



August 21, 2015

Ms. Tammeka Freeman
Executive Assistant
New York State Office of Indigent Legal Services
80 S. Swan St., 29th Floor
Albany, NY 12210

RE: Letter in Support of NYSDA's August 12, 2015 Statement Submitted to the New York State Office of Indigent Legal Services for Public Hearings on Eligibility for Assignment of Counsel after the *Hurrell-Harring* settlement.

Dear Ms. Freeman,

Thank you for the opportunity to comment on the important topic of establishing criteria and procedures to guide courts when determining eligibility for mandated legal representation in New York State criminal and family court proceedings. The National Legal Aid & Defender Association (NLADA) has followed developments in the *Hurrell-Harring* litigation closely. We are delighted to witness the work currently underway by the New York State Office of Indigent Legal Services (ILS) to make substantial and lasting changes to the way in which New York State provides mandated legal representation to those entitled to it. Founded in 1911, NLADA is the United States' oldest and largest nonprofit organization providing advocacy, support, and training for indigent defense.

Among other things, NLADA is known for developing national standards and guidelines for the provision of indigent defense representation. NLADA's guidelines regarding determination of eligibility for representation complement the work of the American Bar Association (ABA) in this area.¹ Both organizations use as the fundamental basis for determining eligibility for counsel a consideration of **financial inability** and **substantial hardship**. To tease out these broad, general criteria, NLADA provides a great deal of guidance in Chapter 5, *Financial Eligibility for Representation*, in the *1976 Guidelines for Legal Defense Systems in the United States, National Commission Study Commission on Defense Services*. We respectfully suggest that you consider these materials as part of your review process.²

While the Guidelines report is by no means new, NLADA's experience in the intervening years is that prospective clients encounter the same obstacles today as in 1976. Those include use of standards that "do not comport with realistic evaluations of the cost of

¹ See Part VII, *Eligibility for Assistance*, ABA Standards for Criminal Justice Providing Defense Services (3d edition, 1992).

² The complete Guidelines document, which contains examples of forms and detailed discussion, is available upon request from NLADA. Chapter 5 begins on p. 72. The blackletter version of the Guidelines is available [here](#) (see Guidelines 1.5, 1.6, and 1.7).



retaining counsel or the cost of providing the necessities of life" and a lack of equal treatment of individuals in similar circumstances.

The New York State Defenders Association (NYSDA) has submitted a well-reasoned document that addresses policy questions and other considerations ILS has been tasked to consider by the *Hurrell-Harring* settlement in its development of eligibility criteria and procedures.³ The positions put forth by the NYSDA are based on that organization's decades of experience and nuanced understanding from working directly with providers of indigent defense services throughout New York State and are informed by widely accepted national standards. NLADA supports the positions taken in the NYSDA document. Substantiation for those positions can be found in NLADA and ABA standards.

Your hearings offer a rare opportunity for ILS to hear about, and then put into place, policies and procedures that will fulfill all clients' rights to constitutionally and statutorily mandated legal representation in criminal and family court proceedings. We encourage your consideration of the ideas put forth by the NYSDA and found in the NLADA and ABA standards. NLADA looks forward to assisting in efforts of ILS, NYSDA, the State of New York, and individual New York counties to make eligible clients' rights to mandated legal representation a reality.

Sincerely,

Michelle Bonner

Michelle Bonner
Chief Counsel, Defender Legal Services

³ The six policy areas are: 1) Whether screening for eligibility should be provided by the Primary Provider of Mandated Representation in the county; 2) Whether persons who receive public benefits, cannot post bond, reside in correctional or mental health facilities, or have incomes below a fixed multiple of federal poverty guidelines should be deemed presumed eligible and be represented by public defense counsel until that representation is waived or a determination is made that they are able to afford private counsel; 3) whether (a) non-liquid assets and (b) income and assets of family members should be considered available for purposes of determining eligibility; 4) whether debts and other financial obligations should be considered in determining eligibility; 5) whether ownership of a home and ownership of an automobile, other than an automobile necessary for the applicant to maintain his or her employment, should be considered sufficient, standing alone, to deny eligibility; and 6) whether there should be a process for appealing any denial of eligibility and notice of that process should be provided to any person denied counsel. *Hurrell-Harring, et al. v. State of New York, et al.*, No. 8866-07 (N.Y. Sup. Ct. Oct. 21, 2014), Stipulation and Order of Settlement, p. 12.

