessment is as follows:

- *Criteria I (core eligibility standard)*: Schuyler County has changed the assigned counsel application to ensure that defendants identify their debts and financial obligations in addition to their income and assets, which is essential to determining if a defendant has the resources to retain private counsel. As a result, defendants who cannot pay the costs of their defense are receiving assigned counsel.
- *Criteria II (eligibility presumptions)*: The assigned counsel application highlights the Eligibility Standard's four eligibility presumptions. Public Defender Office staff report that this has streamlined the application process.
- *Criteria III (ability to post bond or pay bail)*: Defendants are not denied assigned counsel eligibility just because they can pay cash bail or post bond.
- *Criteria IV (third-party resources)*: The assigned counsel application does not require defendants to report third-party income, and the Public Defender Office and ACP do not consider third-party income in making assigned counsel eligibility determinations.
- *Criteria V (non-liquid assets)*: The assigned counsel application asks defendants to list vehicles that are not used for basic life necessities and any real estate owned. For each, the application asks about the fair market value and the amount owed, so that the Public Defender Office and ACP can determine if there is significant equity in the asset. Mr.

Roe reports, however, that there is seldom a defendant who has non-liquid assets with significant equity.

- *Criteria VI (child support and public assistance)*: The assigned counsel application does not require defendants to list child support received, and the Public Defender Office and ACP do not consider this as income available to the defendant. The application asks about need-based public assistance, but only for purposes of deciding presumptive eligibility.
- *Criteria VII (financial obligations)*: The assigned counsel application asks defendants to list the following financial obligations: food, housing, utilities, transportation, child care, child support and alimony payments, and medical expenses. The application also prompts defendants to identify any other financial liabilities and provides examples. Thus, the Public Defender Office and ACP now obtain a more complete assessment of whether each defendant can, in fact, pay for counsel.
- *Criteria VIII (cost of retaining counsel)*: The application prompts the decision-maker to assess the costs of a defense, and the Public Defender Office and ACP do so informally, based on their knowledge of local practice.
- *Procedure X (delegation of screening responsibility)*: Schuyler County judges and magistrates have traditionally delegated to the providers of mandated representation the role of screening and making a recommendation about assigned counsel eligibility. According to Mr. Roe and consistent with the data sent to ILS, since implementation, courts have consistently followed the recommendations of the Public Defender Office and ACP.
- *Procedure XI (confidentiality)*: Because courts delegate the assigned counsel screening function to the providers of mandated representation, defendants are not required to disclose their financial information in open court and on the record. Both the Public Defender Office and the ACP take steps to ensure that the assigned counsel application forms remain confidential. If a judge requests to see an application, the attorney will hand it up to the judge to review, and then take it back so that it is not filed with the court and therefore does not become part of the public court file. As with many jurisdictions, it is not always possible to conduct a confidential interview at arraignment. Generally, Public Defender Office attorneys do not interview defendants at arraignment about assigned counsel eligibility, but instead provide defendants with a copy of the application and tell them they can complete it there or take it with them to complete and send to the Public Defender Office.
- *Procedure XII (timeliness of decision)*: Defendants who are remanded to custody at arraignment are considered presumptively eligible for counsel, though the Public Defender Office still asks such defendants to complete the application so that the office

can collect and maintain relevant information and data.<sup>30</sup> Other defendants are instructed to complete the assigned counsel application and either give it to the arraigning attorney or send it to the Public Defender Office. Once the Public Defender Office or the ACP receives the application, an eligibility decision is made promptly. Regarding applicants who contact the Public Defender Office because they believe they are being investigated, or are otherwise facing a possible criminal prosecution, Mr. Roe talks to such individuals, and where appropriate, provisionally assigns counsel pending an eligibility screening.

- *Procedure XIII (burden of application process)*: The application process is not burdensome. Applicants are asked to sign the application, but an affirmation or attestation is no longer required. Verifying documentation is seldom required, though it probably would be required in “close calls.”
- *Procedure XIV (written notice of ineligibility decision)*: The Public Defender Office (or ACP in conflict cases) sends written notification to defendants deemed ineligible for assigned counsel. This written notification explains the reason for the denial and is accompanied by a separate form notifying applicants of their right to seek reconsideration or appeal.
- *Procedure XV (partial payment orders)*: The Public Defender Office has traditionally not requested judges to issue partial payment orders at the time counsel is assigned, and judges have traditionally not issued such orders on their own. Mr. Roe opines that it is not a good use of his office’s time and that the administrative costs associated in collecting those funds far outweigh any financial benefit to the County.

Regarding the data collection and maintenance requirements set forth in Procedure XVI of the Eligibility Standards, ILS has worked with the Public Defender Office and the ACP, since both are responsible for screening applicants for assigned counsel eligibility, as set forth below:

#### *Schuyler County Public Defender Office*

The Public Defender Office utilizes PDCMS to collect, maintain, and report data, and the office took advantage of the eligibility updates made to PDCMS to issue a report to ILS regarding the last quarter of 2016 (October 1 through December 31). The data we received show that 117 individuals applied for assignment of counsel, with all 117 found eligible and no individuals found ineligible. The data also indicates that there were no eligibility screening reconsiderations, appeals, or County Law § 722-d order requests.

#### *Tompkins County ACP*

ILS received a report from the ACP spanning the last quarter of 2016 representing the number of applicants screened for eligibility whose cases were conflicted out of the Public

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<sup>30</sup> In most instances, this application is completed at arraignment. If not, the Public Defender Office ensures that it is completed as soon as possible post-arraignment. In the meantime, the Public Defender Office treats the case as a provisional assignment of counsel.



Defender Office. Of the 28 applicants screened, one was found ineligible. ILS clarified with the ACP that the one individual found ineligible was deemed so for statutory and not financial reasons. The information the ACP sent indicates that there were no eligibility screening reconsiderations, appeals, or County Law § 722-d order requests.

#### **D. Barriers to implementation and ongoing challenges**

There have been no identifiable barriers to implementing the Eligibility Standards in Schuyler County.

#### Suffolk County

Suffolk County is a large suburban county on the eastern end of Long Island. In 2015, the County's population of just over 1.5 million had a median household income of \$88,663, which is approximately 150% of the New York State average. Suffolk County is an expensive place to live; according to *The Self-Sufficiency Standard for New York State 2010*,<sup>31</sup> in 2010, a family of two adults and one child would need to earn \$86,245, which was 391% of the FPG, to live without relying on public or private assistance; a family of one adult and one child would need \$65,895 or 452% of the FPG.

According to DCJS, in 2015, a total of 21,460 criminal arrests were disposed of in Suffolk County, 75% of which were misdemeanors, and 25% felonies. Five percent of the felonies were violent felonies. Suffolk County's criminal court system is split between the County's West and East Ends. On the West End, a District Court located in Central Islip has jurisdiction over criminal matters for the five West End towns, while on the East End, ten town and village courts ("justice courts") handle criminal matters. The County Court is located on the East End in Riverhead. In most instances, cases originate in District Court or in one of the justice courts, and therefore most initial eligibility decisions are determined in District Court or in one of the East End justice courts.

Suffolk County differs from the other *Hurrell-Harring* counties in that there is no single entity that conducts all the screening for assigned counsel eligibility. Instead, different mechanisms exist for determining eligibility depending on whether the defendant is arraigned in the District Court or in one of the East End justice courts. This is described more fully below.

#### **A. The criteria and procedures used in Suffolk County prior to implementation of the Eligibility Standards.**

The criteria and procedures used in District Court and in the East End justice courts prior to implementation of the Eligibility Standards are set forth below:

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<sup>31</sup> Authored by Diana M. Pearce, Ph.D., this report was prepared for the Self-Sufficiency Standard Steering Committee of New York State. It is available at: <http://www.fiscalpolicy.org/SelfSufficiencyStandardForNewYorkState2010.pdf>.

## *1. District Court*

In District Court, there are two parts for arraigning defendants: 1) D-11, where defendants who are detained after their arrest are arraigned; and 2) the Street Appearance Part (SAP), where defendants who are issued appearance tickets after their arrest are arraigned. In both parts, Suffolk County has taken advantage of ILS grant and distribution funding to ensure that defendants are represented by defense counsel at arraignment.

For several years, the County's Department of Probation has been conducting screening of defendants in D-11 prior to arraignment to assess whether they should be released on their own recognizance ("ROR" screening). Although this ROR screening is Probation's primary function, as a courtesy to the courts, Probation has also agreed to screen defendants for assigned counsel eligibility. It is our understanding that Probation did this screening without any written criteria regarding financial eligibility for assignment of counsel. Additionally, Probation was not able to collect or maintain any data regarding the eligibility screening they conducted; instead, they targeted their limited resources to collecting and maintaining ROR screening data instead. Thus, there is no reliable information available on how often Probation recommended that defendants be deemed eligible for assignment of counsel; nor is there reliable information on how often judges accepted or rejected Probation's recommendations or what criteria courts used in making their assigned counsel decisions.

Unlike D-11, District Court's Street Appearance Part does not have an entity that screens defendants and makes a recommendation regarding eligibility. Thus, judges are solely responsible for obtaining information from defendants to determine eligibility for assignment of counsel. ILS has been told that there is no common procedure or criteria that judges use in determining assigned counsel eligibility and that there is significant variation in how much information individual judges obtain from defendants to make an eligibility decision, just as there is a variation in the criteria judges use in determining which defendants are eligible for assigned counsel.

In both the D-11 and the SAP parts, judges more readily assign counsel to those defendants who are remanded to pre-trial detention and defendants who are arraigned on felony offenses.<sup>32</sup> Additionally, in both parts, there is an ILS grant-funded attorney who is responsible for representing defendants who are considered ineligible for assigned counsel. These grant-funded attorneys will continue to provisionally represent defendants charged with a felony and remanded to pre-trial custody until the next court appearance.

In the SAP part, at the beginning of the court calendar, judges announce to everyone in the courtroom that defendants have the right to counsel and the right to an assigned counsel if they cannot afford an attorney. However, in those situations in which a defendant is not remanded to pre-trial detention and not charged with a serious felony, the District Court judges tend to encourage defendants to retain private counsel, often telling them that they must "come back with a lawyer." In such circumstances, defendants are not deemed eligible for assignment of counsel at their first court appearance, but as the case progresses, courts are more inclined to assign counsel if the defendant continues to appear at scheduled court sessions without private

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<sup>32</sup> In SAP, there are very few defendants who are remanded to custody.

counsel. The result of this practice is that many defendants – most often those charged with misdemeanors who are not in custody – have multiple court appearances without counsel, often in different court parts, until they are finally deemed eligible for assignment of counsel.

## 2. East End Justice Courts

In the East End justice courts, if a defendant is arraigned and remanded, the court will presume the defendant eligible for, and will assign, counsel. If the defendant is not remanded, the court will conduct a brief inquiry into the defendant’s financial situation. If it is obvious that the defendant cannot afford private counsel, the judge will assign counsel. If it is not obvious, the judge will instruct the defendant to go to the Suffolk County Legal Aid Society (“SCLAS”) to apply for assigned counsel. All the East End courts have forms they provide defendants in such circumstances with directions to SCLAS and a list of the documents they should bring. If the SCLAS has a conflict, the case will go to the Assigned Counsel Program.

The SCLAS traditionally deemed as presumptively eligible applicants who: 1) live in public housing; 2) are incarcerated or confined to a mental health facility; 3) receive need-based public assistance; or 4) have an income at or below 125% of the FPG.

The SCLAS also considered the income of parents and spouses as available to the defendant (though they report that these third parties were not always cooperative in the application process), which often made the assigned counsel application process more time consuming. Table 2 summarizes the presumptions and third-party income that SCLAS typically considered.

For the defendants who were not presumptively eligible, the SCLAS would engage in a more in-depth assessment of their income, typically requiring them to produce paystubs or other verifying documents. The SCLAS’ assessment was comprehensive, and it collected and considered information about financial assets and liabilities. SCLAS staff then balanced defendants’ assets against their liabilities to ascertain if they could afford to retain counsel. Thus, an applicant with significant debt, but little income or assets, would likely be deemed eligible for assignment of counsel. Though comprehensive, the SCLAS did not consider all of a defendant’s basic living costs, taking into account housing and utility bills, but not other expenses such as food and transportation. Notably, the SCLAS was thoughtful about the reality that many low-income people in Suffolk County can only secure seasonal work. Thus, if a defendant reported savings, the SCLAS would ascertain if the defendant worked seasonally, and if so, what portion of these savings were needed to pay the living expenses of the defendant and his or her dependents during the season when work is not available.

*Table 2: Presumptive Eligibility and the Consideration of Third Party Resources in Suffolk County Prior to the Criteria and Procedures*

Persons presumptively eligible for counsel

- Living in public housing
- Incarcerated or confined to a mental health facility
- Receiving public benefits (welfare)
- Income below 125% of Federal Poverty Line

Third parties whose income could be considered in the eligibility determination

- Spouses
- Parents

The SCLAS did not automatically deem defendants who could post bond or pay cash bail as ineligible for assigned counsel, though if the bail paid or bond posted by the defendant was significant, judges would often ask the SCLAS to re-screen the defendant to ascertain if the defendant had resources that had not previously been disclosed. The SCLAS previously asked defendants to affirm or attest to the truthfulness of the information they disclosed, but several years ago, they stopped doing so after learning that in other counties, law enforcement agencies were actively seeking out assigned counsel applications to investigate possible criminal activity. SCLAS staff report that since they have stopped using an affirmation or attestation, they are getting more thorough financial information because defendants do not fear that the information they provide will be used against them.

The SCLAS has traditionally considered the cost of retaining private counsel, which can be particularly expensive on the East End. SCLAS staff estimate that, generally, retaining counsel for misdemeanor cases costs about \$5,000, and for felony cases about \$10,000. They have also traditionally considered the fact that these costs are higher for more complex cases that will almost certainly require the use of experts, such as cases in which defendants have a mental health issue.

In terms of confidentiality, SCLAS staff have always interviewed defendants in a confidential setting inside the SCLAS office. They begin these interviews by informing the defendant of the purpose of the interview and hence the importance of being honest and accurate; they also assure defendants that they need not fear being forthcoming because the information they disclose will remain confidential and will not be re-disclosed. Staff create a non-judgmental atmosphere in which defendants feel comfortable providing complete information about their financial situation. Using the information obtained from the defendant, SCLAS staff have always made an immediate determination as to the defendant's eligibility for assignment of counsel, often consulting with a more experienced staff member in "close calls." If the defendant was determined to be ineligible, the SCLAS staff person would verbally inform the defendant that he or she could return with additional information and documentation to have the ineligibility determination reconsidered. SCLAS staff also verbally informed ineligible applicants that they could appeal to the judge, and they would describe to the defendant the type of information that should be given to the judge for this appeal.

Overall, the criteria and procedures that the SCLAS had been using were already consistent with the Eligibility Standards, with a few exceptions.

## **B. Steps taken to implement the Eligibility Standards**

Working with Probation, the SCLAS, and OCA, ILS took the following steps to implement the Eligibility Standards.

### *1. District Court's D-11 Part: ILS' work with Probation*

In August 2016, after consulting with Hon. C. Randall Hinrichs, Suffolk County District Administrative Judge, ILS contacted Patrice Dlhopsky, Director of Suffolk County Probation, to discuss Probation's assigned counsel eligibility screening and capacity to implement the

Eligibility Standards. Ms. Dlhopsky said that Probation has an “ROR Unit” with investigators who interview detained defendants prior to their arraignment and obtain information needed to determine a defendant’s appropriateness for release. This is done using an instrument that “scores” the defendant based on the specified information collected. Because Probation has been asked to do so, as part of this interview, the investigators include questions about the defendant’s financial eligibility for assignment of counsel. Ms. Dlhopsky described the screening process as “very quick,” so as not to delay the court calendar. Thus, Probation’s screening form can include only a limited number of questions regarding financial eligibility for assignment of counsel. Additionally, Ms. Dlhopsky noted that this screening must be done in the courthouse holding pens immediately prior to arraignment, and that therefore, maintaining the confidentiality of the information obtained simply is not possible.

Ms. Dlhopsky emphasized that Probation’s primary function is to screen defendants for appropriateness for ROR. Still, she expressed a continued willingness to assist the D-11 judges in screening for assigned counsel eligibility. Because of limited staff and time in which to conduct this screening, ILS agreed with Ms. Dlhopsky’s assessment that Probation has the capacity to screen only for presumptive eligibility for assignment of counsel. Therefore, ILS worked with Ms. Dlhopsky on amending Probation’s ROR instrument to also obtain enough financial information from defendants to determine if they are presumptively eligible for assignment of counsel. The amended ROR instrument is attached as Exhibit I. In addition to amending Probation’s ROR instrument, Ms. Dlhopsky designated five staff members from her “ROR Unit” to attend the OCA-ILS joint training for judges regarding the Eligibility Standards. (This training is discussed further below).

Despite Probation’s limited resources, Ms. Dlhopsky was willing to collect and maintain data on the outcome of Probation’s screening. She also agreed to report to ILS monthly the number of defendants screened, and of these, the number Probation deemed presumptively eligible for assignment of counsel. This data is discussed further in this report.

For defendants who are not presumptively eligible for assignment of counsel, the court must determine if further screening is necessary, and if so, the scope of this screening.

## *2. East End Justice Courts: ILS’ work with the SCLAS*

On July 11, 2016, ILS conducted a thorough training regarding the Eligibility Standards for the ACP and the SCLAS. Stephanie McCall, ACP Deputy Administrator, attended on behalf of the ACP, while Laurette Mulry, SCLAS’ Chief Attorney-in-Charge, attended for the SCLAS, along with ten other SCLAS staff members who are involved in screening for assigned counsel eligibility and collecting and maintaining the data on this screening. Generally, the SCLAS uses two of their investigators to screen for assigned counsel eligibility: Brennan Holmes and Hilda Garay. Ms. Garay is bi-lingual and able to interview defendants whose primary language is Spanish. Other support staff are also available to screen if necessary.

During this training, we discussed the assigned counsel application to be used. The SCLAS decided to use the ILS Sample Application, but to slightly modify it to accommodate the needs

of its office, such as including the SCLAS logo and address. Attached as Exhibit J is the SCLAS application.

### 3. *The Judiciary: Joint ILS and OCA training*

As stated previously, ILS coordinated with OCA's Office of Justice Court Support to develop a training curriculum for judges and magistrates in the five *Hurrell-Harring* counties. This joint OCA-ILS training was presented to the Suffolk County District Court judges and the Town and Village Court magistrates on September 19, 2016. Nancy Sunukjian presented for OCA, and Lisa Robertson and Patricia Warth presented for ILS. Judge Hinrichs introduced the program. Seventeen judges and magistrates attended, as well as staff from Probation's ROR Unit, SCLAS staff, members of the Suffolk County Bar Association, and County Attorney Dennis Brown.

## **C. Assessment of compliance with the Eligibility Standards**

To assess the County's compliance with the Eligibility Standards, ILS has had ongoing contact with staff from the SCLAS, has obtained and reviewed data monthly from Probation, and has conducted a limited number of observations of proceedings in District Court. Our assessment below distinguishes between the East End courts and the District Court.

### 1. *East End Town and Village Courts*

The SCLAS implemented the Eligibility Standards by September 1, 2016. Because the previous criteria and procedures used were consistent with the Eligibility Standards, implementation required some "tweaks" to its assigned counsel application process, but not a wholesale change. A brief assessment of each Criteria and Procedure is as follows:

- *Criteria I (core eligibility standard):* The SCLAS had traditionally used criteria and procedures designed to ensure that counsel is assigned to defendants who do not have sufficient resources to retain private counsel. SCLAS staff report that implementing the Eligibility Standards has streamlined the application process for those who are obviously eligible (such as defendants who receive need-based public assistance) while simultaneously allowing for a more comprehensive assessment of defendants who do not meet one of the eligibility presumptions.
- *Criteria II (presumptions of eligibility):* The SCLAS is now using the four delineated presumptions of eligibility. Screening staff estimate that approximately 70% to 80% of applicants meet one the eligibility presumptions.
- *Criteria III (ability to post bond):* The SCLAS has maintained its long-standing policy of not automatically denying assigned counsel eligibility to defendants who can post bond or pay cash bail.
- *Criteria IV (third-party resources):* The SCLAS no longer considers third-party resources as available to the defendant.

- *Criteria V (non-liquid assets)*: The SCLAS does not consider any vehicles used for basic life necessities; nor does the SCLAS consider an applicant's primary residence except in circumstances set forth in this Criteria. For any non-liquid assets that are potentially considered, the SCLAS obtains information about the value of the asset and any equity the applicant has in it.
- *Criteria VI (child support and public assistance)*: The SCLAS does not obtain information about or consider child support received (though child support paid is considered as a financial liability). The SCLAS obtains information about need-based public assistance received to determine if an applicant is presumptively eligible for assignment of counsel.
- *Criteria VII (financial obligations)*: The SCLAS has expanded the types of financial obligations it considers so it is now obtaining a more comprehensive picture of the defendant's financial situation.
- *Criteria VIII (cost of retaining counsel)*: As stated above, the SCLAS has traditionally considered the costs of paying for a defense, estimating retainers based on what they know about East End practice, and taking into account the complexity of the case.
- *Procedure X (delegation of screening responsibility)*: East End magistrates have traditionally delegated to the SCLAS the role of screening and making a recommendation about assigned counsel eligibility. According to the SCLAS, East End magistrates generally follow the SCLAS' recommendations.
- *Procedure XI (confidentiality)*: Because the SCLAS screens for assigned counsel eligibility, courts generally do not ask defendants detailed questions about their financial ability to retain counsel in open court and on the record. The SCLAS continues to take steps to ensure the confidentiality of the information obtained. Screening staff inform defendants at the outset of the screening interview that the information disclosed is confidential, encouraging defendants to provide full and complete information.
- *Procedure XII (timeliness of decision)*: At arraignment, counsel is assigned to those defendants who are remanded to custody. Other defendants who seek to apply for counsel go to the SCLAS office prior to their next court appearance to be screened. At the completion of this interview, they are told if they are deemed eligible for assigned counsel, and if so, who their attorney is. The SCLAS is revising its office protocols so that individuals who contact the office seeking counsel because of an appearance ticket or because they are being investigated by law enforcement can be assessed for assigned counsel eligibility.
- *Procedure XIII (burden of application process)*: SCLAS staff are careful not to impose requirements that create needless barriers to applying for assigned counsel. Several years ago, the SCLAS discontinued the practice of requiring applicants to affirm or attest to the accuracy of the information provided. In terms of verification of the financial information applicants provide, the SCLAS requires applicants to provide documentation in close

calls, and when the applicant's income is such that it seems the applicant should be able to retain counsel, but the applicant has significant financial obligations or liabilities. In such cases, the SCLAS will ask for verification of the income as well as the financial liabilities. SCLAS staff also ask for documentation in those few instances in which an applicant has been deemed ineligible but is requesting reconsideration.

- *Procedure XIV (written notice of ineligibility):* As previously stated, the SCLAS has always verbally informed all ineligible applicants that, if presented with additional information, they will reconsider the decision and that the applicant can also appeal to the judge. ILS is currently working with the SCLAS on implementing an office protocol to ensure that ineligible applicants are notified in writing of the ineligibility decision and told of their right to seek reconsideration or appeal to the judge.
- *Procedure XV (use of partial payment orders at the time of assignment of counsel):* Judges on the East End have traditionally not ordered partial payment orders at the time of assigning counsel, and it is not the practice of the SCLAS to ask them to do so.

Regarding data, ILS received a report from SCLAS spanning from September 1, 2016 to December 31, 2016 representing the number of individuals screened in the East End town and village courts. Of the 80 individuals screened, one individual was found ineligible. ILS confirmed with the SCLAS that the one individual was found ineligible for financial reasons. The Suffolk County Legal Aid Society reported that there were no eligibility screening reconsiderations, appeals, or County Law § 722-d order requests.

Overall, SCLAS staff report that implementation of the Eligibility Standards has made the assigned counsel application process less burdensome yet more consistent for applicants and for SCLAS staff. As set forth in ILS' report, *The Impact of Eligibility Standards in Five Upstate New York Counties*, it does not appear that implementation of the Eligibility Standards has significantly impacted the number of defendants on the East End deemed eligible for assigned counsel.

## 2. *District Court*

Since October 3, 2016, Probation has been screening all defendants to determine if they meet one of the Eligibility Standards' four presumptions of eligibility. As the data below reveal, on average about 81% of those defendants screened met one of the eligibility presumptions. Unfortunately, the courts do not collect or maintain data on the number of times judges actually assign counsel, so ILS has not been able to obtain any data on what happens after Probation recommends that a defendant is presumptively eligible for assignment of counsel.

Our limited court observations and discussions with attorneys who practice in D-11 suggest that Probation's implementation of the Eligibility Standards has resulted in more defendants being assigned counsel at arraignment rather than later in their case, and thus fewer defendants facing a gap in representation. Implementation of the Eligibility Standards also has resulted in Probation using transparent written criteria.



Still, our court observations and discussions with attorneys who practice in District Court have revealed instances in which there are procedures and criteria used to determine assigned counsel eligibility that deviate from the Eligibility Standards. We are told that some judges do not consistently follow Probation's recommendation that a defendant is presumptively eligible for assignment of counsel, and instead seemingly use other criteria for assigned counsel eligibility. For example, some judges will not assign counsel to defendants who state they own their own home; in such cases, there is no inquiry made into the value of the home or its equity. Some judges also will not assign counsel if a defendant states that he or she has a regular job, regardless of the income from this job. Some judges apparently also do not consider defendants' financial obligations or the need to care for dependents. For example, ILS observed one case in which the defendant revealed that he had a job at which he earned about \$600 per week. Without asking the defendant if he had any dependents or financial liabilities, the judge told the defendant he would have to "come back with an attorney."

Also troubling is the fact that the assigned counsel eligibility screening is done in open court and on the record, so there is no confidentiality and defendants can inadvertently disclose information that implicates their 5<sup>th</sup> Amendment right against self-incrimination, or otherwise compromise their defense.

Regarding District Court's Street Appearance Part (SAP), it is not clear if the Eligibility Standards have produced any changes in the assigned counsel application process or decision-making. Indeed, it is our understanding that each judge continues to use his or her individual criteria and procedures which often conflict with the Eligibility Standards. Some judges screen from the bench, asking defendants to disclose their financial information in open court. Although judges will make a general statement at the beginning of every court calendar, announcing, among other things, that defendants have a right to counsel and a right to an assigned attorney if they cannot afford to pay for one, some judges will also announce that defendants who want assigned counsel need to "go to Legal Aid," but they do not tell these defendants how to contact the SCLAS. Finally, some judges provide defendants who specifically ask for assigned counsel a form instructing them as to what information and documentation they must bring to their next court appearance. We have obtained two such forms, which are attached as Exhibit K. Both forms instruct defendants to bring photo identification; bank books and bank statements; recent pay stubs for all members of the household; income tax returns; proof of financial hardship, such as utility service shutoffs; proof of Social Services awards; and proof of other financial benefits, such as Social Security, retirement pensions, and unemployment insurance. Defendants under the age of 21 are also instructed to bring their parents.

For both D-11 and the SAP, because each judge does it differently, it would be impossible to accurately describe the criteria and procedures currently used. It is fair, however, to identify the following as ongoing issues for implementation of the Eligibility Standards in Suffolk County's District Court:

- There is no confidentiality in the screening process. Probation must screen in the holding pens, where confidentiality is impossible. Additionally, judges continue to ask defendants to disclose private financial information on the record and in open court.

- There are no uniform or transparent criteria used. This is true even in the D-11 part, where Probation screens defendants for presumptive eligibility. While some judges accept Probation’s recommendations, others do not.
- Although courts make a general statement at the beginning of each calendar about the right to assigned counsel, defendants are encouraged to retain counsel. This happens most often in cases involving defendants charged with a misdemeanor and not remanded to pre-trial detention. Some of these defendants do retain counsel, but at a risk that they can only afford a retainer that is insufficient for quality representation.<sup>33</sup>
- It is common for defendants who are charged with a misdemeanor and released post-arraignment to have several court appearances over the course of several weeks or months before they are assigned counsel. These repeated court appearances damage judicial efficiency, and needlessly disrupt peoples’ lives by requiring them to forfeit work, school, or family responsibilities.
- The courts do not collect or maintain data on the number of defendants who apply for counsel, the number deemed eligible, and the number deemed ineligible. These barriers to obtaining data about the assigned counsel process in District Court are a significant problem, since data is an essential part of assessing the assigned counsel application process.

Though courts do not have data, ILS has received monthly reports from the Suffolk County Probation Department spanning from October 3, 2016 to January 31, 2017. The data, shown below, presents the number of individuals screened in the District Court’s D-11 Part, as well as the number and percentage of those who Probation has determined are presumptively eligible for assignment of counsel. On average, roughly 81% of those individuals screened by Probation were determined to be presumptively eligible for assignment of counsel.

Time Period	Total Screened	Presumptively Eligible	
		Number	Percentage
10/3/2016 - 10/28/2016	884	772	87.3%
10/29/2016 - 11/30/2016	1164	924	79.4%
12/1/2016 - 12/31/2016	987	778	78.8%
1/1/2017 - 1/31/2017	1146	893	77.9%

As previously stated, there is no data available on the frequency with which the District Court judges adopted Probation’s recommendations regarding assigned counsel eligibility, so this data is just part of the picture. Anecdotal information suggests that District Court judges are not consistently following these recommendations, though there seems to be an uptick in the number

<sup>33</sup> ILS has been told by multiple sources that lawyers who accept low retainers often run out of money before the case is resolved, and then ask the court for permission to withdraw from the case and for counsel to be assigned.

of people assigned counsel at arraignment instead of later in the case. Thus, while the steps Probation has taken to implement the Eligibility Standards in District Court's Part D-11 appear to have produced some improvement in ensuring that people who cannot afford counsel are assigned counsel as soon as possible, it is evident that District Court judges continue to use criteria and procedures that deviate from the Eligibility Standards and that produce negative consequences for poor people charged with crimes.

#### **D. Barriers to implementation and ongoing challenges**

Suffolk County's most significant barrier to implementation is the lack of a screening entity in District Court, and thus the lack of uniform procedures and criteria for screening defendants for assigned counsel eligibility. It is the experience of the other *Hurrell-Harring* counties that having a screening entity has made implementation of the Eligibility Standards more manageable, and has resulted in uniform, consistent, and transparent processes and decisions. Not surprisingly, Suffolk County has achieved the most implementation success in the East End town and village courts, where the SCLAS screens applicants and makes eligibility recommendations.

Another barrier is the Suffolk County Bar Association's ("SCBA's") opposition to the Eligibility Standards, as articulated in an August 5, 2016 letter to Governor Cuomo, which is attached as Exhibit L. In this letter, the SCBA expresses its concern that the Eligibility Standards will result in "a significant expansion of the number of people eligible for assigned counsel" which will include "those financially able to retain private counsel." It must be emphasized here that the Eligibility Standards were designed precisely to distinguish between those defendants who can pay for private counsel and those who cannot. It is not at all clear to us why the SCBA alleges that the Eligibility Standards will result in counsel being assigned to defendants who can afford to retain counsel.<sup>34</sup>

The SCBA also expresses a concern that the Eligibility Standards create a "potential for fraud in order to obtain assigned counsel" and that this potential is "both manifest and likely" because "defendants will not be required to substantiate their claims to [sic] indigence nor will they be penalized for submitting false information." Of course, defendants can lose the right to assigned counsel if they intentionally provide false information to obtain assigned counsel, as made clear in Procedures XIII and XV of the Eligibility Standards.<sup>35</sup> Additionally, there is no reason to

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<sup>34</sup> It may be that the SCBA anticipates a significant increase in the number of defendants assigned counsel because of the 250% FPG income presumption of eligibility. Notably, in identifying 250% of the FPG as the presumptive eligibility income level, ILS looked to *The Self-Sufficiency Standard for New York State 2010*, which "provides a detailed measure of what it takes to make ends meet in New York State without public or private assistance." *The Self-Sufficiency Standard for New York State 2010*, Executive Summary. As noted in *The Self-Sufficiency Standard*, the income level for self-sufficiency in Suffolk County hovers around 400% of the FPG (depending on the number of dependents in the home). While it is not yet clear the extent to which implementation of the 250% FPG income presumption will expand the number of people eligible for assigned counsel, what is clear is that the pool of people eligible will not include people who can pay for private counsel. In Suffolk County, people whose income is at or below 250% of the FPG are far from being self-sufficient and must survive through significant public or private assistance. Such individuals certainly do not have the resources to pay for an adequate criminal defense.

<sup>35</sup> These procedures remind judges of their inherent authority to re-visit an assigned counsel eligibility determination whenever a judge learns that the applicant had intentionally misrepresented his financial situation to obtain free counsel.

believe that refraining from needlessly burdensome application requirements, such as requiring verifying documents in all cases and requiring applicants to attest or affirm to the information they disclose, will enhance the occurrence of fraud. Published research about the assigned counsel application process, and the information ILS learned during the public hearings we conducted in 2015, reveal that i) few applicants intentionally engage in fraud to obtain assigned counsel; and ii) requiring documentation in every case creates needless administrative costs for courts and screening entities, and unacceptable delays in the assignment of counsel. To be sure, ILS has trained providers that there will certainly be instances in which verifying documentation should be requested, particularly if there is missing information or reason to believe that the defendant is not providing complete or accurate information. Furthermore, providers have learned that requiring an attestation or affirmation often diminishes the accuracy and thoroughness of the information defendants provide, because they fear that the information they disclose can be used against them and that even inadvertent mistakes could result in punitive consequences.

ILS is confident that, over time, experience will show that the Eligibility Standards achieve the goal of accurately discerning between those who can and those who cannot afford private counsel, and that they do not result in the unwarranted assignment of counsel to people who are financially able to retain an attorney.

A final challenge to implementation has been the June 16, 2016 issuance of Opinion 16-68 by the Advisory Committee on Judicial Ethics (Advisory Committee) regarding Procedure XI of the Eligibility Standards. Procedure XI is taken directly from the *Hurrell-Harring* Settlement, which requires that the assigned counsel determination process be confidential.<sup>36</sup> It is also derived from professional standards and national guidelines, which emphasize the need to maintain the confidentiality of information provided during the assigned counsel determination process.<sup>37</sup>

In Opinion 16-68, the Advisory Committee notes that judges “must not ‘initiate, permit, or consider *ex parte* communications’ unless an exception applies.”<sup>38</sup> The Advisory Committee further notes that “a judge ‘may initiate or consider any *ex parte* communications when

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<sup>36</sup> See *Hurrell-Harring* Settlement, § VI, B.

<sup>37</sup> See, e.g., New York State Bar Ass’n Revised Standards for Providing Mandated Representation, Standard C-4 (2015) (“Rules, regulations, and procedures concerning the determination of initial eligibility and continuing eligibility for mandated representation shall be designed so as to protect the client’s privacy and constitutional rights...”); Brennan Center for Justice, *Eligible for Justice: Guidelines for Appointing Defense Counsel*, Guideline 6(a). These professional standards and guidelines recognize that maintaining confidentiality is a constitutional imperative. See, e.g., Brennan Center for Justice, *Guidelines*, at 23 (confidentiality is critical because “defendants must not be forced to choose between their Sixth Amendment right to counsel and their Fifth Amendment right not to incriminate themselves”). It is not unusual for applicants during the assigned counsel determination process to reveal information that implicates their Fifth Amendment right against self-incrimination. Defendants should not have to abandon one constitutional right to exercise another. *Simmons v. United States*, 390 U.S. 377, 394 (1968) (“[W]e find it intolerable that one constitutional right should be surrendered in order to assert another.”); see also *United States v. Pavelko*, 992 F.2d 32, 34 (3<sup>rd</sup> Cir. 1993). Put simply, confidentiality of the assigned counsel eligibility determination process is necessary to fully protect defendants’ Fifth and Sixth Amendment rights.

<sup>38</sup> See Opinion 16-68 (citing 22 NYCRR 100.3(B)(6)).

authorized by law to do so.”<sup>39</sup> Thus, concludes the Advisory Committee, “absent a legal requirement to do so, a judge should not voluntarily comply with the proposed guidelines to the extent they require the judge to engage in impermissible *ex parte* communications or to close the courtroom or seal the record other than as permitted by law.”<sup>40</sup> The Advisory Committee, however, states that it “cannot resolve the underlying legal questions” as to whether the law authorizes *ex parte* communications and the sealing of records to maintain the confidentiality of information a defendant discloses during the assigned counsel eligibility determination process.<sup>41</sup>

Judges have read Opinion 16-68 as precluding them from conducting assigned counsel eligibility screenings at the bench and off the record, and from sealing or redacting written financial information disclosed to the court. During the joint ILS-OCA trainings on the Eligibility Standards, OCA has advised judges that, because of Opinion 16-68, and considering the importance of maintaining the confidentiality of information disclosed during the assigned counsel application process, it is a “best practice” to delegate the screening responsibility to one of the providers of mandated representation. Because this “best practice” has been adopted in the other *Hurrell-Harring* counties, Opinion 16-68 has not posed a challenge to implementation in those counties. But in Suffolk County’s District Court, where judges screen for assigned counsel eligibility, Opinion 16-68 has posed a challenge to protecting the confidentiality of the information defendants disclose when requesting assigned counsel.

In recent conversations, the County and Suffolk County Court administrators have proposed that the Suffolk County Assigned Counsel Defender Plan (“ACDP”) initiate a program to screen defendants in the Street Appearance Part for assigned counsel eligibility. It is hoped that this program will promote implementation of the Eligibility Standards. Preliminary steps have been taken to execute this proposal, including identifying possible space in the courthouse for this program. Several issues need to be finalized, including ensuring that the ACDP has the resources and staffing needed and that the identified space is available. ILS will continue to consult with the County, court administrators, and the ACDP on this potential screening program and on other steps needed to fully implement the Eligibility Standards.

### Washington County

Washington County, located in the northeastern section of the State, is 846 square miles of elongated area (831 square miles of land; 15 square miles of water), nestled between the Adirondack Mountains to the north, the Vermont border to the east, and the Hudson River and Lake George to the west. The county seat is Fort Edward, although the largest city is Kingsbury. In 2015, the county had an estimated population of 62,230, with a median household income of 51,143 (86% of the state average) and 13.3% of its population living in poverty. According to DCJS, 69% of the 944 criminal cases disposed of in 2015 were misdemeanors and 31% were felonies, of which 5% were violent felonies.

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<sup>39</sup> *Id.* (citing 22 NYCRR 100.3(B)(6)(e)).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

The Washington County court system consists of a County Court and 24 Town and Village Courts (“justice courts”). The justice courts of Fort Edward, Hudson Falls and Kingsbury handle the greatest volume of criminal cases.

Washington County has two providers of mandated representation: the Public Defender Office, headed by Michael J. Mercure, and the Assigned Counsel Program (ACP), with Thomas N. Cioffi as the Supervising Attorney and Marie DeCarlo-Drost as the Administrator. The ACP was formerly in the Public Defender Office and administered by Ms. DeCarlo-Drost, but in 2015, Washington County moved the ACP to its own office, and in August 2016, Mr. Cioffi was hired as the ACP’s Supervising Attorney. Ms. DeCarlo-Drost has traditionally been responsible for assigned counsel eligibility screening, even when she was housed in the Public Defender Office.

#### **A. The criteria and procedures used in Washington County prior to implementation of the Eligibility Standards**

While the ACP has traditionally had the responsibility for assigned counsel eligibility screening, the precise process used has changed as the County has complied with its obligation under the *Hurrell-Harring* Settlement to provide counsel at arraignment. Before 2016, the County was not regularly providing defense counsel at arraignment. Judges would assign counsel to defendants who were arraigned and remanded to pretrial detention.<sup>42</sup> Otherwise, judges would inform defendants that if they could not afford to pay for a lawyer, they would have to go to the ACP to apply for assigned counsel. Some defendants also learned of this process by word-of-mouth.

As the Public Defender Office implemented counsel at arraignment programs, two things happened. First, at arraignments, staff attorneys from the Public Defender Office informed defendants of their right to assigned counsel; the arraigning attorneys also provided defendants with written and oral information about how to apply for assigned counsel. Second, in cases in which it is obvious that a defendant cannot afford to retain counsel, such as when the defendant is homeless, the arraigning attorneys ask the court to assign counsel at arraignment, negating the need for the defendant to apply for assigned counsel. It is our understanding that this is occurring with increasing frequency.<sup>43</sup>

When the Public Defender Office initially began its counsel at arraignment programs, arraigning attorneys told defendants that the representation was for the limited purpose of arraignment until a decision was made about assigned counsel eligibility.<sup>44</sup> In mid-2016, however, the Public

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<sup>42</sup> Defendants subsequently released (for example, those who could pay bail) were told that they had to go to the ACP to apply for an assigned lawyer.

<sup>43</sup> As set forth on pages 36-38 of ILS’ report, *The Impact of the Eligibility Standards in Five Upstate New York Counties*, the data ILS received from Washington County tend to support that notion that the County’s counsel at arraignment programs may have contributed to an increase in the number of defendants exercising their Sixth Amendment right by applying for assigned counsel.

<sup>44</sup> Of course, in cases in which the defendant was remanded to custody, the judge would assign the Public Defender Office at arraignment, and thus, in these cases, the representation was not for the limited purpose of arraignment only, unless there was a conflict, in which case the ACP would assume responsibility for the case after arraignment.

Defender Office changed this policy and considered itself provisionally assigned until a final determination could be made about the defendant's eligibility for assigned counsel. This policy change ensured that there was no gap in representation and, as discussed further, facilitated the ACP receiving information about the case necessary to complete the assigned counsel application process.

Regarding the actual screening, the ACP required all defendants who applied for assigned counsel to complete an application. (This application and its accompanying cover page is attached as Exhibit M). The ACP would then review the application and accompanying documents to determine if the defendant was eligible for assigned counsel. If so, the ACP would notify the Public Defender Office; if there was a conflict, an ACP panel attorney would be assigned. If the determination was that the applicant was not eligible for assigned counsel, the ACP notified the court as well as the defendant. Occasionally, defendants would appeal the ineligibility determination to the judge; in such cases, the ACP would provide a copy of the application form to the judge, if requested to do so.

Below is more specific information about the criteria and procedures the ACP used:

- *Verifying documentation:* All applicants were instructed to provide documents to prove not only their income but also the income of all members of their household. Applicants who had no proof of income were required to describe their current means of support, and if they were residing in the home of another, they had to provide a notarized statement from that person describing the living situation. The application also requested the name and phone number of a contact person at the applicant's place of employment, presumably so that the ACP could verify the applicant's information. Applicants were also required to provide some form of "Government issued" identification. The application itself included a warning that applications would not be accepted if all requested information was not provided. Applicants were also told that the completed application must be returned to the ACP in person; the ACP would not accept applications by mail, fax, email, or personal delivery by someone other than the applicant.
- *Attestation or affirmation:* Applicants were required to affirm to the truthfulness of the information they provided.
- *Third-party income:* The ACP treated as income in its eligibility assessment not only the income of the applicant, but also that of all "other members of the family," including spouses, parents, as well as boyfriends and girlfriends, regardless of whether the family member had any financial responsibility towards the applicant.
- *Notice of ineligibility determinations:* If deemed ineligible, applicants were provided a letter stating the reason for the ineligibility determination. But they were not informed of the right to request reconsideration unless they called the ACP to complain, in which case they were told that they could appeal to the judge.

- *Presumptions of eligibility:* The ACP used two presumptions of eligibility: 1) net income at or below 125% of the Federal Poverty Guidelines; and 2) defendants who were incarcerated or confined to a mental health facility. Regarding the income presumption, the ACP considered gross rather than net income. Regarding the incarceration presumption, the court would assign counsel at arraignment if the defendant was remanded to custody, but those defendants who were released on bail or bond were instructed to apply for assigned counsel upon their release.
- *Types of income considered:* In the section of the application denominated “Other Income,” applicants were asked to list, among other things, welfare and, in the cover letter accompanying the application, instructed to provide, for all household members, proof of income from disability, Social Security, Workers’ Compensation, unemployment benefits, Social Services, child support, alimony, pension benefits and retirement benefits. Ms. DeCarlo-Drost clarified that the ACP did not treat public assistance as income, but did treat SSI, unemployment benefits and receipts from the other listed sources as such.
- *Assets:* Though the application asked for information pertaining to the applicant’s real estate (including primary residence) and automobiles, Ms. DeCarlo-Drost told ILS that the ACP generally did not consider these assets in its assessment, unless the applicant owned an expensive car. The ACP did consider an array of liquid assets, including income, savings, pension payments, child support, and alimony.
- *Financial obligations:* In considering debts and financial obligations, the application contained a list of possible expenses and left a blank line for other “miscellaneous” expenses. This list did not include unreimbursed medical expenses, education or job-related expenses, or minimum credit card payments.
- *Ability to post bond or pay cash bail:* The ACP did not automatically deny assigned counsel to defendants who paid bail or posted bond.

ILS heard from multiple sources that the documentation and verification requirements and the application process’ lack of accessibility had an overall negative impact on the assignment of counsel. For example, as discussed further below, during a September 2016 Eligibility Standards training, several magistrates stated that the application process was needlessly burdensome, that it took too long, and that defendants often had repeated court appearances without an eligibility decision being made. Additionally, the assigned counsel application requirements often resulted in the ACP denying eligibility to applicants because they did not produce documentation in a timely manner or failed to submit a completed application, despite their best efforts. Because of these requirements, it is quite likely that, at best, the assignment of counsel was often delayed, and, at worst, some defendants either did not apply at all, or if they applied, gave up in the application process.



## **B. Steps taken to implement the Eligibility Standards**

The implementation process began in May 2016, when Ms. DeCarlo-Drost contacted ILS to seek guidance as to what processes the ACP needed to change, particularly regarding its requirements about documentation. This was the first of an ongoing series of emails, telephone calls, and in-person meetings with the ACP about bringing its assigned counsel eligibility process into compliance with the Eligibility Standards and dismantling needless barriers to applying for assigned counsel. Below are the steps taken to implement the Standards:

### *1. ILS conducted a training for the ACP and Public Defender Office*

On June 23, 2016, ILS conducted a training on the Eligibility Standards with the ACP and the Public Defender Office. Ms. DeCarlo-Drost and Administrative Assistant Patricia Connors attended on behalf of the ACP, and First Assistant Public Defender Barry Jones attended on behalf of the Public Defender Office. Since the ACP had already started to discuss steps needed to implement, the training served as an opportunity for the ACP to discuss its concerns and, more specifically, to outline steps it needed to take to implement the Standards.

One issue discussed and resolved was the ACP's need to obtain charging information from each applicant. To assess each applicant's ability to retain private counsel and to accurately maintain information about the applicant in the ACP's case management system (i.e., PDCMS) for data collection and maintenance purposes, the ACP needs to know the specific charges against each applicant. Traditionally, the ACP tried to obtain this information by requiring applicants to provide it with a copy of the accusatory instrument against them; the ACP staff would refuse to consider an application, and thus deem an applicant ineligible for assigned counsel, until they had received this paperwork. This resulted in many applicants being denied eligibility for assigned counsel because they could not provide the accusatory instrument, either because they had lost it, or because it was not given to them during their arraignment. However, because the Public Defender Office is now providing counsel at arraignment, the ACP resolved this problem by coordinating with the Public Defender Office to develop a system whereby the Public Defender Office regularly conveys to the ACP key information from each arraignment. Now, when a defendant applies for assigned counsel, the ACP already has the requisite information about the case in PDCMS, which facilitates the application process.

Another issue discussed at length during and after the training was the ACP's documentation requirements, which created significant barriers to applying for assigned counsel. In consultation with ILS, the ACP overhauled its policy regarding the verification of information and redrafted the ACP instructions, set forth in a cover letter that accompanies the assigned counsel application. Under the new policy, verification is no longer required in every case, but only when the information disclosed on the application raises concerns, prompting a reason to inquire further.<sup>45</sup>

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<sup>45</sup> Mr. Cioffi recently reported an instance that exemplifies when the ACP requests verification. He described an assigned counsel application which reported an income that was significant. But the applicant stated that he was in debt. The ACP requested and received a copy of the applicant's tax returns and a letter from the accountant who helped him complete the tax returns, which revealed that the applicant had significant debt and, thus, had no available resources with which to retain counsel.

## *2. The ACP changed its assigned counsel application forms*

ILS also worked with the ACP in updating its assigned counsel application forms to bring them into compliance with the Eligibility Standards. The ACP used ILS' Sample Application as a template, making some minor changes in consultation with ILS. The ACP also consulted with ILS in amending the written application instructions so that, among other things, applicants are no longer told that documentation is mandated in every instance and that their application will be denied if documentation is not provided.

Working with Ms. Drost, ILS assisted the ACP in finalizing the updates to its assigned counsel application on September 9, 2016; implementation began three days later, on September 12, 2016. (The updated application, cover letter, and ineligibility notice are attached as Exhibit N).

## *3. The joint OCA-ILS Eligibility Standards training for Washington County magistrates*

On September 15, 2016, ILS and OCA conducted a joint training for the Washington County magistrates on the Eligibility Standards. The training was attended by 17 magistrates. Lisa Robertson and Patricia Warth presented from ILS; Hon. Gary C. Hobbs, Glenn Falls City Court Judge and Supervising Judge for the Town and Village Courts, and Matthew Chivers, Special Counsel to the Fourth Judicial District, presented on behalf of OCA. Mr. Cioffi attended on behalf of the ACP. The magistrates engaged in a substantive discussion about the barriers to applying for assigned counsel, stating that the application process was not accessible to applicants and that the documentation requirements were burdensome and effectively delayed the assignment of counsel. ILS emphasized that the Eligibility Standards were designed to dismantle needless barriers to applying for assigned counsel. Mr. Cioffi noted the specific problems the magistrates identified and committed to changing the application process to make it more accessible.

On January 24, 2017, ILS attended a meeting of the Washington County Magistrates Association to learn if implementation of the Eligibility Standards had, in fact, dismantled barriers to applying for assigned counsel. The magistrates unequivocally stated that the process was working much better. Speaking on behalf of the other magistrates, one justice stated that the ACP had been very responsive to the magistrates' concerns and that applications are now being processed far more quickly. He stated that the ACP's policy of no longer requiring verifying documentation about the financial information of every household member has, in and of itself, made the assigned counsel process far more efficient.

## *4. The ACP's ongoing efforts to make the application process more accessible*

Since assuming the role of ACP Supervising Attorney, Mr. Cioffi has implemented many changes to make the assigned counsel application process more accessible for applicants. Applicants can now deliver their application by mail, email or fax, or ask someone else to deliver it for them, and the written instructions that accompany the application make it clear that the application can be delivered in these ways. The ACP has also initiated an outreach program,

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placing an ACP staff member at the Whitehall Town Court one day each month to assist applicants in completing the application, answer questions, and accept completed applications for assigned counsel. This diminishes the need for applicants in the northern end of the county (where the access problem is more prominent) from having to travel to Fort Edward to apply for assigned counsel. The ACP is exploring ways to expand this outreach.

### **C. Assessment of compliance with the Eligibility Standards**

This assessment is made based on the several telephone and in-person meetings ILS has had with the ACP staff, the county magistrates, and the various county stakeholders, as described above. An assessment of each criteria and procedure is as follows:

- *Criteria I (core eligibility standard):* The ACP has traditionally sought to consider applicants' total financial circumstances (income and debts) in determining eligibility for assignment of counsel. The Eligibility Standards have provided the ACP with clear guidance in doing so, and counsel is now being assigned to defendants who cannot pay the costs of a defense.
- *Criteria II (eligibility presumptions):* The ACP now uses all four eligibility presumptions and has found that the presumptions have streamlined the assigned counsel eligibility process overall.
- *Criteria III (ability to post bond or pay bail):* The ACP has traditionally not used ability to post bond or pay bail as a reason to deny eligibility for assignment of counsel.
- *Criteria IV (third-party resources):* The ACP no longer requests proof, or considers the financial resources, of other household members, including those of a spouse or of a parent.
- *Criteria V (non-liquid assets):* The assigned counsel application asks defendants to list vehicles that are not used for basic life necessities and any real estate owned. For each, the application asks about the fair market value and the amount owed, so that the ACP can determine if there is significant equity in the asset.
- *Criteria VI (child support and public assistance):* The ACP no longer requests information pertaining to an applicant's receipt of child support, and no longer treats this information as income available to the applicant. However, it considers child support paid out as a monthly living expense. Similarly, receipt of public assistance is no longer treated as income in the eligibility assessment process, but is considered as a factor in determining whether the applicant is presumptively eligible for counsel.
- *Criteria VII (financial obligations):* The assigned counsel application asks applicants to list the following financial obligations: food, housing, utilities, transportation, child care, child support and alimony payments, and medical expenses. The application also prompts defendants to identify any other financial liabilities, and provides examples.

- *Criteria VIII (cost of retaining counsel):* Traditionally, the ACP did not consider the cost of retaining an attorney in determining assigned counsel eligibility. As a result, the ACP tended to deem defendants ineligible if there was any disposable income, even if this income was insufficient to pay the costs of a defense. Now the ACP considers the cost of retaining counsel, though this issue has arisen infrequently, since nearly all defendants have lacked any disposable income or any other means of paying for counsel.
- *Procedure X (delegation of screening responsibility):* Washington County magistrates have traditionally delegated to the ACP the role of screening and making a recommendation about assigned counsel eligibility. According to Mr. Cioffi, since implementation of the Eligibility Standards, courts have consistently followed the ACP's recommendations.
- *Procedure XI (confidentiality):* ILS' court observations and conversations with Washington County practitioners confirm that magistrates are not asking defendants to disclose financial information in open court and on the record, but are instead simply asking defendants if they need assigned counsel, and if the answer is yes, instructing defendants how to apply with the ACP.<sup>46</sup> The ACP similarly takes measures to ensure confidentiality, and maintains all completed applications in a confidential manner and does not disclose them to anyone outside the office, except to the attorney to whom the case is assigned.
- *Procedure XII (timeliness of decision):* Defendants who are remanded to pre-trial detention are assigned counsel at arraignment. In other cases, defendants must apply with the ACP, though the arraignment attorney remains on the case as provisionally assigned until a final decision is made about assigned counsel eligibility. The ACP's revamped procedures have resulted in decisions being made without needless delays. The ACP also will assess eligibility for applicants who contact them asking for counsel even though charges have not yet been filed; the ACP has coordinated with the Public Defender Office to do so, since such applicants will likely contact the Public Defender Office before contacting the ACP.
- *Procedure XIII (burden of application process):* The ACP no longer automatically requires verifying documentation in every case, but does ask for verification if there are "red flags," or the defendant appears to have sufficient income, but states that he or she has financial liabilities that makes it impossible to pay for counsel. The ACP has also taken steps to make the process more accessible, including: accepting applications by mail, email or fax; permitting applicants to apply by phone; and travelling to the harder-to-reach northern part of the County at least once per month to accept applications.
- *Procedure XIV (written notice of ineligibility decision):* Although the ACP has not denied many applicants since implementation, it has notified applicants in writing of the reason for the ineligibility decision and the right to seek review, using a version of

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<sup>46</sup> As previously noted, if the defendant is remanded to custody, judges will assign counsel. Thus, this inquiry is reserved for those defendants who are not detained pretrial.

the ILS Sample Notice of Eligibility Recommendation and Notice of Right to Seek Review forms.

- *Procedure XV (reconsiderations)*: The ACP does not request orders for partial payment, and the judges do not *sua sponte* issue such orders.

In terms of data about the assigned counsel application process, according to the data and information ILS received from the ACP, in the last quarter of 2016 (October 1 through December 31), 423 defendants applied for assigned counsel; all 423 were found eligible. There were no requests for reconsideration or appeals; nor were there any requests for partial payment orders pursuant to County Law § 722-d.

#### **D. Barriers to implementation and ongoing challenges**

There were no significant barriers to implementing the Eligibility Standards. There is, however, an ongoing challenge that the County would like to resolve. This concerns the ACP office itself, which is in the basement of the county municipal building, in a relatively isolated location where there is little security. The office does not include an interview room. To apply for counsel, applicants speak through a window in the basement hallway outside the ACP's office, which is not a confidential setting. Additionally, ACP Supervising Attorney Tom Cioffi notes that having to talk through a window is demeaning to applicants. Mr. Cioffi has addressed this issue with the County administration, and there is consensus that, for this reason and others, the ACP's current space is inadequate and new space is needed. Mr. Cioffi is working with the County on securing new space as soon as possible.

### **III. STEPS TAKEN BY ILS TO PREPARE THE NON-HURRELL-HARRING COUNTIES TO IMPLEMENT IN APRIL 2017**

Section VI(C) of the Settlement requires this annual report to assess implementation in the five *Hurrell-Harring* counties. We nonetheless describe here the steps ILS has taken to facilitate implementation in the non-*Hurrell-Harring* counties. These steps include the training of the institutional providers, the fielding of questions from the providers concerning various aspects of the Eligibility Standards, working with some providers to modify their eligibility documents to bring them into compliance with the Eligibility Standards, and working jointly with OCA to train the justice court magistrates.

#### **Training of providers in the non-Hurrell-Harring counties**

ILS has conducted joint trainings of the providers in several counties, each respectively hosted by one of the participating counties. The first training, hosted by the Cattaraugus County Public Defender Office, was held on August 19, 2016, and included Cattaraugus and Allegany counties. Thereafter, trainings for the other counties occurred as follows:

- September 9, 2016: The Wayne County Public Defender hosted a training that included providers from Wayne, Cayuga, Seneca, and Yates counties.

- September 30, 2016: The provider training for Genesee, Livingston, Orleans, and Wyoming counties was hosted by the Genesee County Public Defender Office.
- January 23, 2017: Training for providers in the 8<sup>th</sup> Judicial District was hosted by the Legal Aid Bureau of Buffalo, Inc., and attended by providers from Erie and Niagara counties.
- February 24, 2017: Training for the 6<sup>th</sup> Judicial District providers was hosted by the Broome County Public Defender Office and attended by providers from Broome, Tioga, Madison, Otsego, Delaware, Chemung, Chenango, Steuben, and Cortland counties.
- March 3, 2017: Training for providers in the 5<sup>th</sup> Judicial District was hosted by the Oneida County Public Defender Office and attended by providers from Oneida, Oswego, Lewis, and St. Lawrence counties.
- March 7, 2017: The Nassau County Legal Aid Society (LAS) hosted a training, attended by 35 of its attorneys, as well as by Brian Davis, President of the Nassau County LAS Board.
- March 10, 2017: The Monroe County Public Defender Office hosted a training for those providers in the 7<sup>th</sup> Judicial District who had not attended the September 9, 2016 training in Wayne County. The training was attended by providers from Monroe, Wayne and Livingston counties.
- March 17 and 18, 2017: Over two days, ILS conducted two trainings, jointly hosted by the Legal Aid Society of Westchester County and the Westchester County Assigned Counsel Plan (ACP) for their office and panel attorneys.
- March 27, 2017: Training for the 3<sup>rd</sup> Judicial District providers was hosted by the Rensselaer County ACP and attended by providers from Rensselaer, Albany, Montgomery, Saratoga and Schenectady Counties.

We anticipate two additional trainings in April and May 2017: 1) a second training for the 3<sup>rd</sup> Judicial District providers to be hosted by the Ulster County Public Defender Office on April 5, 2017; and 2) a rescheduled training for the 4<sup>th</sup> Judicial District providers to be hosted by the Essex County Public Defender on May 10, 2017. This training was previously scheduled for March 14, 2017, but was cancelled due to weather.

In sum, providers from 33 non-*Hurrell-Harring* counties have already been trained, and we anticipate that providers from 11 counties will be participate in trainings in April and May 2017, with ILS to follow-up with the remaining counties.

Questions about implementation

ILS has also fielded questions from providers in some of the non-*Hurrell-Harring* counties that are already initiating steps to implement. For example, in October 2016, ILS assisted the Legal

Aid Bureau of Buffalo in drafting a letter to the judges of the Buffalo City Court, where all the eligibility screening is done for criminal cases in the City of Buffalo, about their plan for implementation. Also in October, ILS held several telephone meetings with the Assigned Counsel Plan Administrator and staff of the Warren County Attorney's Office about the changes needed to their assigned counsel application to implement the Eligibility Criteria and Procedures. These questions, and the answers we provided, are included in the FAQ section of our website.

Joint OCA/ILS trainings for magistrates

ILS coordinated with OCA's Office of Justice Court Support (OJCS) to provide training for the Town and Village Court justices at four OJCS-sponsored conferences. Specifically, on February 20 and 21, 2017, ILS and OJCS conducted two training sessions at the 2017 Town & Village Justices Continuing Judicial Education Program, Association of Towns Conference, in New York City. Approximately 110 magistrates attended over the course of the two days. A similar jointly-conducted training was held on March 22, 2017 at the 2017 Town & Village Justices Continuing Judicial Education Program, Desmond Taping, in Albany, New York. Approximately 65 magistrates attended this session, which was taped and will be made available as a webinar. Finally, ILS is scheduled to present at the OJCS-sponsored conferences in July and October 2017.

## CONCLUSION

In all five *Hurrell-Harring* counties, where providers are involved in screening and making an eligibility recommendation, great strides have been made in eliminating needless barriers to applying for assigned counsel. Great strides have also been made in ensuring that there is an assessment of the defendant's ability to retain counsel, and not just whether the defendant is impoverished. Notably, in examining the criteria and procedures that existed prior to implementation, it became evident to ILS that even where providers had previously used restrictive procedures and criteria, judges nearly always intervened to protect the right to assigned counsel and, where appropriate, assign counsel. Thus, it is no surprise that, preliminarily at least, it appears that implementation of the Eligibility Standards has not significantly impacted caseloads.<sup>47</sup> Instead, implementation has diminished administrative time and costs and has resulted in counsel being assigned earlier in the case.

ILS will continue to monitor implementation in all of the *Hurrell-Harring* counties. In Suffolk County, ILS looks forward to working with the County and court administrators in achieving better compliance with the Eligibility Standards, and promoting the goal of fairly distinguishing between those defendants who have the resources to retain competent counsel and those who do not.

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<sup>47</sup> See *The Impact of Eligibility Standards in Five Upstate New York Counties*, at 4.

# **EXHIBIT A**



**EXHIBIT A**

**SCHEDULE OF PROVIDER TRAININGS**

***HURRELL-HARRING COUNTIES:***

<b>Date</b>	<b>Hosted by</b>	<b>Participating Providers</b>
<b>May 9, 2016</b>	Schuyler County P.D.	Schuyler County P.D. and Ontario County P.D.
<b>June 23, 2016</b>	Washington County P.D. and ACP	Washington County P.D. and ACP
<b>July 11, 2016</b>	Suffolk County LAS	Suffolk County LAS and ACP
<b>August 24, 2016</b>	Onondaga County ACP	ACP Executive Staff and County Attorneys
<b>November 10, 2016</b>	ILS	Onondaga County ACP Panel Attorneys

***NON-HURRELL-HARRING COUNTIES:***

<b>Date</b>	<b>Hosted by</b>	<b>Participating Counties</b>
<b>May 9, 2016</b>	Schuyler County P.D.	Tompkins
<b>August 19, 2016</b>	Cattaraugus County P.D.	Cattaraugus and Allegany
<b>September 9, 2016</b>	Wayne County P.D.	Wayne, Cayuga, Seneca, Yates
<b>September 30, 2016</b>	Genesee County P.D.	Genesee, Livingston, Orleans, Wyoming
<b>January 23, 2017</b>	Legal Aid Bureau of Buffalo, Inc.	Erie and Niagara
<b>February 24, 2017</b>	Broome County P.D.	Broome, Tioga, Madison, Otsego, Delaware, Chemung, Chenango, Steuben, Cortland
<b>March 3, 2017</b>	Oneida County P.D.	Oneida, Oswego, Lewis, St. Lawrence
<b>March 7, 2017</b>	Nassau County Legal Aid Society	Nassau
<b>March 10, 2017</b>	Monroe County P.D.	Monroe, Wayne, Livingston
<b>March 17 and 18, 2017</b>	Legal Aid Society of Westchester County and the Westchester County ACP	Westchester
<b>March 27, 2017</b>	Rensselaer County ACP	Rensselaer, Albany, Montgomery, Saratoga, Schenectady

# **EXHIBIT B**

**EXHIBIT B**

**SCHEDULE OF THE JOINT OCA-ILS TRAININGS**

***HURRELL-HARRING COUNTIES:***

<b>Date</b>	<b>Counties and Attendees</b>
<b>September 15, 2016</b>	Onondaga County judges and magistrates
<b>September 15, 2016</b>	Washington County judges and magistrates
<b>September 19, 2016</b>	Suffolk County judges and magistrates
<b>September 23, 2016</b>	Ontario County judges and magistrates
<b>October 3, 2016</b>	Schuyler County judges and magistrates
<b>February 20-21, 2017</b>	Magistrates attending the 2017 Town & Village Justices Continuing Judicial Education Program, Association of Towns Conference, New York City
<b>March 22, 2017</b>	Magistrates attending the 2017 Town & Village Justices Continuing Judicial Education Program, Desmond Taping, Albany, NY
<b>July 18-19, 2017 (tentatively scheduled)</b>	Magistrates attending the 2017 Town & Village Justices Continuing Judicial Education Program, Association of Towns Conference, State University of New York, Potsdam, NY
<b>October 16-18, 2017 (tentatively scheduled)</b>	Magistrates attending the 2017 Town & Village Justices Continuing Judicial Education Program, Association of Towns Conference, Turning Stone Resort & Casino, Verona, NY

# **EXHIBIT C**

**Description of the Eligibility Process-  
OCBA Assigned Counsel Program, Inc.**

In Onondaga County, assignment is made by the judge presiding at the arraignment. The assigned attorney is notified by the assigning court, usually via telephone and/ or fax within an hour or two of the arraignment. The Assigned Counsel Program is also notified of the assignment, via written notice, in most cases.

Upon receipt of an assignment, the attorney assigned is charged with the obligation of obtaining a client financial form and supporting documentation, and submitting these materials to the Assigned Counsel Program (ACP) office within 10 days of the assignment; in the case of a client under 21 years, the attorney is to obtain a parents' financial statement and supporting documentation as well. Both the client and parent financial forms contain an affirmation that the information provided is true and correct. The forms also authorize verification of the information provided and specified release of information. Copies of the current forms are attached hereto. All original forms are returned to ACP and retained at the ACP office for 10 years, accessible only to ACP personnel. ACP computer database access is limited by password and has several levels of security, with each level limited to information that may be required by that unique user.

Upon receipt of the required financial forms and/ or documentation, ACP reviews the information provided, compares the information against any information that may be in the ACP database from any prior assignment for this client or the client's parents and then, if it appears that the client meets the eligibility guidelines, ACP records the client as "eligible" in the ACP database. If further information is required, because either the submission is incomplete or if there is some question regarding the application that must be resolved, then the client is entered into the system as "pending" and the assigned attorney is notified in writing of what further information or documentation is required to complete processing. If the client does not appear to meet the eligibility guidelines, then the client is shown as "ineligible" in the database and the attorney is notified of this in writing. Efforts are made to notify the attorney immediately of any pending or ineligible clients, with most notices being returned within a week, and many in less than 2 business days. Notices are sent by fax in almost all cases, and in addition, ACP has recently established a web-based interface which allows each attorney to access the attorney's own cases and view the real time status of each case, including eligibility status.

ACP uses income guidelines of 125% of the HRS Federal Poverty Guidelines, and considers assets to the extent that such assets could be liquidated or used as collateral to obtain funds to retain counsel for the offense charged or matter pending. A copy of the 2007 ACP Guidelines is attached. If a client is receiving public assistance, and verifies this by submission of either a public assistance budget form or a copy of a current benefits card, and then the client is deemed eligible. If a client has self-posted sufficient cash bail to pay a retainer for the crime charged, or if parents of a client under 21 have posted sufficient cash bail to retain, then the client will be deemed ineligible. In the case of a client under 21 years, the parents' income and assets are considered in determining eligibility.

In the event that a client or parents of a client under 21 years are ineligible or are uncooperative in providing necessary information, then appeal is to the judge presiding

at the time. The attorney is required to provide a copy of the ACP eligibility notice to the court, in order to inform the judge of the reasons for the ACP recommendation, and to request permission to withdraw from representation. The judge may relieve the attorney of the assignment or direct the attorney to continue representation. If the Judge relieves the attorney, then the attorney is paid for the time reasonably expenses to that point. In the event that the judge directs the attorney to continue, then the attorney continues representation as if the client was eligible in the first instance. The case is then reflected in the ACP database as "Judge Ordered" and treated as an eligible case. In keeping with the statutory scheme, **final determination of client eligibility is made by the Court.**

The judge has the option of directing the client, or the parents of a client under 21 years, to contribute to the expenses of representation in either a sum certain or a specified percentage of the actual cost to the county. Upon final determination by the judge, a written order is made, reflecting the decision of the court. A copy of the ACP form order is attached. A copy of the signed order is served, by ACP, on the client or the parents by mail, and any payments made pursuant to the terms of any such order are received by ACP, on behalf of the County of Onondaga. Upon request, ACP will set up a payment schedule for payment of the amounts ordered. No further action is taken by ACP in pursuing recovery of these amounts, rather further action is left to the discretion of the county.

For cases received in 2006, the eligibility status of those cases is as follows:

<u>Eligibility</u>	<u># of Cases Received 2006</u>	<u>% of 2006 Cases</u>
<u>Eligible</u>	<u>8574</u>	<u>60.9%</u>
<u>Ineligible</u>	<u>723</u>	<u>5.1%</u>
<u>Ineligible- Client under 21 years</u>	<u>332</u>	<u>2.4%</u>
<u>Judge Ordered</u>	<u>2329</u>	<u>16.5%</u>
<u>Judge Ordered - Client under 21 years</u>	<u>1066</u>	<u>7.5%</u>
<u>Pending</u>	<u>1051</u>	<u>7.5%</u>
<b>TOTAL</b>	<b>14075</b>	<b>100.0%</b>

ACP attempts, in all cases to balance the client's right to counsel against the need to apply limited funding to those who meet the statutory requirement of being "unable to afford counsel".

**OCBA Assigned Counsel Program, Inc.  
2007 Eligibility Guidelines**

(Applicable to cases assigned on or after February 1, 2007)

**CLIENT INCOME**

<b>Family Size (include client)</b>	<b>Gross Income Annually</b>	<b>Gross Income Monthly</b>	<b>Gross Income Bi-Weekly</b>	<b>Gross Income Weekly</b>
1	\$12,763	\$1,064	\$491	\$245
2	\$17,113	\$1,426	\$658	\$329
3	\$21,463	\$1,789	\$825	\$413
4	\$25,813	\$2,151	\$993	\$496
5	\$30,163	\$2,514	\$1,160	\$580
6	\$34,513	\$2,876	\$1,327	\$664
7	\$38,863	\$3,239	\$1,495	\$747
8	\$43,213	\$3,601	\$1,662	\$831
Each additional person, add	\$4,350	\$363	\$167	\$84

Based upon 2007 HHS Poverty Guidelines, *Federal Register*, Vol. 72, No. 15,  
January 24, 2007, pp. 3147-3148 *Federal*

**Family Size**

This figure includes the client, client's spouse, and LEGAL dependents under 21 years RESIDING with client full time. DO NOT include children in the primary custody of another person, or non-legal dependents. Absent unusual circumstances, client receives credit for EITHER child support or for resident children, but not both.

**Income**

This figure is the total **gross** income, from all sources, for all members of the family. This should include wages of all family members, as well as public assistance, TANFF assistance, disability, Worker=s Compensation, SSI, or other sums received by ALL members of the family, including resident children. **Child support** (current care) actually paid, pursuant to a Court Order or Separation Agreement, will be deducted from gross income, assuming verification can be provided.

**CLIENT ASSETS**

Assets, such as **real estate**, bank accounts or trust accounts, pension funds, 401(k) or IRA accounts, as well as stocks, bonds, cash bail, or any other assets which could be applied to payment of attorney=s fees, or which could be used as collateral for a loan sufficient to pay fees, are also considered.

**FAILURE TO COOPERATE WITH ACP ELIGIBILITY PROCESS (INCLUDING  
FAILURE TO PROVIDE DOCUMENTATION REQUESTED)  
WILL RESULT IN A DETERMINATION OF INELIGIBILITY.**

**We need to limit program participation to persons UNABLE to afford counsel.  
Your assistance in assuring proper eligibility determinations is important!**

Eligibility \_\_\_\_\_

**ONONDAGA COUNTY BAR ASSOCIATION ASSIGNED COUNSEL PROGRAM, INC.**  
Lobby Suite 6 State Tower Building - Syracuse, NY 13202 - (315) 476-2921 FAX (315) 476-0576

Client \_\_\_\_\_ Attorney's Name \_\_\_\_\_  
Charges: (Do NOT use section numbers) \_\_\_\_\_ Date of Assignment \_\_\_\_\_  
\_\_\_\_\_ Court \_\_\_\_\_  
\_\_\_\_\_ Judge \_\_\_\_\_

**CHARGES :**

Criminal (Number of each): \_\_\_\_\_ Violations \_\_\_\_\_ Misdemeanors \_\_\_\_\_ Felonies  
\_\_\_\_\_ Misdemeanor Probation Violations \_\_\_\_\_ Felony Probation Violations \_\_\_\_\_ Parole Violations  
\_\_\_\_\_ Other (specify) \_\_\_\_\_

For Family or Supreme Court : **ALL INFORMATION IS REQUIRED!**

Docket/ Index No: \_\_\_\_\_ Petitioner \_\_\_\_\_ Respondent \_\_\_\_\_ Other \_\_\_\_\_  
\_\_\_\_\_ Neglect/Abuse \_\_\_\_\_ Order of Protection \_\_\_\_\_  
\_\_\_\_\_ Support \_\_\_\_\_ Paternity \_\_\_\_\_  
\_\_\_\_\_ Custody/Visitation \_\_\_\_\_ Termination of Parental Rights \_\_\_\_\_  
\_\_\_\_\_ Extension of Placement \_\_\_\_\_ Other (specify) \_\_\_\_\_

**STATEMENT OF FINANCIAL STATUS**

- Name \_\_\_\_\_ Age \_\_\_\_\_ D.O.B. \_\_\_\_\_  
Maiden Name or other name used previously \_\_\_\_\_ Male \_\_\_\_\_ Female \_\_\_\_\_
- Address \_\_\_\_\_ Tel. # \_\_\_\_\_  
S.S. # \_\_\_\_\_
- Income (check all that apply): **Insert Amount Received!** (There are 4.3 weeks in a month)  
 \_\_\_\_\_ Employment \$ \_\_\_\_\_ per week **gross** (attach 2 recent pay stubs)  
 Employer Name and Address \_\_\_\_\_  
 \_\_\_\_\_ Self Employment \$ \_\_\_\_\_ per week (attach income documentation)  
 \_\_\_\_\_ Unemployment Benefits Received \$ \_\_\_\_\_ per week (attach verification)  
 \_\_\_\_\_ Employer's Disability/ Workers Comp. \$ \_\_\_\_\_ per week (attach verification)  
 \_\_\_\_\_ Social Security SSI/ SSD \$ \_\_\_\_\_ per week (attach verification)  
 \_\_\_\_\_ Public Assistance \$ \_\_\_\_\_ per week (attach verification)  
 \_\_\_\_\_ Child/ Spousal Support **received** \$ \_\_\_\_\_ per week  
 \_\_\_\_\_ Other (Specify) \_\_\_\_\_ \$ \_\_\_\_\_ per week (attach verification, if any)  
 If no income, how do you manage? \_\_\_\_\_  
 If supported by another, who is providing support (name)? \_\_\_\_\_
- Assets (check all that apply)  
 \_\_\_\_\_ House or Land Address \_\_\_\_\_  
 \_\_\_\_\_ Vehicle Year, Make, and Model \_\_\_\_\_  
 \_\_\_\_\_ Bank Account Bank \_\_\_\_\_ Account No. \_\_\_\_\_  
 Balance \$ \_\_\_\_\_ (Attach Recent Statement)  
 \_\_\_\_\_ IRA/401(k) Trustee \_\_\_\_\_ Balance \$ \_\_\_\_\_  
 \_\_\_\_\_ Pension Company \_\_\_\_\_ Value \$ \_\_\_\_\_  
 \_\_\_\_\_ Stocks, Bonds Company \_\_\_\_\_ Value \$ \_\_\_\_\_  
 \_\_\_\_\_ Other assets (Specify) \_\_\_\_\_ Value \$ \_\_\_\_\_
- Support Paid by You (check all that apply): There are 4.3 weeks in a month  
 \_\_\_\_\_ Child Support \$ \_\_\_\_\_ per week \_\_\_\_\_ voluntarily \_\_\_\_\_ by court order  
 \_\_\_\_\_ Spousal Support \$ \_\_\_\_\_ per week \_\_\_\_\_ voluntarily \_\_\_\_\_ by court order  
 Support is paid for (names and ages): \_\_\_\_\_



6. Marital Status (Check applicable status)

Single/ Divorced

Married Spouse's Name \_\_\_\_\_

Spouse's Address \_\_\_\_\_

Spouse's Income \$ \_\_\_\_\_ per week (attach verification) Spouses Birth Date \_\_\_\_\_

Source of Spouse's Income (specify employer or payor) \_\_\_\_\_

Child Support received by spouse (not paid by you) \$ \_\_\_\_\_ per week

7. Children

(Include only your children or your spouse's, who live with you full time.)

Names and BIRTH DATES of children under 21 \_\_\_\_\_

8. Parents

(For ALL applicants under 21 years) If you are under 21 and unmarried, your parents are responsible for your legal fees. This information and Parents Form #3 are **REQUIRED!**

Father's Name \_\_\_\_\_

Father's Address \_\_\_\_\_

Father's Employer \_\_\_\_\_

Number of children under 21 years father supports \_\_\_\_\_ Father's Date of Birth \_\_\_\_\_

Mother's Name \_\_\_\_\_

Mother's Address \_\_\_\_\_

Mother's Employer \_\_\_\_\_

Number of children under 21 years mother supports \_\_\_\_\_ Mother's Date of Birth \_\_\_\_\_

9. Other Income

Is any other person in your household employed?  No  Yes

If yes, who is employed (name/ relationship)? \_\_\_\_\_

10. School

Are you a student?  No  Yes (Attach Proof of ANY Financial Aid Received)

Full time  Part Time

Name of School \_\_\_\_\_

11. Bail Status

In jail

ROR

Pretrial Release

Bailed

Cash Bail

Amount \$ \_\_\_\_\_

Paid by \_\_\_\_\_

Bail Bond

Amount \$ \_\_\_\_\_

Bondsman \_\_\_\_\_

Bail Bond obtained by \_\_\_\_\_

12. Prior ACP

Have you had an ACP assigned attorney before?  No  Yes When? \_\_\_\_\_

Attorney's Name? \_\_\_\_\_

I hereby affirm, under penalties of perjury, that the information contained herein is true and correct. I authorize release of information provided herein to the OCBA Assigned Counsel Program, Inc. (ACP), the Court, the County of Onondaga, or their designated agents. I understand that this information may be investigated, and that the information provided may be used to obtain payment of any fees ordered paid by me, or on my behalf, for assigned counsel representation. I hereby authorize any Department of Social Services, any employer, any other income payer, and any other individual or agency providing me with income, support or benefits, as well as any bank, trustee, financial institution, or asset holder, to release to my assigned attorney, the Court, ACP, the County of Onondaga, or their designated agents, any information requested concerning my financial status and any income and/or benefits received by me or on my behalf, or any assets owned by me. I further consent to release, to the ACP of information in an individual assigned case file, relevant to reviewing eligibility determination and voucher payment, subject to the ACP maintaining the confidentiality of all such information.

I hereby acknowledge and agree that, **if I fail to qualify** for an assigned counsel attorney, or **if I fail to fully cooperate** with determination of my eligibility for assigned counsel, including providing additional documentation as requested by the Assigned Counsel Program, I (or my parents) may be required to hire a lawyer, of my (our) choice, at my (our) own expense. I further acknowledge that, in the event that I do not qualify, I (or if under the age of 21 years, my parents) may be court ordered to pay or to contribute to the expenses of my representation, and I agree to payment of such sums, as may be ordered by the court.

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Date

PEOPLE OF THE STATE OF NEW YORK

or

\_\_\_\_\_ Petitioner

-against-

\_\_\_\_\_ Defendant / Respondent

ORDER UPON REQUEST TO  
WITHDRAW AS ASSIGNED COUNSEL  
(Docket No: \_\_\_\_\_ File No: \_\_\_\_\_)

Client Address \_\_\_\_\_

Client Date of Birth \_\_\_\_\_

Client is under 21?  Yes  No

\_\_\_\_\_, Esq. having been assigned on or about the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, to represent \_\_\_\_\_ the  defendant;

respondent;  petitioner; on charges of \_\_\_\_\_ in the above entitled action, and the Assigned Counsel Program having made a recommendation of the rejection of eligibility, a copy of which Assigned Counsel recommendation is attached hereto, and made a part hereof (client having refused to provide a financial statement required for Assigned Counsel recommendation); and which client ineligibility is based upon one or more of the following:

- \_\_\_\_\_  No client financial statement; and/ or
- No income verification or other requested documentation was submitted;
- Reason: \_\_\_\_\_; and
- \_\_\_\_\_  No parents' financial statement and/ or
- Other requested documentation for parents was not submitted;
- Reason: \_\_\_\_\_; and
- \_\_\_\_\_  The prospective client; and/ or
- Client's spouse; and/ or
- Client's parents
- appear to have income above the guidelines used by the Assigned Counsel Program. Specifically income of \$ \_\_\_\_\_ per \_\_\_\_\_ for a family of \_\_\_\_\_; and
- \_\_\_\_\_  The prospective client and/ or
- Client's spouse and/ or
- Client's parents
- having savings, property or other resources, which could be applied toward retaining counsel, more specifically \_\_\_\_\_; and

\_\_\_\_\_, Esq. having requested, based upon the attached Assigned Counsel recommendation (based upon the client's refusal to provide information necessary to determine eligibility), that counsel be relieved of the assignment or that, in the alternative, a determination be made by the Court, that the client lacks the income or resources to retain counsel and that counsel should, therefore, be ordered to continue to represent the client at County expense; and

The Court having reviewed the circumstances, including the Assigned Counsel Program recommendation (client's refusal to provide financial information), and having further considered whether client, or if the client is under 21, the client's parents, should be ordered to make payment or contribution, in accordance with Section 722-d of the County Law, toward the cost of his or her representation; it is hereby

\_\_\_\_\_ **ADJUDGED**, that  defendant;  respondent;  petitioner is (or being under 21, his parents are) possessed of sufficient income and/ or assets to retain counsel in this matter, and it is therefore **ORDERED**, that \_\_\_\_\_, Esq. be, and hereby is **relieved** of the assignment to represent  defendant;  respondent;  petitioner herein as Assigned Counsel; and  Counsel is hereby granted permission to accept a retainer in this matter;  The attorney may present a voucher to the OCBA Assigned Counsel Program, Inc. for reasonable and necessary services rendered on behalf of the captioned client  To the date of this order  Through \_\_\_\_\_, 200\_\_\_\_, subject to and in accordance with program rules; and it is further

\_\_\_\_\_ **ADJUDGED**, that  defendant;  respondent;  petitioner, and those legally responsible for his support is/are not possessed of sufficient income and/ or assets to retain counsel in this matter; and it is therefore **ORDERED**, \_\_\_\_\_, Esq. be, and hereby is **ordered to continue** to represent the aforesaid client **at County expense**  Through \_\_\_\_\_, 200\_\_\_\_  Until the matter is completed; and it is further

\_\_\_\_\_ **ORDERED**, that the client is to **reimburse** the County of Onondaga in the amount of \$ \_\_\_\_\_ (to a maximum of \$ \_\_\_\_\_) toward the cost of his or her representation, and he is / they are hereby directed to contact the Assigned Counsel Program office at **315/476-2921** on or before \_\_\_\_\_, 200\_\_\_\_, to arrange for payment of the amount due to the County of Onondaga; and it is further

\_\_\_\_\_ **ORDERED**, that  the parents;  the mother;  the father; of the client, who is under the age of 21, are/ is to **reimburse** the County of Onondaga in the amount of \$ \_\_\_\_\_ toward the cost of representation of their child under the age of 21, and they are directed to contact the Assigned Counsel Program office at 315/476-2921 on or before \_\_\_\_\_, 200\_\_\_\_, to arrange for payment of the amount due to the County of Onondaga; and it is further

\_\_\_\_\_ **ORDERED** that service of a copy of this Order, upon  client;  the client's parent(s), by regular mail, at their last known address shall be good and sufficient service.

DATED: \_\_\_\_\_

\_\_\_\_\_  
PRINT NAME: \_\_\_\_\_  
JUDGE OF THE \_\_\_\_\_ COURT

**NOTE:** This form directs continuation of representation, but does NOT constitute an order to pay for services of counsel. Such order to pay is subject to review of time and charges, as set forth in the ACP Rules. Judges are requested not to sign this form unless it is completed; incomplete forms cannot be processed by ACP.

**ONONDAGA COUNTY BAR ASSOCIATION ASSIGNED COUNSEL PROGRAM, INC.**

Lobby Suite 6 · State Tower Building · Syracuse, NY 13202 · (315) 476-2921 · FAX (315) 476-0576

Attorney's Name: \_\_\_\_\_ Client's Name: \_\_\_\_\_

Charge \_\_\_\_\_ Client's Date of Birth \_\_\_\_\_ SS# \_\_\_\_\_

Court \_\_\_\_\_ Judge \_\_\_\_\_

**THIS FORM IS REQUIRED TO BE COMPLETED BY PARENTS OF ALL CLIENTS UNDER THE AGE OF 21 AND RETURNED IMMEDIATELY TO THE ASSIGNED COUNSEL PROGRAM.**

**PARENTS**

If your child is under the age of 21, a statement of your financial status is required before your child can be found eligible for assigned counsel. If your child is found to be ineligible for representation, due to your failure to cooperate in completing this form or because of your income and/or resources, and if you do not provide for an attorney to represent your child, the Court may order that your child be represented by an assigned attorney and further direct that you (the parents) be responsible for reimbursement to the County of Onondaga for Assigned Counsel services.

**STATEMENT OF FINANCIAL STATUS**

**1. FATHER:**

Name \_\_\_\_\_ SS# \_\_\_\_\_

Address \_\_\_\_\_ Date of Birth \_\_\_\_\_

Marital Status \_\_\_\_\_ Spouses Name \_\_\_\_\_

**Income** (check all that apply): **Specify Amount** (There are 4.3 weeks in a month)

\_\_\_\_ Employment \$ \_\_\_\_\_ per week gross (attach 2 recent pay stubs)

\_\_\_\_ **Employer and Address** \_\_\_\_\_

\_\_\_\_ Self Employment \$ \_\_\_\_\_ per week (attach income documentation)

\_\_\_\_ Unemployment Benefits \$ \_\_\_\_\_ per week (attach verification)

\_\_\_\_ Disability/ Workers Comp. \$ \_\_\_\_\_ per week (attach verification)

\_\_\_\_ Social Security \$ \_\_\_\_\_ per week (attach verification)

\_\_\_\_ Public Assistance \$ \_\_\_\_\_ per week (attach verification)

\_\_\_\_ Child/ Spousal Support received \$ \_\_\_\_\_ per week from \_\_\_\_\_

\_\_\_\_ Other (Specify) \_\_\_\_\_ \$ \_\_\_\_\_ per week (attach verification, if any)

If no income, how do you manage? \_\_\_\_\_

**Assets** (check all that apply)

\_\_\_\_ House or Land Owned Address \_\_\_\_\_

\_\_\_\_ Vehicle Year, Make, and Model \_\_\_\_\_

\_\_\_\_ Bank Account Bank \_\_\_\_\_ Acct. No. \_\_\_\_\_

Balance \$ \_\_\_\_\_ (Attach Recent Statement)

\_\_\_\_ IRA/401(k) Trustee \_\_\_\_\_ Balance \$ \_\_\_\_\_

\_\_\_\_ Pension Company \_\_\_\_\_ Value \$ \_\_\_\_\_

\_\_\_\_ Stocks, Bonds Company \_\_\_\_\_ Value \$ \_\_\_\_\_

\_\_\_\_ Other assets (Specify) \_\_\_\_\_ Value \$ \_\_\_\_\_

**Support PAID by You** (check all that apply): There are 4.3 weeks in a month

\_\_\_\_ Child Support PAID \$ \_\_\_\_\_ per week \_\_\_\_\_ voluntarily \_\_\_\_\_ by court order (Attach)

**Support is paid for (names and birthdates)** \_\_\_\_\_

**Names and birth dates of children residing with you** \_\_\_\_\_

2. **MOTHER:**

Name \_\_\_\_\_ SS# \_\_\_\_\_  
Address \_\_\_\_\_ Date of Birth \_\_\_\_\_

Marital Status \_\_\_\_\_ Spouses Name \_\_\_\_\_

**Income** (check all that apply): **Specify Amount** (There are 4.3 weeks in a month)

\_\_\_ Employment \$ \_\_\_\_\_ per week gross (attach 2 recent pay stubs)

\_\_\_ **Employer and Address** \_\_\_\_\_

\_\_\_ Self Employment \$ \_\_\_\_\_ per week (attach income documentation)

\_\_\_ Unemployment \$ \_\_\_\_\_ per week (attach verification)

\_\_\_ Disability/ Workers Comp. \$ \_\_\_\_\_ per week (attach verification)

\_\_\_ Social Security \$ \_\_\_\_\_ per week (attach verification)

\_\_\_ Public Assistance \$ \_\_\_\_\_ per week (attach verification)

\_\_\_ Child/ Spousal Support **received** \$ \_\_\_\_\_ per week from \_\_\_\_\_

\_\_\_ Other (Specify) \_\_\_\_\_ \$ \_\_\_\_\_ per week (attach verification, if any)

**If no income**, how do you manage? \_\_\_\_\_

**Assets** (check all that apply)

\_\_\_ House or Land Owned Address \_\_\_\_\_

\_\_\_ Vehicle Year, Make, and Model \_\_\_\_\_

\_\_\_ Bank Account Bank \_\_\_\_\_ Acct. No. \_\_\_\_\_

Balance \$ \_\_\_\_\_ (Attach Recent Statement)

\_\_\_ IRA/401(k) Trustee \_\_\_\_\_ Balance \$ \_\_\_\_\_

\_\_\_ Pension Company \_\_\_\_\_ Value \$ \_\_\_\_\_

\_\_\_ Stocks, Bonds Company \_\_\_\_\_ Value \$ \_\_\_\_\_

\_\_\_ Other assets (Specify) \_\_\_\_\_ Value \$ \_\_\_\_\_

**Support PAID by You** (check all that apply): There are 4.3 weeks in a month

\_\_\_ Child Support PAID \$ \_\_\_\_\_ per week \_\_\_ voluntarily \_\_\_ by court order (Attach)

**Support is paid for (names and birthdates)** \_\_\_\_\_

**Names and birth dates of children residing with you** \_\_\_\_\_

3. Where does your child reside? \_\_\_\_\_ With whom? \_\_\_\_\_

4. What are your major debts? \_\_\_\_\_

I hereby affirm, under penalties of perjury, that the information contained herein is true and correct. I authorize release of information provided herein to the OCBA Assigned Counsel Program, Inc., the Court, the County of Onondaga, or their designated agents. I understand that this information may be investigated, and that the information provided may be used to obtain payment of any fees ordered paid by me, for my child's assigned counsel representation

I hereby acknowledge and agree that, if my child fails to qualify for an assigned counsel attorney, or if I fail to fully cooperate with determination of my child's eligibility for assigned counsel, or in the event that my child does not qualify, I may be ordered to pay or contribute to the expenses of my child's representation, and I agree to payment of such sums, as may be ordered by the court.

\_\_\_\_\_  
Father's Signature

Dated: \_\_\_\_\_

\_\_\_\_\_  
Mother's Signature

Dated: \_\_\_\_\_

# **EXHIBIT D**

Client Represented at Arraignment?  Yes  No  
Eligibility \_\_\_\_\_ ACP Case # \_\_\_\_\_

# CRIMINAL COURT FINANCIAL

## ONONDAGA COUNTY BAR ASSOCIATION ASSIGNED COUNSEL PROGRAM, INC.

Suite 220, State Tower Bldg., 109 S. Warren St., Syracuse, NY 13202 · (315)476-2921 FAX (315)476-0576

### CURRENT CASE INFORMATION

ARRAIGNMENT Attorney: \_\_\_\_\_

Client Name: \_\_\_\_\_ ASSIGNED Attorney: \_\_\_\_\_

Charges: (Use section numbers) \_\_\_\_\_ Date of Assignment \_\_\_\_\_  
\_\_\_\_\_ Court \_\_\_\_\_  
\_\_\_\_\_ Judge \_\_\_\_\_

CRIMINAL CHARGES (Number of each): \_\_\_\_\_ Violations \_\_\_\_\_ Misdemeanors \_\_\_\_\_ Felonies \_\_\_\_\_ Parole Violations  
\_\_\_\_\_ Misdemeanor Probation Violations \_\_\_\_\_ Felony Probation Violations \_\_\_\_\_ Other (specify)

### APPLICANT'S PERSONAL INFORMATION

- Client's Name \_\_\_\_\_ 2. Age \_\_\_\_\_ D.O.B. \_\_\_\_\_  
Maiden Name or other name used previously \_\_\_\_\_ 3.  Male  Female
- Mailing Address \_\_\_\_\_ 5. Tel. # \_\_\_\_\_
- \_\_\_\_\_ 6. S.S. # \_\_\_\_\_
- E-mail \_\_\_\_\_ 8. Was the client born in the United States?  Yes  No
- Number of financial dependents in household, including the client: \_\_\_\_\_

### APPLICANT'S INCOME (check and provide income for all that apply):

Insert Amount Received! (Indicate if weekly or monthly)

\_\_\_\_\_ Employment \$ \_\_\_\_\_ NET  
 \_\_\_\_\_ Employer Name \_\_\_\_\_  
 \_\_\_\_\_ Self Employment \$ \_\_\_\_\_ NET as a \_\_\_\_\_  
 \_\_\_\_\_ Unemployment Benefits Received \$ \_\_\_\_\_  
 \_\_\_\_\_ Employer's Disability/ Workers Comp. \$ \_\_\_\_\_  
 \_\_\_\_\_ Social Security; SSD \$ \_\_\_\_\_  
 \_\_\_\_\_ Income from Real Property \$ \_\_\_\_\_  
 \_\_\_\_\_ Income from Pension, Retirement or Annuity \$ \_\_\_\_\_  
 \_\_\_\_\_ Other (Specify) \_\_\_\_\_ \$ \_\_\_\_\_

Has the client ever had an ACP assigned attorney before?  Yes  No  
When? \_\_\_\_\_ Attorney's Name \_\_\_\_\_

### BAIL STATUS

(After Arraignment) \_\_\_\_\_ In jail \_\_\_\_\_ ROR \_\_\_\_\_ Pretrial Release  
 \_\_\_\_\_ Bailed \_\_\_\_\_ Cash Bail Amount \$ \_\_\_\_\_ Paid by \_\_\_\_\_  
 \_\_\_\_\_ Bail Bond Amount \$ \_\_\_\_\_

### Presumption of Eligibility:

- Using the FPG Income chart, is the client's income at or below 250% of the FPG?  Yes  No
- Is the client in jail, detained, confined to a mental health facility?  Yes  No
- Is the client receiving Public Assistance (or approved, pending receipt)?  Yes  No
- Has the client been found eligible for Assigned Counsel w/in the past 6 months?  Yes  No

**IF THE ANSWER TO A, B, C, OR D IS YES, THE CLIENT IS PRESUMED ELIGIBLE. PLEASE STOP HERE AND SUBMIT THE SIGNED FORM TO ACP. SEE THE BACK FOR INSTRUCTIONS ON SIGNING AND A BRIEF EXPLANATION OF CLIENT RIGHTS. IF THE CLIENT IS NOT PRESUMPTIVELY ELIGIBLE, PROCEED WITH REMAINDER OF APPLICATION.**

1. **Assets** (check all that apply)

Real Estate (do not include primary residence)  
 Address \_\_\_\_\_  
 Current Market Value (estimate) \$ \_\_\_\_\_ Amount Owed \$ \_\_\_\_\_  
 Vehicle (do not include if used for life necessities, such as employment, medical, shopping, etc.)  
 Year, Make, and Model \_\_\_\_\_ Amount Owed \$ \_\_\_\_\_  
 Bank Account Balance \$ \_\_\_\_\_  
 Stocks, Bonds Value \$ \_\_\_\_\_  
 IRA/401(k) Balance \$ \_\_\_\_\_  
 Other assets (Specify) \_\_\_\_\_ Value \$ \_\_\_\_\_

2. **Expenses**

\$ \_\_\_\_\_ Food                      \$ \_\_\_\_\_ Housing                      \$ \_\_\_\_\_ Utilities  
 \$ \_\_\_\_\_ Medical Bills              \$ \_\_\_\_\_ Transportation              \$ \_\_\_\_\_ Child Care  
 \$ \_\_\_\_\_ Medical Insurance        \$ \_\_\_\_\_ Education Loans  
 \$ \_\_\_\_\_ Child Support you pay        \$ \_\_\_\_\_ Spousal Support you pay  
 Other Expenses (specify):  
 \$ \_\_\_\_\_ for \_\_\_\_\_        \$ \_\_\_\_\_ for \_\_\_\_\_        \$ \_\_\_\_\_ for \_\_\_\_\_  
 \$ \_\_\_\_\_ for \_\_\_\_\_        \$ \_\_\_\_\_ for \_\_\_\_\_        \$ \_\_\_\_\_ for \_\_\_\_\_

I authorize release of information provided herein to the OCBA Assigned Counsel Program, Inc. (ACP), or the Court, or their designated agents. **I acknowledge that, in the event that I do not qualify, I can request that the assigned counsel program reconsider my eligibility, or I can appeal to the court, or both.**

\_\_\_\_\_ Applicant's Signature

\_\_\_\_\_ Date

**ATTORNEY:** If the client is unable to sign this form for any reason, please read the following statement to them and sign, indicating that the statement was read to the client.

By completing this application with me, you authorize release of information provided herein to the OCBA Assigned Counsel Program, Inc. (ACP), or the Court, or their designated agents. **You acknowledge that, in the event that you do not qualify, you can request that the assigned counsel program reconsider your eligibility, or you can appeal to the court, or both.**

\_\_\_\_\_ Attorney Signature

\_\_\_\_\_ Date



<b>Box is for ACP use only:</b>	Judge: _____	Court: _____	Date of signature: _____
ACP case number: _____	Financial Received Date: _____		

COURT

STATE OF NEW YORK COUNTY OF ONONDAGA

3/17

**PEOPLE OF THE STATE OF NEW YORK**

or

\_\_\_\_\_  
Petitioner

-against-

\_\_\_\_\_  
Defendant / Respondent

**ORDER TO WITHDRAW OR CONTINUE AS  
ASSIGNED COUNSEL**

(Docket No: \_\_\_\_\_ File No: \_\_\_\_\_)

Client Address \_\_\_\_\_  
\_\_\_\_\_

Client Date of Birth \_\_\_\_\_

Client is under 21?  Yes  No

Attorney: \_\_\_\_\_

Assigned: \_\_\_\_\_

Client: \_\_\_\_\_

respondent;  petitioner

Charges: \_\_\_\_\_

In the above entitled action, the Assigned Counsel Program has made a recommendation of **rejection** of eligibility, or has been unable to determine a client's eligibility. **A copy of the recommendation is attached**, if a determination was able to be made.

\_\_\_\_\_ The prospective client appears to have resources sufficient to retain an attorney for the matter indicated, **please see the attached recommendation from the Assigned Counsel Program.**

\_\_\_\_\_ The client failed to provide the necessary financial information for the Assigned Counsel Program to make an eligibility recommendation.

\_\_\_\_\_ A prior attorney was assigned to the client on another matter and will be taking over this case.

\_\_\_\_\_ Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Based on the attached recommendation, and the circumstances provided above, the attorney requests that the court deem the client ineligible and relieve them of the case, or deem the client eligible and order the attorney to continue representation for the client in the indicated matter.**

Upon review of the circumstances, including the Assigned Counsel Program's recommendation, the court has decided on the following, and it is hereby

\_\_\_\_\_ **ADJUDGED**, that  defendant;  respondent;  petitioner has sufficient income and/or assets to retain counsel in this matter.

**ORDERED** that \_\_\_\_\_, Esq. is **relieved** of the assignment to represent the client; and

Counsel is hereby granted permission to accept a retainer in this matter;

The attorney may present a voucher to the OCBA Assigned Counsel Program, Inc. for reasonable and necessary services rendered on behalf of the indicated client

To the date of this order

Through \_\_\_\_\_, 20\_\_\_\_, subject to and in accordance with program rules

\_\_\_\_\_ **ADJUDGED**, that  defendant;  respondent;  petitioner does not have sufficient income and/or assets to retain counsel in this matter; and it is therefore

**ORDERED** that \_\_\_\_\_, Esq. **continue** to represent the client **at County expense**

Through \_\_\_\_\_, 20\_\_\_\_

Until the matter is completed; and it is further

\_\_\_\_\_ **ORDERED** that service of a copy of this Order, upon the client by regular mail, at their last known address.

DATED: \_\_\_\_\_

\_\_\_\_\_  
PRINT NAME: \_\_\_\_\_

JUDGE OF THE \_\_\_\_\_ COURT

**NOTE:** This form directs continuation of representation, but does NOT constitute an order to pay for services of counsel. Such order to pay is subject to review of time and charges, as set forth in the ACP Rules. Judges are requested not to sign this form unless it is completed; **incomplete forms cannot be processed by ACP.**

**ONONDAGA COUNTY BAR ASSOCIATION  
ASSIGNED COUNSEL PROGRAM, INC.**

Lobby Suite 6 ♦ State Tower Building ♦ Syracuse, NY 13202 ♦ (315) 476-2921 ♦ FAX (315) 476-0576

Attorney:  Client:  Case: 1166772  
Received: 1/17/2017 Assigned: 1/12/2017 As of: 3/20/2017

We have received your notice of assignment and statement of financial status for the above client. The client has been determined to be:

**PENDING for the following reason(s):**

Family Size of 1  
Client is over 21 years old

<u>Income:</u>	<u>For:</u>	<u>Amount:</u>
Employment	Client	\$600.00
Food	Client	(\$46.00)
Housing	Client	(\$120.00)
Transportation	Client	(\$116.00)
		<b><u>Total Amount: \$318.00/wk</u></b>

<u>Assets:</u>	<u>For:</u>	<u>Amount:</u>
Bank Account	Client	\$700.00

**The recommendation indicated above will be reconsidered upon receipt of the following.:**

♦ Client's pay stubs

A client for whom a recommendation of ineligibility is made may request a review and reconsideration of this recommendation by ACP and may submit additional information to be considered, or to explain why assigned counsel should be provided.

Request may also be made for the judge presiding over the case to review and reconsider eligibility.

**YOUR RIGHT TO SEEK REVIEW OF THE RECOMMENDATION  
THAT YOU ARE NOT ELIGIBLE FOR ASSIGNED COUNSEL**

You have been notified of our decision to recommend to the judge that you are not financially eligible for an assignment of counsel. If you are financially able to retain private counsel, you should do so immediately. If you are unable to retain counsel, you may exercise your right to seek review of our recommendation. There are two ways you can do this:

**A. Request that we Reconsider our Recommendation that you are not Eligible**

If you believe that our recommendation is incorrect, you may request that we review and reconsider your application. Your request should be made in writing and you should include any additional information or documentation that you wish for us to use in our reconsideration.

If you choose to request that we reconsider our recommendation, you are urged to do so as soon as possible. It is best for you to act as quickly as you can to minimize any delay in confirmation of counsel.

Following our reconsideration, we will notify you at your last known address, in writing, whether your application for assigned counsel was granted or denied.

**B. Request that the Judge Reconsider the Recommendation that you are not Eligible**

You may also request that the judge who is presiding over your criminal case review and reconsider our recommendation that you are not eligible. You may do so whether or not you have already requested reconsideration by our office. However, if you did request our reconsideration, you should wait until you receive our written decision on your reconsideration request before making your request directly to the judge.

**Please note that if you request that the judge reconsider our recommendation, we cannot guarantee the confidentiality of the information that you provided to us during the application process. The judge may order us to provide him or her with this information. Once we give it to the judge, it may become part of the court file that is available to the public.**

**This means that if you request the judge to reconsider our decision, you are waiving the right to confidentiality.**

If you decide to ask the judge to review and reconsider our recommendation, we urge you to do so immediately. Please be advised that it is best for you to act as quickly as you can to minimize any delay in the possible confirmation of counsel.

If you choose to appeal to the judge, you should wait until your next scheduled court appearance. During that appearance, you should explain to the judge that you disagree with our ineligibility recommendation. You should also tell the judge why you cannot afford to retain a lawyer and need to have one assigned to you. You should bring to court a copy of our written recommendation of ineligibility. You may also provide the judge with any additional information or documentation that you believe will be helpful to your application.

**Please be advised that if you choose to request that a judge reconsider our recommendation, the judge will not necessarily treat your financial information as confidential or privileged, meaning, it may be used against you in this or any subsequent criminal proceeding. You also may be prosecuted if there is any false information contained in your application.**

**NOTE: When you are communicating with the judge about your application for assignment of counsel, do not discuss what happened in your case. Limit your discussion to your financial information. DO NOT DISCUSS THE FACTS OF YOUR CASE WITH ANYONE BUT YOUR ATTORNEY.**

You are urged to discuss any request for reconsideration with your attorney. Note that this should be done immediately as the attorney can request that the court relieve your attorney from your case upon receipt of the Assigned Counsel Program's recommendation.

# **EXHIBIT E**

## John R. Kennedy

ATTORNEY AT LAW  
66 NORTH MAIN STREET  
CANANDAIGUA, NEW YORK 14424  
585-396-2040  
FAX 585-396-9409

July 10, 2007

Ms. Carol Salem  
State of New York  
Unified Court System  
100 Centre Street  
New York, New York 10013

Re: Ontario County Assigned Counsel Program: Eligibility Issues

Dear Ms. Salem:

At the request of the Ontario County Board of Supervisors and the County Administrator, please permit me to respond to your letter of April 23, 2007 addressed to Mr. Theodore M. Fafinski regarding eligibility issues. This response is based upon my experience as the Administrator of our Plan since 1997 as well as the provisions contained in our Plan itself.

1. a description of the eligibility process and who makes the determination: In the vast majority of cases, my office makes the determination of eligibility after interviewing a defendant (or party in family court) and reviewing the defendant's Affirmation of Financial Status Form. The judges in the Geneva City Court and the Canandaigua City Court prefer to make their own determination after questioning the defendant, on the record, with respect to income and assets. I visit the Ontario County Jail on a regular basis to interview defendants that have been incarcerated prior to their first appearance. At times, the jail will have the Affirmation completed and signed by the defendant and faxed to my office where time is critical.

2. the annual percentage of those deemed ineligible: In 2006, our office handled 3,484 cases that were vouchered and denied representation to 78 individuals based upon financial resources. Any denials taking place in the city courts would not come to my attention.

3. the appeal process for those found ineligible: There is no formal appeal process. However, if a person insists that they are eligible, I will personally review their Affirmation and seek additional documentation and, if appropriate, make a finding of eligibility.

4. income guidelines and other factors or information considered in eligibility determinations: We adhere to the Federal Poverty Guidelines published annually, and base our income determinations on 125 percent thereof. However, we also consider the level of assets and debts in the name of the defendant, the income of the spouse, and consider whether or not the defendant would be able to make a reasonable retainer payment to a private attorney in the event of ineligibility.

5. public assistance as a factor: While public assistance is not in and of itself a

factor, it is a question on the Affirmation form and my experience is that a person receiving any form of public assistance usually tends to be qualified under our guidelines.

6. specific information or forms requested of the defendant: The defendant is required to fill out the financial affirmation and sign it under penalty of perjury. In borderline cases, I ask for wage stubs and/or tax returns.

7. treatment of bail in the eligibility process: Bail is not factored in.

8. partial payment or options: At the current time, our plan does not provide for partial payments or other options. However, I believe the county is reviewing this issue.

9. requirement to sign an affidavit: The defendant is required to sign the Affirmation. However, some parties apply over the phone and refuse or are unable to stop into our office to sign the form. In such event, it has been our practice to assign an attorney and try to obtain the defendant's signature at a later time.

10. permission or waivers to investigate any information given in the course of the eligibility determination: There is no formal process of obtaining permission or waivers to investigate eligibility through third parties. A defendant may, on occasion, be asked to provide supporting documentation but no independent investigation is currently done.

11. the confidentiality of the information provided: The information provided is treated as confidential and the records maintained in my office.

12. treatment of minors: If a minor makes application for an attorney, we first determine whether or not the minor is emancipated from his or her parents. If so, we make a determination based solely upon the minor's income and resources. If not emancipated, we send to the parents a parental affirmation requesting their financial information. If they are deemed to have the ability to pay, the minor is not granted an attorney unless the parents indicate an unwillingness or refusal to retain an attorney, then, in such event, we do provide an attorney for the minor. Although it has been discussed, there is currently no recovery process from the parents.

I do hope the aforementioned has been responsive to your inquiry and I invite you to contact me directly in the event I can be of any further assistance. Thank you for your courtesies.

Very truly yours,



John R. Kennedy

JRK/sr

cc: Mr. Theodore M. Fafinski, Chair of Board of Supervisors  
Mr. Geoffrey C. Astles, Ontario County Administrator



ONTARIO COUNTY  
ASSIGNED COUNSEL PROGRAM

Rev. 5/02

66 NORTH MAIN STREET

CANANDAIGUA, NY 14424

TELEPHONE: (585) 396-2852 FAX: (585) 396-9409

Date: \_\_\_\_\_  
Court: \_\_\_\_\_ Eligible: \_\_\_\_\_ Denied: \_\_\_\_\_  
Judge: \_\_\_\_\_ By: \_\_\_\_\_  
Court Date: \_\_\_\_\_ Time: \_\_\_\_\_ Assigned Attorney: \_\_\_\_\_  
Charges: \_\_\_\_\_ Notified/Accepted: \_\_\_\_\_

**AFFIRMATION OF FINANCIAL STATUS**

**PRINT:**

Applicant Name: \_\_\_\_\_ Age: \_\_\_\_\_ DOB: Mo \_\_\_\_\_ Day \_\_\_\_\_ Yr \_\_\_\_\_  
Current Address: \_\_\_\_\_ Social Security #: \_\_\_\_\_  
\_\_\_\_\_ Telephone #: (AC \_\_\_\_\_) \_\_\_\_\_  
\_\_\_\_\_ How long have you lived at this address: \_\_\_\_\_

1. Your marital status: Single \_\_\_\_\_; Married: \_\_\_\_\_; Separated: \_\_\_\_\_; Divorced: \_\_\_\_\_. (If separated/divorced, and if there is a court order/agreement whereby your spouse is responsible for the defendant, attach a copy, but complete remainder of the form).

2. Are you currently receiving welfare (public assistance) payments (not food stamps)? Yes \_\_\_\_\_; No \_\_\_\_\_.

3. List all family members who currently live with you:

Name	Relationship	Age	Earnings from Employment (Indicate weekly, monthly, etc.)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**EMPLOYMENT**

4A. Employer Name: \_\_\_\_\_ 4B. If self-employed, your occupation: \_\_\_\_\_  
Address: \_\_\_\_\_

5. If unemployed, how long? \_\_\_\_\_ 6. Name of last employer: \_\_\_\_\_

7. Do you own a car or truck, motorcycle, or boat? Yes \_\_\_\_\_ No \_\_\_\_\_. If yes, complete the following:

Make: _____ Model: _____	Make: _____ Model: _____
Year: _____ Value: \$ _____	Year: _____ Value: \$ _____
Registered to (name): _____	Registered to (name): _____
Amount owed: \$ _____	Amount owed: \$ _____
Name of lender: _____	Name of lender: _____

8. Do you own any real estate? Yes \_\_\_\_\_; No \_\_\_\_\_. If yes:  
A. If yes, describe i.e., house and/or property, 1/2 acre, etc.: \_\_\_\_\_  
B. Address: \_\_\_\_\_ C. Estimated value: \$ \_\_\_\_\_  
D. Amount owed: \$ \_\_\_\_\_  
E. To whom owed?: \_\_\_\_\_ F. Who has the title?: \_\_\_\_\_

9. Amount in checking account: \$ \_\_\_\_\_ 9B. Name of Bank: \_\_\_\_\_

10. Amount in savings account: \$ \_\_\_\_\_ 10B. Name of Bank: \_\_\_\_\_

11. Cash on Hand: \$ \_\_\_\_\_

6C. Motorcycle Year: \_\_\_\_\_ Make: \_\_\_\_\_ Value: \$ \_\_\_\_\_

Registered to: \_\_\_\_\_ Amount owed: \$ \_\_\_\_\_

6D. Boat: Year: \_\_\_\_\_ Make: \_\_\_\_\_ Value: \$ \_\_\_\_\_

Registered to: \_\_\_\_\_ Amount owed: \$ \_\_\_\_\_

**7. Real Property**

7A. Do you own any real property? Yes \_\_\_\_\_; No \_\_\_\_\_

7B. If yes, describe i.e., house, 1/2 acre, etc.: \_\_\_\_\_

7C. Value: \$ \_\_\_\_\_ 7D. Amount owed: \$ \_\_\_\_\_

7E. who to: \_\_\_\_\_ 7F. Who has title: \_\_\_\_\_

**8. Total Income** - Include all family members living with you and are 16 years or older.

	AMOUNT PAID	FREQUENCY (check)			
		Weekly	Biweekly	Monthly	Other
Employment/Unemployment	_____	_____	_____	_____	_____
Self Employment	_____	_____	_____	_____	_____
Rental Income	_____	_____	_____	_____	_____
Child Support	_____	_____	_____	_____	_____
Alimony	_____	_____	_____	_____	_____
Pensions	_____	_____	_____	_____	_____
Interest/Savings/Stocks/Bonds	_____	_____	_____	_____	_____
Social Security	_____	_____	_____	_____	_____
Disability Payments	_____	_____	_____	_____	_____
Others: _____	_____	_____	_____	_____	_____

**9. Liabilities**

	Amount Paid	FREQUENCY (check)			
		Weekly	Biweekly	Monthly	Other
Rent/Mortgage	_____	_____	_____	_____	_____
Child Care	_____	_____	_____	_____	_____
Liability	_____	_____	_____	_____	_____
Vehicle Loans	_____	_____	_____	_____	_____
Personal Loans	_____	_____	_____	_____	_____
Charge Cards	_____	_____	_____	_____	_____
Other: _____	_____	_____	_____	_____	_____

10. Was the defendant/litigant listed as a dependent on last year's Federal Income Tax Return?

Yes \_\_\_\_\_; No \_\_\_\_\_.

11. How much can you afford to pay for your child's legal fees and frequency i.e., weekly, monthly, other:

\$ \_\_\_\_\_ Frequency: \_\_\_\_\_

The statements/information provided above are accurate. Further, I (we) hereby authorize my employer(s), lending institutions, etc., to release pertinent information to verify the information contained herein. Further, I (we) understand that the court may request I provide proof of the information provided. It is a crime, punishable as a Class A Misdemeanor under Section 210.45 of the Penal Law of the State of New York, for a person, in and by a written instrument, to knowingly make a false statement, or to make a statement which such person does not believe to be true.

Affirmed under penalty of perjury

Affirmed under penalty of perjury

Father's Signature

Mother's Signature

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ONTARIO COUNTY  
**ASSIGNED COUNSEL PROGRAM**  
 66 NORTH MAIN STREET  
 CANANDAIGUA, NY 14424

Rev. 3/01

TELEPHONE: (585) 396-2852 FAX: (585) 396-9409

**AFFIRMATION OF FAMILY FINANCIAL STATUS**

**To Parents:** Your child has applied for Assigned Counsel at county expense regarding a pending court proceeding. Since your child is under 21 years of age, it is necessary for you to complete the following Financial Affirmation in order that determination can be made as to whether you will be responsible for the cost of your child's legal representation.

Court: \_\_\_\_\_ Eligible: \_\_\_\_\_ Denied: \_\_\_\_\_  
 Judge: \_\_\_\_\_ By: \_\_\_\_\_  
 Court Date: \_\_\_\_\_ Time: \_\_\_\_\_ Assigned Attorney: \_\_\_\_\_  
 Charges: \_\_\_\_\_ Notified/Accepted: \_\_\_\_\_  
 Defendant Name: \_\_\_\_\_ Age: \_\_\_\_\_ DOB: Month \_\_\_\_\_ Day \_\_\_\_\_ Year \_\_\_\_\_  
 Current Address: \_\_\_\_\_ Social Security #: \_\_\_\_\_  
 Telephone #: (AC \_\_\_\_\_) \_\_\_\_\_

.....  
 1. Your marital status: Single \_\_\_\_\_; Married: \_\_\_\_\_; Separated: \_\_\_\_\_; Divorced: \_\_\_\_\_. (If separated divorced, and if there is a court order/agreement whereby your spouse is responsible for the defendant, attach a copy but complete remainder of the form).

2. Are you currently receiving welfare (public assistance) payments (not food stamps) for yourself or any member of your family? Yes \_\_\_\_\_; No \_\_\_\_\_.

3. List all family members who currently live with you:

NAME	RELATIONSHIP	AGE	MONTHLY EARNINGS/INCOME
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**FATHER**

**MOTHER**

4A. Social Security #: \_\_\_\_\_  
 4B. Employer: \_\_\_\_\_  
 4C. Address: \_\_\_\_\_  
 4D. If unemployed (check): \_\_\_\_\_  
 How long: \_\_\_\_\_

4A. Social Security #: \_\_\_\_\_  
 4B. Employer: \_\_\_\_\_  
 4C. Employer: \_\_\_\_\_  
 4D. If unemployed (check): \_\_\_\_\_  
 How long: \_\_\_\_\_

5. **Assets** (if joint account, note):

5A. Amount in checking account: \$ \_\_\_\_\_  
 5B. Name of Bank: \_\_\_\_\_  
 5C. Amount in savings account: \$ \_\_\_\_\_  
 5D. Name of bank/institution(s): \_\_\_\_\_  
 \_\_\_\_\_  
 5E. Cash on Hand: \$ \_\_\_\_\_  
 5F. Stocks/Bonds Amount: \$ \_\_\_\_\_

5A. Amount in checking account: \$ \_\_\_\_\_  
 5B. Name of Bank: \_\_\_\_\_  
 5C. Amount in savings account: \$ \_\_\_\_\_  
 5D. Name of bank/institution(s): \_\_\_\_\_  
 \_\_\_\_\_  
 5E. Cash on Hand: \$ \_\_\_\_\_  
 5F. Stocks/Bonds Amount: \$ \_\_\_\_\_

**6. Disposable Assets**

6A. Car(s) Year: \_\_\_\_\_ Make: \_\_\_\_\_  
 Registered to: \_\_\_\_\_  
 6B. Truck: Year: \_\_\_\_\_ Make: \_\_\_\_\_  
 Registered to: \_\_\_\_\_

Value: \$ \_\_\_\_\_  
 Amount owed: \$ \_\_\_\_\_  
 Value: \$ \_\_\_\_\_  
 Amount owed: \$ \_\_\_\_\_

**INCOME**

<u>TYPE</u>	<u>AMOUNT PAID</u>	<u>FREQUENCY (check)</u>			
		<u>Weekly</u>	<u>Biweekly</u>	<u>Monthly</u>	<u>Other</u>
Employment/Self employment	\$ _____	_____	_____	_____	_____
Unemployment Benefits	\$ _____	_____	_____	_____	_____
Child Support	\$ _____	_____	_____	_____	_____
Alimony	\$ _____	_____	_____	_____	_____
Pensions	\$ _____	_____	_____	_____	_____
Interest/Savings/Stocks/Bonds	\$ _____	_____	_____	_____	_____
Social Security	\$ _____	_____	_____	_____	_____
Disability Payments	\$ _____	_____	_____	_____	_____
Student Loans/Grants	\$ _____	_____	_____	_____	_____
Others: _____	\$ _____	_____	_____	_____	_____

**DEBITS**

<u>TYPE</u>	<u>Amount Paid</u>	<u>FREQUENCY (check)</u>			
		<u>Weekly</u>	<u>Biweekly</u>	<u>Monthly</u>	<u>Other</u>
Rent/Mortgage	\$ _____	_____	_____	_____	_____
Child Support	\$ _____	_____	_____	_____	_____
Alimony	\$ _____	_____	_____	_____	_____
Vehicle Loans	\$ _____	_____	_____	_____	_____
Personal Loans	\$ _____	_____	_____	_____	_____
Charge Cards	\$ _____	_____	_____	_____	_____
Other: _____	\$ _____	_____	_____	_____	_____

**If you are under 21 years and unmarried, your parents are responsible for your legal costs. Complete this section.**

1) Father's Name \_\_\_\_\_ Mother's Name \_\_\_\_\_  
Address: \_\_\_\_\_ Address: \_\_\_\_\_  
Telephone: (AC \_\_\_\_\_) \_\_\_\_\_ Telephone: (AC \_\_\_\_\_) \_\_\_\_\_

2) Are you currently attending school? Yes \_\_\_\_\_ No \_\_\_\_\_. If yes, name of school \_\_\_\_\_

The statements/information are accurate and I understand that the court may require verification on this information. Further, I authorize release of any information from those sources listed herein. It is a crime, punishable as a Class A Misdemeanor under Section 210.45 of the Penal Law of the State of New York, for a person, in and by a written instrument, to knowingly make a false statement, or to make a statement which such person does not believe to be true.

Affirmed under penalty of perjury

\_\_\_\_\_  
Signature (Deponent)

Date:

# **EXHIBIT F**

Date/Interviewer

Eligible  Presumptively Eligible  Ineligible  RPC  Conflict  TBD

Ontario County Office of the Public Defender

OPEN FILE REQUEST

CASE TYPE: VFO  NVFO  DRUG  MISD  VIOL  VOP-M  VOP-F  PAROLE  FAMILY  INV

ATTORNEY ASSIGNED: \_\_\_\_\_

INVESTIGATOR ASSIGNED: YES  NO

PERSONAL INFORMATION

Last Name \_\_\_\_\_ First Name \_\_\_\_\_ MI \_\_\_\_\_ M  F

SSN: \_\_\_\_\_ DOB: \_\_\_\_\_ Age \_\_\_\_\_ Place of birth \_\_\_\_\_

Top Charge: \_\_\_\_\_ Type: \_\_\_\_\_ Court: \_\_\_\_\_ Judge: \_\_\_\_\_

In Custody: Y  N  PTR Y  N  Veteran Y  N

NCD: \_\_\_\_\_ Bail \_\_\_\_\_ Bond \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone #: \_\_\_\_\_ Alt Contact #: \_\_\_\_\_

Marital status: Single  Married  Separated  Divorced  Widowed

CASE PLAYERS (If known)

Name	Age	Relationship	Household	In CMS?
1			YES <input type="checkbox"/> NO <input type="checkbox"/>	
2			YES <input type="checkbox"/> NO <input type="checkbox"/>	
3			YES <input type="checkbox"/> NO <input type="checkbox"/>	
4			YES <input type="checkbox"/> NO <input type="checkbox"/>	
5			YES <input type="checkbox"/> NO <input type="checkbox"/>	
6			YES <input type="checkbox"/> NO <input type="checkbox"/>	
7			YES <input type="checkbox"/> NO <input type="checkbox"/>	
8			YES <input type="checkbox"/> NO <input type="checkbox"/>	

CRIMINAL HISTORY

Prior Offenses \_\_\_\_\_

Other charges? \_\_\_\_\_

Parole or Probation? Yes  No  Judge \_\_\_\_\_

Why Violated? \_\_\_\_\_

PO \_\_\_\_\_

Found eligible within past 6 months Ontario County \_\_\_\_\_ Other \_\_\_\_\_

**MEDICAL INFORMATION**

Do you have any Physical/Mental Health/Learning disabilities/Addiction issues.

YES

NO

Details: \_\_\_\_\_

Are you currently on any medications?

YES

NO

Details: \_\_\_\_\_

**FINANCIAL INFORMATION**

Employed /School \_\_\_\_\_

Spouse Income \_\_\_\_\_

Employment Income: \_\_\_\_\_

PW / BW / PM / PA

Other income? \_\_\_\_\_

Unemployment

Food Stamps

SSI

SSD

If no income how do you support yourself? \_\_\_\_\_

**ASSETS**

Real Estate Owned (Address) \_\_\_\_\_

Value/Mortgage Owed \_\_\_\_\_

Vehicle(s) Owned \_\_\_\_\_

(Year / Make/Value) \_\_\_\_\_

Cash/Bank Accounts/ \_\_\_\_\_

Savings/Retirement Accounts or \_\_\_\_\_

Other liquid assets \_\_\_\_\_

**EXPENSES**

Mortgage or Rent \_\_\_\_\_

Utilities \_\_\_\_\_

Car Payment & Insurance \_\_\_\_\_

Child Care or Child support \_\_\_\_\_

Student Loan \_\_\_\_\_

Other Debt \_\_\_\_\_

Any other hardship factors that should be considered \_\_\_\_\_

**APPLICANT UNDER 21 - PARENTAL INCOME INFORMATION**

PARENT'S INCOME

PARENT'S INCOME

Additional Financial Information:-


By submitting this application to the Ontario County Office of the Public Defender, you are requesting that an attorney be provided at the County's expense and you authorize any such attorney to use any information contained herein in the course of that representation.

Do you agree

YES

NO





**CASE NOTES - CONFIDENTIAL**

When/what time did you come into custody?

--

Did you have an attorney present at arraignment?

YES		NO	
-----	--	----	--

Do you have any family court cases pending?

YES		NO	
-----	--	----	--



ONTARIO COUNTY  
OFFICE OF THE PUBLIC DEFENDER

PUBLIC DEFENDER

Leanne Lapp

ASSISTANT PUBLIC DEFENDERS

Jennifer Kehoe	Chelsea Carter	Jonathan Lorge
Patrick Conklin	Kevin Karnyski	Matthew Turetsky
Bradley Porter	Mollie Dapolito	Alicia Grasso
Delton Caraway		William Beck

FIRST ASSISTANT

Catherine Walsh

< !\$MG\_CurrDate >

< !\$MG\_DefFullName >  
< !\$MG\_DefStreet1 >  
< !\$MG\_DefCity > < !\$MG\_DefST > < !\$MG\_DefZip >

**RE: INELIGIBILITY FOR A PUBLIC DEFENDER**

Dear < !\$MG\_DefFullName >:

You recently applied to have a lawyer assigned to represent you in your < !\$MG\_TopChgLongDescr > case from < !\$MG\_CT >. We screen all applicants to ensure that they are financially eligible for assignment of counsel. We then make a recommendation to the Judge, who is responsible for making the final decision. Based on the information you gave us, we will recommend to the judge that you are not financially eligible for assigned counsel. The reason(s) for our conclusion are provided on the attached form, which lists the information we relied upon in making the recommendation.

If you are financially able to retain private counsel, you should do so immediately.

You have the right to have this recommendation reviewed. There are two avenues available for you to do so.

- 1. You may appeal to the Public Defender.** This request may be made in person, by telephone, or in writing. If you choose to submit such a request, please explain why you believe you should be provided counsel. You will be given an opportunity to provide any additional material you wish our office to consider.

If you choose to request that we reconsider your recommendation, please do so as soon as possible. It is best for you to act as quickly as you can to minimize any delay in the possible appointment of counsel.

- 2. You may request that the Judge assigned to your case reconsider the recommendation that you are ineligible for assignment of counsel.** You may choose this option whether or not you have already requested reconsideration by

*20 Ontario Street, Canandaigua, NY 14424 • Phone (585) 396-4645 • Fax (585) 396-4348*

*83 Seneca Street, Geneva, NY 14456 • Phone (315) 759-2002*

the Public Defender. However, if you did request reconsideration from the Public Defender, you should wait until you receive a written decision on your reconsideration request before making your request to the judge.

If you choose to ask the judge to reconsider our recommendation, please do so as soon as possible. It is best for you to act as quickly as you can to minimize any delay in the possible appointment of counsel.

If you wish to appeal to the judge, you should wait until your next scheduled court appearance. During that appearance, you should explain to the judge that you disagree with our ineligibility recommendation. You should also tell the judge why you cannot afford to retain a lawyer and need to have one assigned to you. You should bring to court a copy of our written recommendation of ineligibility. You may also provide the judge with any additional information or documentation that you believe will be helpful to your application

**Please be advised that if you choose to request that a judge reconsider our decision, any information you give the judge may not be protected by attorney-client privilege, meaning it may be used against you in this or any subsequent criminal proceeding. You also may be prosecuted if there is any false information contained in your application.**

**PLEASE NOTE: When you are communicating with the judge about your application for assignment of counsel, you should not discuss the facts involved in what you are charged with.**

You may call our office at (585) 396-4645 if you have any questions, or need clarification of these instructions.

Sincerely,

*Leanne Lapp*

**Leanne Lapp**  
Public Defender

## REASON FOR INELIGIBILITY RECOMMENDATION

Applicant: \_\_\_\_\_  
Charge(s): \_\_\_\_\_  
Court: \_\_\_\_\_

We have decided to recommend to the judge that you are not eligible for a Public Defender because you have enough income and/or assets to pay for a qualified attorney, a competent defense, and release on bond. Your living expenses and financial obligations do not prevent you from being able to pay these costs. This recommendation is based on the following information about the case and the financial information that you provided:

### 1) Nature of the case

a) We considered the type of charges against you, which are:

- Violation    Misdemeanor    Class C, D, or E felony    Class A or B felony  
 Sex offense, violent felony offense, or homicide offense

b) We also considered whether there is any indication that the case against you might be complex. Examples include cases that may require hiring an expert, an investigator, or forensic specialist, or that may involve complex legal issues, or mental health or mental competence issues. In your case, we determined:

- No indication of case complexity    Indication of possible case complexity, as follows:

\_\_\_\_\_  
\_\_\_\_\_

2) We considered your income, which is approximately \$ \_\_\_\_\_ per week/month/year.

3) We considered your assets, which include (check all that are applicable):

- Bank accounts in the approximate amount of \$ \_\_\_\_\_  
 Securities/stocks worth approximately \$ \_\_\_\_\_  
 Other assets (description and approximate value): \_\_\_\_\_

\_\_\_\_\_

4) We considered your living expenses, including those of your dependents, which are approximately \$ \_\_\_\_\_ per week/month/year.

5) We considered your current debt and other financial obligations, which include (check all that are applicable):

- Medical debt of approximately \$ \_\_\_\_\_  
 Educational debt of approximately \$ \_\_\_\_\_  
 Other debt (describe nature and amount of debt): \_\_\_\_\_

\_\_\_\_\_

6) We considered the following information about Bail in your case (check appropriate box):

- You were released on your own recognizance or on pre-trial release.  
 Bail was set and you have the financial resources needed to pay it.

7) Other factors we considered or other reasons for our ineligibility recommendation:

Respectfully,

Dated:

# **EXHIBIT G**

## Opinion 16-68

June 16, 2016

Digest: A judge may not voluntarily comply with guidelines requiring ethically impermissible conduct when deciding a defendant's eligibility for assigned counsel.

Rules: Executive Law § 832; Judiciary Law §§ 212(2)(l); 212(2)(l)(iv); 22 NYCRR 100.2(A); 100.3(B)(6); 100.3(B)(6)(d)-(e); 101.1; Opinions 13-124/13-125/13-128/13-129; 09-137; 98-150.

### Opinion:

An administrative or supervising judge asks about the propriety of following the Criteria and Procedures for Determining Financial Eligibility for Assignment of Counsel prepared by the Office of Indigent Legal Services pursuant to Executive Law § 832. These guidelines, which have not yet gone into effect, would apparently require judges to consider defendants' applications for assignment of counsel ex parte and under seal in all circumstances. For example, the guidelines provide:

- “The eligibility screening process, whether done by another entity or the court, shall be done in a confidential setting and not in open court.”
- “Any entity involved in screening shall not make any information disclosed by applicants available to the public or other entities (except the court).”
- “Any documentation submitted to the court shall be submitted ex parte and shall be ordered sealed from public view.”

The inquirer asks several questions concerning the propriety of a judge's voluntary compliance with these proposed guidelines. In essence, the judge is concerned about the requirement that judges must review an indigent defendant's application for assignment of counsel ex parte and must close the courtroom, seal the records, and otherwise refuse to disclose the contents of an indigent defendant's application for assignment of counsel, even though (according to the inquirer) applicable statutes do not require confidentiality and do not permit records to be sealed.

A judge must respect and comply with the law (*see* 22 NYCRR 100.2[A]) and must not “initiate, permit, or consider ex parte communications” unless an exception applies (22 NYCRR 100.3[B][6]). For example, a judge “may initiate or consider any ex parte communications when authorized by law to do so” (22 NYCRR 100.3[B][6][e]).

A judge who speaks with a defendant privately about his/her financial eligibility for assigned counsel, outside the presence of any representative of the prosecution, is engaging in ex parte communications within the meaning of the Rules Governing Judicial Conduct (*see*

22 NYCRR 100.3[B][6]).<sup>1</sup> If governing law authorizes such communications to take place ex parte (see 22 NYCRR 100.3[B][6][e]), or if the prosecution expressly or impliedly consents to the judge conferring separately with the defendant on this issue (see 22 NYCRR 100.3[B][6][d]), it is ethically permissible to do so.<sup>2</sup> Otherwise it is impermissible.

In light of the many statutory provisions concerning access to court proceedings and records, which are intended, among other things, “to assure that court proceedings are held in official public facilities and not at private locations where unfettered public access may be jeopardized or where the perception of the public nature of what is occurring may be obscured” (Opinion 98-150), a judge may not ethically close the courtroom or seal the record concerning a defendant’s application for assigned counsel, except as authorized by law.

Therefore, the Committee concludes that, absent a legal requirement to do so, a judge should not voluntarily comply with the proposed guidelines to the extent they require the judge to engage in impermissible ex parte communications or to close the courtroom or seal the record other than as permitted by law.

Of course, the Committee cannot resolve the underlying legal questions, such as whether applicable statutes do (or will) authorize ex parte communications, closed courtrooms, and sealed records with respect to a defendant’s application for assigned counsel; whether the Office of Indigent Legal Services’ guidelines will have the force of law; and whether the guidelines will supersede or amend other rules or statutes on these issues (see Judiciary Law § 212[2][l]; 22 NYCRR 101.1).

While perhaps not strictly necessary here, the Committee makes three final observations for future reference. First, if an exception applies so the judge is ethically permitted to speak ex parte with a criminal defendant concerning his/her financial eligibility for assigned counsel (see 22 NYCRR 100.3[B][6][d]-[e]), the judge should discourage the defendant from raising or discussing the merits of the charges or other issues beyond those reasonably necessary to determine the defendant’s financial eligibility for assigned counsel (see Opinion 13-124/13-125/13-128/13-129 n 5). Second, a judge who makes a good-faith legal determination of the legal issues involved, and makes a good-faith effort to follow governing law, does not thereby violate the Rules Governing Judicial Conduct (see e.g. Opinion 09-137 [“a judge who directs a pre-trial conference based upon controlling statutory language, per se acts ethically, even if an appellate court later reverses on the ground that the judge’s statutory interpretation was erroneous”]). Third, while the Committee cannot comment on the likelihood that a disciplinary complaint will be filed against any particular judge, Judiciary Law § 212(2)(l)(iv) provides that:

Actions of a judge or justice of the unified court system taken in accordance with the findings or recommendations contained in an advisory opinion issued by the [Advisory Committee on Judicial Ethics] shall be presumed proper for the purposes of any subsequent investigation by the state commission on judicial conduct.



<sup>1</sup> The Committee has stated that “when a defendant appears before a judge for arraignment, the judge’s proposed communications with the defendant about his/her financial status are indeed ex parte communications in an identifiable pending proceeding” (Opinion 13-124/13-125/13-128/13-129). This statement may be somewhat misleading. A judge’s communications with a defendant who is not yet represented by counsel are not necessarily ex parte in every instance, *unless* they take place outside the prosecution’s presence.

<sup>2</sup> In Opinion 13-124/13-125/13-128/13-129, the Committee provided an example of ethically “implied” consent where, under the described circumstances, “a judge would be justified in treating the district attorney’s failure to make any reasonable effort to provide for a representative to participate in or attend the arraignment as ‘consent’ to conduct the arraignment ex parte with defense counsel assigned pursuant to the program.”

# **EXHIBIT H**



Please return completed application to:  
Schuyler County Public Defender's Office  
105 9<sup>th</sup> Street, Unit 7  
Watkins Glen NY 14891  
Phone (607) 535-6400 Fax (607) 535-6404

Date: \_\_\_\_\_

Screened by: \_\_\_\_\_

### **CONFIDENTIAL**

State of New York : County of Schuyler  
Application for Assignment of Counsel under County Law, Article 18-B  
**PART I**

#### **PERSONAL INFORMATION**

Full Name: \_\_\_\_\_

Other Last Names Used: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Home Address: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Home phone: \_\_\_\_\_

Cell phone: \_\_\_\_\_

Email: \_\_\_\_\_

Number of financial dependents in household (other than yourself): \_\_\_\_\_

#### **CURRENT CASE INFORMATION**

Arrest Date: \_\_\_\_\_ Arraignment Date: \_\_\_\_\_

Docket No. (if available): \_\_\_\_\_

Name of Court: \_\_\_\_\_

Judge: \_\_\_\_\_

Charges: \_\_\_\_\_

Co-Defendants (If any): \_\_\_\_\_

Next Scheduled Court Date: \_\_\_\_\_

Did you have counsel at your first court appearance? \_\_\_\_\_

#### **EMPLOYMENT**

Occupation (if a student, indicate the school attending): \_\_\_\_\_

Name and address of Current Employer: \_\_\_\_\_

Self-employed:  Yes  No If Yes, nature of self-employment: \_\_\_\_\_

Amount of Net (Take-Home) Pay: \$ \_\_\_\_\_ per  Year  Month  Bi-weekly  Weekly

**Instructions for Court/Screeners: Using the FPG Income Chart, is the applicant's income at or below 250% of the FPG?  Yes  No**

#### **OTHER CIRCUMSTANCES:**

- 1) Are you currently incarcerated, detained, or confined to a mental health facility?  Yes  No
- 2) Are you currently receiving need-based public assistance (or recently been deemed eligible, pending receipt)?  Yes  No
- 3) Within the past 6 months, have you been found eligible for assigned counsel in another criminal case?  Yes  No

**Instructions for Court/Screeners ( In regard to Part 1):**

**Is Applicant presumptively eligible for assigned counsel?  Yes  No**  
**[If Yes, counsel shall be assigned. If No, proceed to Part II of the application]**

**CONFIDENTIAL**

**PART II**

**OTHER INCOME**

Do you currently receive any pension, annuity, or retirement payments? \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, list the amount: \_\_\_\_\_

Do you currently receive any income from owned real estate? \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, list the amount: \_\_\_\_\_

List other sources and amount of income you receive (do not include child support or need-based public assistance):

1. \_\_\_\_\_
2. \_\_\_\_\_

**ASSETS**

List estimated total amount currently in your bank accounts (savings and checking): \_\_\_\_\_

List all real estate you own: \_\_\_\_\_

Current Market Value (estimate): \_\_\_\_\_ Amount owed: \_\_\_\_\_

List any vehicles you own not necessary for basic life activities: \_\_\_\_\_

Current Market Value (estimate): \_\_\_\_\_ Amount owed: \_\_\_\_\_

List value of all stocks or bonds in your name: \_\_\_\_\_

**MONTHLY LIVING EXPENSES**

Food: \$ \_\_\_\_\_ Rent or Mortgage Payments: \$ \_\_\_\_\_ Utilities: \$ \_\_\_\_\_

Transportation/Auto Expenses (Including Payments & Insurance): \$ \_\_\_\_\_

Child Care: \$ \_\_\_\_\_ Child Support Paid Out: \$ \_\_\_\_\_ Alimony Paid Out: \$ \_\_\_\_\_

Medical Bills (Including Health Insurance, Medications, Medical Debts): \$ \_\_\_\_\_

List other expenses. Include employment-related expenses, educational loans & costs, minimum monthly credit card payments, unreimbursed medical expenses and expenses related to age or disability: \_\_\_\_\_

**AMOUNT NEEDED FOR BAIL**

Bail has been set: \_\_\_\_\_ Yes \_\_\_\_\_ No If Yes, indicate the amount: \_\_\_\_\_

**Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

**Court/screener may request additional information or documents.**

**COST OF RETAINING PRIVATE COUNSEL**

What is the average cost of retaining private counsel in your county for the offense the applicant is being charged with?

Based on the information in the previous section (seriousness of the offense, income and expense information, etc.), will this applicant be able to afford the cost of counsel indicated above? \_\_\_\_\_ Yes \_\_\_\_\_ No

**ELIGIBILITY**

Is the applicant eligible for assigned counsel? \_\_\_\_\_ Yes \_\_\_\_\_ No

If answering no, state why: \_\_\_\_\_

**For Court/Screener Use Only**

# SCHUYLER COUNTY PUBLIC DEFENDER



105 Ninth Street, Unit 7  
Watkins Glen, NY 14891  
Phone: (607) 535-6400  
Fax: (607) 535-6404



*Mark R. Raniewicz, Esq.*  
Assistant Public Defender

*Wesley A. Roe, Esq.*  
Public Defender

*Fred M. Cerio, Esq.*  
Assistant Public Defender

## CONFIDENTIAL

### NOTICE OF ELIGIBILITY RECOMMENDATION

To:

Docket No. N/A  
(if available)

From: Lisa Orr, Administrator

Re: Application for Assigned Counsel

Date:

You recently applied to have a lawyer assigned to represent you in your criminal case. We screen all applicants to ensure that they are financially eligible for assignment of counsel. We then make a recommendation to the judge, who is responsible for making the final decision.

Based on the information you gave us, we will recommend to the judge that:

You are financially eligible for an assignment of counsel.

You are not financially eligible for assigned counsel.

If our recommendation to the judge is that you are not financially eligible for assigned counsel, a reason is provided on the attached form, which lists the information we relied upon in making the recommendation.

Additionally, if our recommendation is that you are not financially eligible for assigned counsel, you have the right to have this recommendation reviewed. Your rights are discussed in the attached document entitled, **Your Right to Seek Review of the Recommendation that You are not Eligible for Assigned Counsel.**

**CONFIDENTIAL**

**REASON FOR INELIGIBILITY RECOMMENDATION**

We have decided to recommend to the judge that you are not eligible for assigned counsel because you have enough income and/or assets to pay for a qualified attorney, a competent defense, and release on bond. Your living expenses and financial obligations do not prevent you from being able to pay these costs. This recommendation is based on the following information about the case and the financial information that you provided:

**1) Nature of the case**

a) We considered the type of charges against you, which are:

- Violation     Misdemeanor     Class C, D, or E felony     Class A or B felony  
 Sex offense, violent felony offense, or homicide offense

b) We also considered whether there is any indication that the case against you might be complex. Examples include cases that may require hiring an expert, an investigator, or forensic specialist, or that may involve complex legal issues, or mental health or mental competence issues. In your case, we determined:

- No indication of case complexity     Indication of possible case complexity, as follows:

\_\_\_\_\_  
\_\_\_\_\_

**2) We considered your income, which is approximately \$ \_\_\_\_\_ per week/month/year.**

**3) We considered your assets, which include (check all that are applicable):**

- Bank accounts in the approximate amount of \$ \_\_\_\_\_  
 Securities/stocks worth approximately \$ \_\_\_\_\_  
 Other assets (description and approximate value): \_\_\_\_\_

\_\_\_\_\_

**4) We considered your living expenses, including those of your dependents, which are approximately \$ \_\_\_\_\_ per week/month/year.**

**5) We considered your current debt and other financial obligations, which include (check all that are applicable):**

- Medical debt of approximately \$ \_\_\_\_\_  
 Educational debt of approximately \$ \_\_\_\_\_  
 Other debt (describe nature and amount of debt): \_\_\_\_\_

\_\_\_\_\_

**6) We considered the following information about Bail in your case (check appropriate box):**

- You were released on your own recognizance or on pre-trial release.  
 Bail was set and you have the financial resources needed to pay it.

**7) Other factors we considered or other reasons for our ineligibility recommendation:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



## SCHUYLER COUNTY PUBLIC DEFENDER

105 Ninth Street, Unit 7  
Watkins Glen, NY 14891  
Phone: (607) 535-6400  
Fax: (607) 535-6404



*Mark R. Raniewicz, Esq.*  
Assistant Public Defender

*Wesley A. Roe, Esq.*  
Public Defender

*Fred M. Cerio, Esq.*  
Assistant Public Defender

### ***NOTICE OF RIGHT TO SEEK REVIEW***

#### **YOUR RIGHT TO SEEK REVIEW OF THE RECOMMENDATION THAT YOU ARE NOT ELIGIBLE FOR ASSIGNED COUNSEL**

You have been notified of our decision to recommend to the judge that you are not financially eligible for an assignment of counsel. If you are financially able to retain private counsel, you should do so immediately. If you are unable to retain counsel, you may exercise your right to seek review of our recommendation. There are two ways you can do this:

##### **A. Request that we Reconsider our Recommendation that you are not Eligible**

If you believe that our recommendation is incorrect, you may request that we review and reconsider your application. Your request may be made in person, by telephone, or in writing. Upon our receipt of your request for reconsideration, we will provide you with an opportunity to submit to us any additional information you may wish for us to consider, or you may explain to us why you believe you should be provided assigned counsel.

If you choose to request that we reconsider our recommendation, you are urged to do so as soon as possible. It is best for you to act as quickly as you can to minimize any delay in the possible appointment of counsel.

Following our reconsideration, we will notify you, in writing, whether your application for assigned counsel was granted or denied.

##### **B. Request that the Judge Reconsider the Recommendation that you are not Eligible**

You may also request that the judge who is presiding over your criminal case review and reconsider our recommendation that you are not eligible. You may do so whether or not you have already requested reconsideration by our office. However, if you did request our reconsideration, you should wait until you receive our written decision on your reconsideration request before making your request directly to the judge.

**Please note that if you request that the judge reconsider our recommendation, we cannot guarantee the confidentiality of the information that you provided to us during the application process. The judge may order us to provide him or her with this information. Once we give it to the judge, it may become part of the court file that is available to the public.**

**This means that if you request the judge to reconsider our decision, you are waiving the right to confidentiality.**

If you decide to ask the judge to review and reconsider our recommendation, we urge you to do so immediately. Please be advised that it is best for you to act as quickly as you can to minimize any delay in the possible appointment of counsel.

There are two ways that you can make your request to the judge:

- 1) You may wait until your next scheduled court appearance. During that appearance, you should explain to the judge that you disagree with our ineligibility recommendation. You should also tell the judge why you cannot afford to retain a lawyer and need to have one assigned to you. You should bring to court a copy of our written recommendation of ineligibility. You may also provide the judge with any additional information or documentation that you believe will be helpful to your application; or
- 2) You may write a letter to the judge prior to your next scheduled court appearance explaining why you believe that our ineligibility recommendation is wrong. In this letter, you should also explain to the judge why you cannot afford to retain a lawyer and therefore need to have one assigned to you. You should attach to this letter a copy of our written recommendation of ineligibility. You may also attach any additional information or documentation that you believe will be helpful to your application.

**NOTE: When you are communicating with the judge about your application for assignment of counsel, it is not necessary to discuss what happened (or the facts) in your case.**

**You may contact our office at (607) 535-6400 if you have any questions or need clarification of these instructions.**



# **EXHIBIT I**

<b>Charges:</b>	Date _____
	NYSID# _____ SCPDPIN # _____ Precinct # _____
	Return Date _____ Disposition _____

Name: \_\_\_\_\_ D.O.B.: \_\_\_\_\_ Age: \_\_\_\_\_ Male/Female

AKA: \_\_\_\_\_ Y / N Interpreter: \_\_\_\_\_

Address: \_\_\_\_\_ How Long: \_\_\_\_\_

Town: \_\_\_\_\_ P  
h  
o  
n  
e Landline: \_\_\_\_\_

Lives with: \_\_\_\_\_ Cell: \_\_\_\_\_

Relationship: \_\_\_\_\_ Prior Address: \_\_\_\_\_

How long: \_\_\_\_\_ Time In Suffolk: \_\_\_\_\_ Place of Birth: \_\_\_\_\_

Returning Home / If not, will reside at \_\_\_\_\_

With: \_\_\_\_\_ Phone: \_\_\_\_\_

Marital Status  Married  Divorced  Single  Widowed  Separated  Other

Spouse's Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_

Probation, Judge \_\_\_\_\_  Parole  I.C.E.

Requests Lawyer / Has lawyer assigned: \_\_\_\_\_

Has/Will Get Private Attorney Name: \_\_\_\_\_

Mental Health Evaluation recommended Y / N Does defendant expect someone at arraignment (DK=No)

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Probation/Parole Officer recommendation: \_\_\_\_\_

R.O.R. -  Eligible  Ineligible  Borderline SCORE: \_\_\_\_\_  Based on interview only  
 Verified Residence  Verified Family Ties  Verified Employment Status  
 Conflict w/Residence  Conflict w/Family Ties  Conflict w/ Employment Status

Individual(s) contacted: \_\_\_\_\_ Investigator: \_\_\_\_\_

FAMILY COMPOSITION

# of Children                      Resides with                      Address                      Age

**Parent(s):**                                      **Address:**                                      **Phone:**  
 F-  
 M-

**Contact Name:**                      **Relationship:**                      **Address:**                      **Phone:**

EMPLOYMENT OR SCHOOL/FINANCIAL INFORMATION

**Military Service Branch** \_\_\_\_\_ **Years** \_\_\_\_\_ **Discharge Type** \_\_\_\_\_

**PRESENT JOB**       Full time       Part time       Retired       Disabled       Unemployed

**Employer/school:** \_\_\_\_\_ **Telephone:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Job Title / Student:** \_\_\_\_\_ **Length of time at above :** \_\_\_\_\_ **Salary \$** \_\_\_\_\_

**PRIOR JOB**       Full time       Part time       Retired       Disabled       Unemployed

**Employer/School:** \_\_\_\_\_ **Telephone:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Job Title/Student:** \_\_\_\_\_ **Time at above:** \_\_\_\_\_ **Salary \$** \_\_\_\_\_

**Other Sources of Income:**       Public Assistance or       Unemployment       Social Security Income  
 Medicare/Medicaid      TANF      Compensation/      Or Disability (SSI,SSD)  
 Food Stamps       Social Security Pension      Insurance  
 Veterans Benefits       Other Pension       Spouse/Parent Income \$ \_\_\_\_\_

**Assets:**      **Bank \$** \_\_\_\_\_      **Make/ Year of Car** \_\_\_\_\_      **Car Loan (Monthly) \$** \_\_\_\_\_

**Liabilities: Mortgage/Rent (Monthly) \$** \_\_\_\_\_      **Y / N Is Child Support Court Ordered**

**Child Support \$** \_\_\_\_\_      **Other Income \$** \_\_\_\_\_

**Verified Criminal Justice History** Currently on/off Probation/Parole Office: \_\_\_\_\_

Name of Officer: \_\_\_\_\_ Phone: \_\_\_\_\_ On for: \_\_\_\_\_

SPO: \_\_\_\_\_ Phone: \_\_\_\_\_

Case # \_\_\_\_\_ Closed: F \_\_\_\_\_ M \_\_\_\_\_ Fam/Crim Ct \_\_\_\_\_ VOP \_\_\_\_\_ Prob: \_\_\_\_\_ Parole \_\_\_\_\_

# of Warrants \_\_\_\_\_ # of open cases \_\_\_\_\_ Last Incarceration \_\_\_\_\_ Time Served \_\_\_\_\_

**Self-Disclosed Criminal History:** Y / N Ever arrested outside Suffolk County: \_\_\_\_\_

Earliest arrest: \_\_\_\_\_ Last arrest before this one \_\_\_\_\_

Convictions: # of Misdemeanors \_\_\_\_\_ # of Felonies \_\_\_\_\_

**Drug and Alcohol**

Y / N Are you now or have you ever been in a Drug or Alcohol Program If Yes, Inpatient or Outpatient

Where: \_\_\_\_\_

When: \_\_\_\_\_ How Long: \_\_\_\_\_ Y / N Requests alcohol or drug treatment

Y / N Recommend for Alcohol/Substance Abuse Screening

**Mental Health**

Y / N Any Mental Health Issues If Yes: Last Date Treated: \_\_\_\_\_ Inpatient or Outpatient

Where: \_\_\_\_\_ How long: \_\_\_\_\_

Y / N Requests Treatment

Y / N Recommend for Mental Health Screening

**Medication(s)**

Y / N Are you on medication If yes, for what condition: \_\_\_\_\_

What medications: \_\_\_\_\_

**Tattoos/Brandings/Markings**

**Additional Information:**

ROR Branch Rating Sheet

Name: \_\_\_\_\_

To be considered, defendant needs:

1. A Suffolk, Nassau, Queens, or Brooklyn address where they can be reached, **AND**
2. A total of **5 points** from the following rating scale categories:

Unverified	Verified	
		<b>Residence ( Steady residence in Suffolk, Nassau, Queens, Brooklyn)</b>
3	3	1 year at present residence
2	2	1 year total between present and last residence <b>OR</b> 6 months at present residence
1	1	6 month total between present and last residence <b>OR</b> 5 years or more in Suffolk, Nassau, Queens, or Brooklyn
0	0	Less than 6 months in present and prior residence; <b>OR</b> less than 5 years living in Suffolk, Nassau, Brooklyn, or Queens; <b>OR</b> None of the above/Conflicting Info
		<b>Family Ties/Contact</b>
3	3	Living in established family home <b>AND</b> has regular contact with immediate family members
2	2	Lives in established family home
1	1	Does not live in established family home <b>AND</b> has regular contact with immediate family members
0	0	None of the above/Conflicting Info
		<b>Employment</b>
3	3	Steadily employed in present job for 1 or more years
2	2	Steadily employed in present job for 4 months <b>OR</b> steadily employed in present <b>AND</b> prior job for 6 months <b>OR</b> Homemaker <b>OR</b> Retired
1	1	In present job less than 4 months <b>AND</b> job is still available; <b>OR</b> is unemployed for less than 3 months <b>AND</b> was employed for 9 or more months steadily in last job
1	1	Is currently on Public Assistance, Unemployment Insurance, SSI, SSD, Retired
		<b>School</b>
3	3	Presently attending school regularly
2	2	Out of school less than 6 months <b>AND</b> employed <b>OR</b> in training program
1	1	Out of school less than 3 months <b>AND</b> unemployed <b>AND</b> not in training program
0	0	None of the above/Conflicting Info
		<b>Prior Record of Arrests</b>
2	2	No convictions
0	0	1 Misdemeanor conviction <b>OR</b> Youthful Offender Adjudication
-1	-1	2 Misdemeanor <b>OR</b> 1 Felony conviction
-2	-2	3 or more Misdemeanor <b>OR</b> 2 or more Felony convictions
0	0	Not Verified/ Conflicting Info
		<b>Discretion</b>
+1	+1	Cooperative, over 65 years old, attending hospital or treatment program
-1	-1	Uncooperative, under the influence of alcohol or drugs Warrants
_____	_____	<b>Total Points Verified and Unverified</b>

### Addendum Page to ROR Report

Report Date: \_\_\_\_\_

Defendant Name: \_\_\_\_\_ Defendant DOB: \_\_\_\_\_

Number of financial dependents (including applicant) in the household \_\_\_\_\_

Amount of Net (Take-Home) Pay \$ \_\_\_\_\_ per  Year  Month  Bi-weekly  Weekly

**Assessment of Presumptive Eligibility for Assigned Counsel:**

- Defendant's income is at or below 250% of the FPG [Based on net-income & number of financial dependents, using the FPG chart]
- Applicant is currently receiving need-based public assistance
- Applicant has been deemed eligible for assigned counsel w/in last 6 months.

**The defendant is eligible for assigned counsel if any of the above are checked.**

# **EXHIBIT J**

Date: \_\_\_\_\_  
 Screened by: \_\_\_\_\_  
 \_\_\_\_\_

**CONFIDENTIAL**

**Suffolk County Legal Aid Society**

**Application for Assignment of Counsel under County Law, Article 18-B**

**PART I**

<u>PERSONAL INFORMATION</u>	<u>CURRENT CASE INFORMATION</u>
Full Name: _____	Arrest Date: _____ Arraignment Date: _____
Date of Birth: _____	Docket No. (if available): _____
Home Address: _____ _____	Name of Court: _____
Home phone: _____	Judge: _____
Cell phone: _____	Charges: _____ _____
Email: _____	_____
Number of financial dependents in household: _____ _____ _____	Co-Defendants (if any): _____ _____ _____
	Next Scheduled Court Date: _____

**EMPLOYMENT**

Occupation (if a student, indicate the school attending; if self-employed, indicate and describe the nature of employment):  
 \_\_\_\_\_  
 \_\_\_\_\_

Name and address of Current Employer:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Amount of Net (Take-Home) Pay: \$ \_\_\_\_\_ per  Year  Month  Bi-weekly  Weekly

Instructions for Court/Screeners: Using the FPG Income chart, is the applicant's income at or below 250% of the FPG?  Yes  No


**OTHER CIRCUMSTANCES:**

1) Is the applicant currently incarcerated, detained, or confined to a mental health facility?  Yes  No

2) Is the applicant currently receiving need-based public assistance (or recently been deemed eligible, pending receipt)?  
 Yes  No

3) W/n past 6 months, has the applicant been found eligible for assigned counsel in another criminal case?  Yes  No

Signature: \_\_\_\_\_ Date: \_\_\_\_\_



**Applicant: Stop here. Await further instructions.**

Instructions for Court/Screeners: Is Applicant presumptively eligible for assigned counsel?  Yes  No



**CONFIDENTIAL**

**PART II**

**OTHER INCOME**

Does the applicant currently receive pension, annuity, or retirement payments? \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, list the amount: \_\_\_\_\_

Does the applicant currently receive income from owned real estate? \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, list the amount: \_\_\_\_\_

List other sources and amount of income the applicant receives (do not include child support or need-based public assistance):

1. \_\_\_\_\_
2. \_\_\_\_\_

**ASSETS**

List estimated total amount currently in applicant's bank accounts (savings and checking): \_\_\_\_\_

List all real estate applicant owns (see Instructions for primary residence exception): \_\_\_\_\_

Current Market Value (estimate): \_\_\_\_\_ Amount owed: \_\_\_\_\_

List any vehicles applicant owns not necessary for basic life activities: \_\_\_\_\_

Current Market Value (estimate): \_\_\_\_\_ Amount owed: \_\_\_\_\_

List value of all stocks or bonds in applicant's name: \_\_\_\_\_

**MONTHLY LIVING EXPENSES**

Food: \$ \_\_\_\_\_ Rent or Mortgage Payments: \$ \_\_\_\_\_ Utilities: \$ \_\_\_\_\_

Transportation/Auto Expenses (Including Payments & Insurance): \$ \_\_\_\_\_

Child Care: \$ \_\_\_\_\_ Child Support Paid Out: \$ \_\_\_\_\_ Alimony Paid Out: \$ \_\_\_\_\_

Medical Bills (Including Health Insurance, Medications, Medical Debts): \$ \_\_\_\_\_

List other expenses. Include employment-related expenses, educational loans & costs, minimum monthly credit card payments, unreimbursed medical expenses, and expenses related to age or disability:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

**For Court or Screener**

**AMOUNT NEEDED FOR BAIL**

Bail has been set: \_\_\_\_\_ Yes \_\_\_\_\_ No If Yes, indicate the amount: \_\_\_\_\_

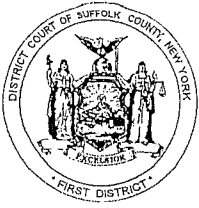
**ELIGIBILITY**

Is the applicant eligible for assigned counsel? \_\_\_\_\_ Yes \_\_\_\_\_ No

Notes: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# **EXHIBIT K**



**ASSIGNED COUNSEL REFERRAL**  
**SUFFOLK COUNTY DISTRICT COURT**  
**400 CARLETON AVENUE, CENTRAL ISLIP, NY 11722**

**PLEASE BRING THE FOLLOWING DOCUMENTS BACK TO COURT ON THE NEXT COURT DATE. THE JUDGE WILL REVIEW YOUR DOCUMENTS AND DETERMINE IF YOU ARE ELIGIBLE FOR ASSIGNED COUNSEL.**

\*YOUR PARENT OR GUARDIAN if you are under the age of 21 years old - unless the Judge has ordered otherwise in writing - legal guardians must bring proof.

\*IDENTIFICATION - Drivers License or other Photo ID or Birth Certificate

\*NAMES, ADDRESSES & PHONE NUMBERS of at least 2 friends or family members who do not live with you who can verify your information

\*BANK BOOKS and/or BANK STATEMENTS

\*RECENT PAY STUBS for all household members

\*INCOME TAX RETURNS or W2 & 1099 forms from last year

\*PROOF OF ANY FINANCIAL HARDSHIPS like Foreclosures, gas or electric cut-off, excessive medical bills, or a notice of eviction.

\*PROOF OF SOCIAL SERVICES awards and/or paperwork from the Department of Social Services showing your case is active and the aid you receive.

\*PROOF OF ANY OTHER BENEFITS like Social Security, Worker's Compensation, Veterans Disability, Retirement Pension, and/or Unemployment Insurance, in the form of award letters and/or copies of checks

---

**Haga el favor de traer los documentos siguientes de vuelta al tribunal en la proxima fecha judicial. El juez repasara sus documentos para determinar si usted es elegible para tenerle asignado un abogado.**

\*SU PADRE/MADRE O TUTOR si tiene menos de 21 anos - a menos que el juez haya ordenado por escrito lo contrario - los tutores legales deben traer prueba.

\*IDENTIFICACION - Licencia de manejo o otra I.D. con foto o partida de nacimiento

\*NOMBRES, DIRECCIONES Y NUMEROS DE TELEFONO de al menos 2 amigos o miembros familiares que no viven con usted y que pueden verificar su informacion

\*LIBERTAS BANCARIAS y estados de cuentas bancarias

\*TALONES RECIENTES DE CHEQUES de todos los miembros de la casa

\*DECLARACIONES DE IMPUESTOS o los formularios W2 y 1099 del ano pasado

\*PRUEBA DE CUALESQUIER DIFICULTADES FINANCIERAS como juicio hipotecario, corte del servicio electrico o de gas, cuentas medicas excesivas, o un aviso de desalojamiento.

\*PRUEBAS DE SUBVENCIONES Y PAPELEO DEL DEPARTAMENTO DE SERVICIOS SOCIALES que muestran que su caso es vigente y la ayuda que recibe

\*PRUEBA DE CUALESQUIER OTROS BENEFICIOS como Seguro Social, Compensacion de Obreros, Incapacidad de Veteranos, Pension de jubilacion, y seguro de desempleo, en forma de cartas de subvencion y copias de cheques

**NEW YORK STATE UNIFIED COURT SYSTEM**

SUFFOLK COUNTY DISTRICT COURT

400 CARLETON AVENUE CENTRAL ISLIP, NEW YORK 11722

TELEPHONE: (631) 853-7500

**LEGAL AID ELIGIBILITY**

**IF YOU ARE SEEKING TO HAVE A LEGAL AID ATTORNEY ASSIGNED TO YOUR CASE. YOU MUST BRING THE FOLLOWING WITH YOU ON YOUR NEXT COURT DATE:**

1. A PARENT OR A GUARDIAN IF YOU ARE UNDER 21 YEARS OLD
2. PHOTO IDENTIFICATION
3. BANK BOOKS OR BANK STATEMENTS IF ANY
4. RECENT PAY STUBS FOR ALL HOUSEHOLD MEMBERS
5. INCOME TAX RETURNS AND/OR W2 AND/OR 1099 FORMS FROM THE PREVIOUS YEAR
6. PROOF OF FINANCIAL HARDSHIPS SUCH AS FORECLOSURE, UTILITIES BEING SHUT OFF FROM YOUR RESIDENCE, EXCESSIVE MEDICAL BILLS, OR A NOTICE OF EVICTION
7. PROOF OF SOCIAL SERVICE AWARDS AND/OR PAPERWORK FROM THE DEPARTMENT OF SOCIAL SERVICES SHOWING YOUR CASE IS ACTIVE AND THE AID YOU CURRENTLY RECEIVE.
8. PROOF OF ANY OTHER BENEFITS SUCH AS SOCIAL SECURITY, WORKER'S COMPENSATION, VETERANS DISABILITY, RETIREMENT PENSION, OR UNEMPLOYMENT INSURANCE IN THE FORM OF AWARD LETTER, BANK STATEMENTS AND/OR COPIES OF CHECKS.

# **EXHIBIT L**

**THE SUFFOLK COUNTY BAR ASSOCIATION**



560 Wheeler Road  
 Hauppauge, New York 11789-4357  
 (631) 234-5511 • FAX (631) 234-5899  
 E-Mail: scba@scba.org  
 Website: www.scba.org

August 5, 2016

**President**  
 John R. Calcagni

**President Elect**  
 Patricia M. Meisnerheimer

**First Vice President**  
 Justin M. Block

**Second Vice President**  
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**Treasurer**  
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 Francine H. Most  
 Luis Antonio Pagan  
 Arthur E. Shulman  
 Richard L. Stein  
 Harry Tills

**Past President Directors**  
 Dennis R. Chase  
 William T. Ferris III  
 Donna England

**Counsel**  
 John M. Cross

The Honorable Andrew M. Cuomo  
 Governor of New York State  
 NYS State Capitol Building  
 Albany, New York 12224

Dear Governor Cuomo:

I write on behalf of the Suffolk County Bar Association's Task Force ("Task Force") to Study and Report on the Final Report of the Office of Indigent Legal Services ("ILS") dated April 4, 2016 ("Final Report"). The Task Force would like to express its concerns with respect to a recent Bill (A10706/SE144) ("Bill") passed by the New York Legislature. Among other things, the Bill requires New York State to fund the costs of legal defense of the indigent throughout the State and empowers ILS to adopt rules and regulations to ensure adequate representation in criminal proceedings throughout the State.

At the outset, we wish to affirm our commitment to the core principle of access to justice for indigent defendants in criminal court. In that regard, Suffolk County has already implemented procedures so that indigent defendants who are charged with a crime are represented by counsel.

However, the Task Force has several concerns with the Bill.

First, we believe that, if enacted into law, the Bill's impact on both State and County resources is likely to be significant. Assuming ILS adopts the same eligibility standards under the authority granted to it in the Bill as it has in the Final Report, there would be a significant expansion of the number of people eligible for assigned counsel.

Moreover, assuming the procedures to be articulated by ILS under the authority granted to it in the Bill are similar to those set forth in the Final Report, it appears that defendants will not be required to substantiate their claims to indigence nor will they be penalized for submitting false information. Thus, the potential for fraud in order to obtain assigned counsel is both manifest and likely, thereby causing the State and local governments to incur even greater costs, which are unlikely to be recovered.

While we understand and acknowledge that the need to address the issue of counsel for the indigent is pressing, we respectfully request that you delay consideration of the Bill so that we may provide you with specific documentation to substantiate our concern and our position that these standards and procedures must be re-examined. The likely drastic increases in new, unanticipated and unbudgeted or underfunded expenditures on both the State and local levels impel an examination of the Bill's likely consequences.

In making this request, we reiterate our belief in, and commitment to, the principle that indigent persons are incontrovertibly entitled to be represented by counsel. The issue we raise is that we don't believe that taxpayers should have to fund defense counsel for individuals who, in fact, have the means to retain private counsel.

Thank you for your consideration.

Very truly yours,

*John R. Calcagni*  
 JOHN R. CALCAGNI  
 President

# **EXHIBIT M**

**Washington County Public Defender/Assigned Counsel:  
Application for Counsel**

**Complete the attached packet and return "In Person" to:**

Washington County Assigned Counsel Office  
Washington County Court House  
Building C – Basement  
383 Broadway  
Fort Edward, New York 12828  
Phone: (518)-746-2403  
Fax: (518)-746-2406

**Applications will be accepted from:  
9:00 a.m. to Noon and 1:00 p.m. to 3:00 p.m. (Mon. – Thurs.)**

**ALL INFORMATION MUST BE PROVIDED OR YOUR  
APPLICATION WILL NOT BE ACCEPTED.**

**PLEASE BRING THE FOLLOWING:**

- 1. **Identification** (Driver's license, DMV I.D., Social Security card, Military I.D, Learner's Permit, Medicaid Card, Passport, Green Card, Voter Registration Card, any Government issued I.D. card)
- 2. **Charges, Complaints, Summonses, Tickets,**  
Supporting Depositions, Statements, Petitions
- 3. **Proof of income for all household members:**  
(Paystubs, Most Recent Tax Return, Disability, Social Security, Workers' Comp., Unemployment, Social Services, Child Support/Alimony, Pension Benefits, Retirement Benefits)

If you have no proof of income, what is your present means of support? If you reside in someone else's home you must provide a notarized statement from that person explaining your current living situation.

Date Received: \_\_\_\_\_



# Application for Assigned Counsel:

Court: Village or Town (Circle One) \_\_\_\_\_

of \_\_\_\_\_

Return Date: \_\_\_\_\_ Time: \_\_\_\_\_

Charges/Matter: \_\_\_\_\_

\*\*If under 21 years of age and not emancipated, both you and your parents' financial information must be submitted with this form.

## Contact Information:

Applicant's Name: \_\_\_\_\_ Age: \_\_\_\_\_ D.O.B. \_\_\_\_\_

Soc. Sec. No. \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone #'s: (H) \_\_\_\_\_ (W) \_\_\_\_\_ (C) \_\_\_\_\_ (other) \_\_\_\_\_

Marital Status (circle one): Single/ Married/ Separated/ Divorced/ Widowed

Were you born in the United States? Yes or No

On Probation? Yes or No (Circle One) If yes, Probation Officer: \_\_\_\_\_

List All Dependents and/or Persons Living in Household and Relationship:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.

## Monthly Expenses:

Rent or Mortgage	\$ _____	Car Insurance	\$ _____
Prop/School Taxes	\$ _____	Auto Payment	\$ _____
Utilities	\$ _____	Life Ins.	\$ _____
Water	\$ _____	Transportation	\$ _____
Cable	\$ _____	Laundry/Dry Cleaning	\$ _____
Food and Groceries	\$ _____	Babysitting	\$ _____
Telephone	\$ _____	Medical Ins.	\$ _____
Child Support	\$ _____	Garbage	\$ _____
Dental Ins.	\$ _____	Prescription Drugs	\$ _____
Miscellaneous	\$ _____		

**Applicant Employment Information:**

Employer or Business: \_\_\_\_\_  
Address: \_\_\_\_\_

Gross Income \$ \_\_\_\_\_  
Net Income \$ \_\_\_\_\_  
Weekly or Biweekly (circle)

**Employment Information:**

Contact Person: \_\_\_\_\_  
Telephone No. of Employer: \_\_\_\_\_  
Date Employment Started: \_\_\_\_\_

**If You Are Unemployed:**

Last day of work: \_\_\_\_\_  
Name of last employer: \_\_\_\_\_  
Telephone No. \_\_\_\_\_  
Are you or will you be applying for unemployment benefits?  
Yes or No (Circle One) If no why? \_\_\_\_\_

If you have no source of income, please explain how you are supporting yourself.

\_\_\_\_\_  
\_\_\_\_\_

**Do You Receive Child Support?** If Yes: \$ \_\_\_\_\_ Weekly/ Monthly (circle one)

**Other Income:** (List source of income for example: Welfare, income of other members of the family).

Name: \_\_\_\_\_ Source \_\_\_\_\_ Amount \$ \_\_\_\_\_

**Assets:**

Real Property: (Describe) Value: \$ \_\_\_\_\_  
Stocks/Bonds Value: \$ \_\_\_\_\_  
Savings and/or Checking Accounts: Balance: \$ \_\_\_\_\_  
List name of Bank: \_\_\_\_\_ Balance: \$ \_\_\_\_\_  
Automobiles (Year and Make) Value \$ \_\_\_\_\_

**Creditors:** Amount Due Payment  
Weekly Monthly  
\$ \_\_\_\_\_ \$ \_\_\_\_\_

**Please Note:** If you are applying for assigned counsel and eligible to receive same in this type of proceeding and you are untruthful regarding any relevant information or should your financial circumstances change after you are assigned, you may be held for all or part of the legal fees for representing you.

Sworn to before me this \_\_\_\_\_  
Day of \_\_\_\_\_, \_\_\_\_\_.

Sign: \_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Notary Public

# **EXHIBIT N**

**APPLICATION FOR PUBLIC DEFENDER/ASSIGNED  
COUNSEL REPRESENTATION**

Washington County Assigned Counsel Office  
Washington County Courthouse  
Building C, Basement  
383 Broadway  
Fort Edward, New York 12828  
Phone: (518) 746-2403  
Fax: (518) 746-2406

There are four (4) different ways to apply for assigned counsel. You may:

- 1) Apply in person by visiting the Assigned Counsel Office anytime between 9:00 am and 3:00 pm, Monday thru Friday
- 2) Fax the completed application to the Assigned Counsel Office at (518) 746-2406
- 3) Mail the completed application to the address above
- 4) On the third Tuesday of each month, from 8:30 am to 10:30 am, apply in person at the Whitehall Town or Village Court, located at:

57 Skenesborough Drive  
Whitehall, NY 12887

Along with your Application, you are encouraged to provide the following information to assist us in determining your eligibility for assignment of counsel:

- Charges, Complaints, Summonses, Tickets, Supporting Depositions and/or statements
- Identification: (Driver's license, DMV I.D., Social Security card, Military I.D., Learner's Permit, Medicaid Card, Passport, Green Card or Government- issued I.D.)

**PART I**

*Please return application to:*

*Washington County Assigned Counsel Office*

*383 Broadway, Building C - Basement*

*Fort Edward, New York 1282*

*Phone: (518)-746-2403, Fax: (518)-746-2406*

**CONFIDENTIAL**

State of New York, County Of Washington

Application for Assigned Counsel under County Law, Article 18-B

Date: _____
Screened by: _____
_____

<u>PERSONAL INFORMATION</u>	<u>CURRENT CASE INFORMATION</u>
Full Name: _____	Arrest Date: _____ Arraignment Date: _____
Date of Birth: _____ Social Security # _____	Docket No. (if available): _____
Home Address: _____	Name of Court: _____
Home phone: _____	Judge: _____
Cell phone: _____	Charges: _____
Email: _____	_____
Number of financial dependents in household: _____	_____
_____	Co-Defendants (If any): _____
_____	_____
_____	Next Scheduled Court Date: _____
_____	Represented at arraignment? <input type="checkbox"/> Yes <input type="checkbox"/> No

<u>EMPLOYMENT</u>
Occupation (if a student, indicate the school attending; if self-employed, indicate and describe the nature of employment): _____ _____
Name and address of Current Employer: _____ _____
Amount of Net (Take-Home) Pay: \$ _____ per <input type="checkbox"/> Year <input type="checkbox"/> Month <input type="checkbox"/> Bi-weekly <input type="checkbox"/> Weekly
<b>Instructions for Court/Screeners: Using the FPG Income chart, is the applicant's income at or below 250% of the FPG? <input type="checkbox"/> Yes <input type="checkbox"/> No</b>

**OTHER CIRCUMSTANCES:**

- 1) Is the applicant currently incarcerated, detained, or confined to a mental health facility? \_\_\_ Yes \_\_\_ No
- 2) Is the applicant currently receiving need-based public assistance (or recently been deemed eligible, pending receipt)?  
\_\_\_ Yes \_\_\_ No
- 3) W/n past 6 months, has the applicant been found eligible for assigned counsel in another criminal case? \_\_\_ Yes \_\_\_ No

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

***Applicant: Stop here. Await further instructions.***



Instructions for Court/Screeners: Is Applicant presumptively eligible for assigned counsel?

\_\_\_ Yes \_\_\_ No

**CONFIDENTIAL**

**PART II**

**OTHER INCOME**

Does the applicant currently receive pension, annuity, or retirement payments? \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, list the amount: \_\_\_\_\_

Does the applicant currently receive income from owned real estate? \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, list the amount: \_\_\_\_\_

List other sources and amount of income the applicant receives (do not include child support or need-based public assistance):

1. \_\_\_\_\_
2. \_\_\_\_\_

**ASSETS**

List estimated total amount currently in applicant's bank accounts (savings and checking): \_\_\_\_\_

List all real estate applicant owns (see Instructions for primary residence exception): \_\_\_\_\_

Current Market Value (estimate): \_\_\_\_\_ Amount owed: \_\_\_\_\_

List any vehicles applicant owns not necessary for basic life activities: \_\_\_\_\_

Current Market Value (estimate): \_\_\_\_\_ Amount owed: \_\_\_\_\_

List value of all stocks or bonds in applicant's name: \_\_\_\_\_

**MONTHLY LIVING EXPENSES**

Food: \$ \_\_\_\_\_ Rent or Mortgage Payments: \$ \_\_\_\_\_ Utilities: \$ \_\_\_\_\_

Transportation/Auto Expenses (Including Payments & Insurance): \$ \_\_\_\_\_

Child Care: \$ \_\_\_\_\_ Child Support Paid Out: \$ \_\_\_\_\_ Alimony Paid Out: \$ \_\_\_\_\_

Medical Bills (Including Health Insurance, Medications, Medical Debts): \$ \_\_\_\_\_

List other expenses. Include employment-related expenses, educational loans & costs, minimum monthly credit card payments, unreimbursed medical expenses, and expenses related to age or disability:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

**For Court or Screener**

**AMOUNT NEEDED FOR BAIL**

Bail has been set: \_\_\_\_\_ Yes \_\_\_\_\_ No If Yes, indicate the amount: \_\_\_\_\_

**COST OF RETAINING PRIVATE COUNSEL**

What is the average cost of retaining private counsel in your county for the offense the applicant is being charged with?

\_\_\_\_\_

Based on the information in the previous section (seriousness of the offense, income and expense information, etc.), will this applicant be able to afford the cost of counsel indicated above? \_\_\_\_\_ Yes \_\_\_\_\_ No

**ELIGIBILITY**

Is the applicant eligible for assigned counsel? \_\_\_\_\_ Yes \_\_\_\_\_ No

If answering no, state why:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WASHINGTON COUNTY ASSIGNED COUNSEL OFFICE  
WASHINGTON COUNTY COURTHOUSE

THOMAS CIOFFI, ESQ.  
SUPERVISING ATTORNEY

MARIE DECARLO-DROST  
ADMINISTRATOR

PATRICIA CONNORS  
LEGAL AIDE

BUILDING C, BASEMENT  
383 BROADWAY  
FORT EDWARD, NEW YORK 12828  
TELEPHONE: (518) 746-2403  
FAX: (518) 746-2406

**CONFIDENTIAL**

Date:

To:

RE: \_\_\_\_\_  
\_\_\_\_\_

Please be advised that we have determined that your Application for Assigned Counsel Representation has been **Denied**.

This recommendation is based on the following information about the case and the financial information that you provided:

**1) Nature of the case**

a) We considered the type of charges against you, which are:

- Violation  Misdemeanor  Class C, D, or E felony  Class A or B felony  
 Sex offense, violent felony offense, or homicide offense

b) We also considered whether there is any indication that the case against you might be complex. Examples include cases that may require hiring an expert, an investigator, or forensic specialist, or that may involve complex legal issues, or mental health or mental competence issues. In your case, we determined:

- No indication of case complexity  Indication of possible case complexity, as follows:

\_\_\_\_\_

**2) We considered your income, which is approximately \$ \_\_\_\_\_ per week/month/year.**

**3) We considered your assets, which include (check all that are applicable):**

- Bank accounts in the approximate amount of \$ \_\_\_\_\_  
 Securities/stocks worth approximately \$ \_\_\_\_\_  
 Other assets (description and approximate value): \_\_\_\_\_

**4) We considered your living expenses, including those of your dependents, which are approximately \$ \_\_\_\_\_ per week/month/year.**

**5) We considered your current debt and other financial obligations, which include (check all that are applicable):**

- Medical debt of approximately \$ \_\_\_\_\_  
 Educational debt of approximately \$ \_\_\_\_\_  
 Other debt (describe nature and amount of debt): \_\_\_\_\_

**6) We considered the following information about Bail in your case (check appropriate box):**

- You were released on your own recognizance or on pre-trial release.  
 Bail was set and you have the financial resources needed to pay it.

**7) Other factors we considered or other reasons for our ineligibility recommendation:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Very truly yours,

cc:

Marie DeCarlo-Drost

AC File Number \_\_\_\_\_



**YOUR RIGHT TO SEEK REVIEW OF THE RECOMMENDATION  
THAT YOU ARE NOT ELIGIBLE FOR ASSIGNED COUNSEL**

You have been notified of our decision to recommend to the judge that you are not financially eligible for an assignment of counsel. If you are financially able to retain private counsel, you should do so immediately. If you are unable to retain counsel, you may exercise your right to seek review of our recommendation. There are two ways you can do this:

**A. Request that we Reconsider our Recommendation that you are not Eligible**

If you believe that our recommendation is incorrect, you may request that we review and reconsider your application. Your request may be made in person, by telephone, or in writing. Upon our receipt of your request for reconsideration, we will provide you with an opportunity to submit to us any additional information you may wish for us to consider, or you may explain to us why you believe you should be provided assigned counsel.

If you choose to request that we reconsider our recommendation, you are urged to do so as soon as possible. It is best for you to act as quickly as you can to minimize any delay in the possible appointment of counsel.

Following our reconsideration, we will notify you, in writing, whether your application for assigned counsel was granted or denied.

**B. Request that the Judge Reconsider the Recommendation that you are not Eligible**

You may also request that the judge who is presiding over your criminal case review and reconsider our recommendation that you are not eligible. You may do so whether or not you have already requested reconsideration by our office. However, if you did request our reconsideration, you should wait until you receive our written decision on your reconsideration request before making your request directly to the judge.

**Please note that if you request that the judge reconsider our recommendation, we cannot guarantee the confidentiality of the information that you provided to us during the application process. The judge may order us to provide him or her with this information. Once we give it to the judge, it may become part of the court file that is available to the public.**

**This means that if you request the judge to reconsider our decision, you are waiving the right to confidentiality.**

If you decide to ask the judge to review and reconsider our recommendation, we urge you to do so immediately. Please be advised that it is best for you to act as quickly as you can to minimize any delay in the possible appointment of counsel.

If you choose to appeal to the judge, you should wait until your next scheduled court appearance. During that appearance, you should explain to the judge that you disagree with our ineligibility recommendation. You should also tell the judge why you cannot afford to retain a lawyer and need to have one assigned to you. You should bring to court a copy of our written recommendation of ineligibility. You may also provide the judge with any additional information or documentation that you believe will be helpful to your application.

**Please be advised that if you choose to request that a judge reconsider our recommendation, the judge will not necessarily treat your financial information as confidential or privileged, meaning, it may be used against you in this or any subsequent criminal proceeding. You also may be prosecuted if there is any false information contained in your application.**

**NOTE: When you are communicating with the judge about your application for assignment of counsel, do not discuss what happened in your case. Limit your discussion to your financial information. DO NOT DISCUSS THE FACTS OF YOUR CASE.**

You may contact our office at (518) 746-2403 if you have any questions or need clarification of these instructions.