

INDIGENT LEGAL SERVICES BOARD

AGENDA

June 17, 2016

Association of the Bar of the City of New York

- I. Opening Remarks by the Chief Judge**
- II. Approval of Minutes from April 22, 2016 Board Meeting**
- III. Honoring Judge Toni Cimino**
- IV. Report on Pending Legislation (Counsel Joe Wierschem)**
- V. Report on Onondaga County Mentor Program and RFP (Amanda Oren)**
- VI. Report on *Hurrell-Harring* Caseload Standards Study (Andy Davies & Nora Christenson)**
- VII. Report on Progress of *Padilla* Regional Immigration Assistance Centers**
- VIII. Schedule of Remaining 2016 Board Meetings**
 - * Friday, September 23**
 - * Friday, December 9**
- IX. Concluding Remarks**

Minutes for ILS Board Meeting

April 22, 2016

11:00 A.M.

Office of the Chief Judge

Board Members Present: Chief Judge Janet DiFiore, Carmen Ciparick, Sheila DiTullio, Vince Doyle, John Dunne, and Joe Mareane

ILS Office Attendee(s): Bill Leahy, Joseph Wierschem, Joanne Macri and Patricia Warth

I. Opening Remarks by the Chief Judge

Chief Judge Janet DiFiore opened her first meeting as Chair of the board. She expressed her commitment to the spirit and purpose of the legislation. In addition, Chief Judge DiFiore noted that she was a member of the Kaye Commission and has followed the ILS progress since its inception. She looks forward to learning more about the work and progress of both the board and the ILS Office and is committed to using her position and authority in any way appropriate to advance the quality of indigent legal services throughout the state.

Bill Leahy then welcomed the new Chief Judge and noted his appreciation for her welcoming remarks. He noted that while a lot of progress has been made, there is much that remains to be accomplished. He expressed to the Chief that the board is very active in promoting the goals of both the board and the office. And, finally, he is thrilled to work with the new Chief Judge.

John Dunne also welcomed the new Chief Judge. He noted that they worked together on the Kaye Commission and that he was delighted to have someone who has been in the trenches working for change and progress. John Dunne expressed that this will be a wonderful new challenge and Judge DiFiore's leadership will be key.

II. Honoring Sue Sovie

Bill Leahy passed around a group photo that included Sue Sovie from Chief Judge Lippman's farewell luncheon. The photo will hang in the ILS Office's Jonathan Lippman Conference Room in Albany. Sue was a champion of family law representation. She was loyal and honored to be part of the ILS Board. She was "one among giants." At her last meeting, she championed the ILS *Standards for Parental Representation in State Intervention Matters*. Bill noted that Angela Burton attended Sue's memorial service in Watertown.

Sheila DiTullio added that Sue "had a heart as big as the ocean." And, at the luncheon depicted in the photo, Sue said, "it was the most exciting day of [her] life."

III. Approval of Minutes from the November 6, 2015 Board Meeting

The Chief Judge inquired whether the board members had received copies of the minutes from the prior meeting. The board members acknowledged that they had in fact received the minutes. The Chief Judge then asked the Board to vote to approve the minutes.

John Dunne moved to approve the minutes; his motion was seconded by Vince Doyle and unanimously approved by the board members in attendance.

IV. Staffing Additions and Changes in the ILS Office

Bill shared that the eighth and final member of the *Hurrell-Harring* team was hired on April 18. He noted that it was 18 months from the emergency board meeting where the board authorized the ILS Office to accept the role wherein it would lead the settlement implementation.

Bill also noted that a new grants manager received initial approval and would hopefully join his staff by May 9, 2016.

V. Allocation of Aid to Localities Appropriations for FY 2014-15, 2015-16, and 2016-2017

Bill reiterated his disappointment with the outcome of the budget process. Although the Hurrell-Harring counties received full funding, there was no additional funding for counsel at arraignment or caseload reduction or quality improvements in any of the other counties. He explained that the lack of funding has an immediate negative effect requiring action by the board.

After a thorough review of all agency appropriations which might be used to augment the previously authorized \$4 million for the Counsel at First Appearance (CAFA) RFP, Bill noted that there were two potential appropriations that could be used: in 2014, the board allocated a total of \$1,740,278 to establish a Wrongful Conviction Center and to enhance six Assigned Counsel Programs. An identical allocation was then made in 2015.

Bill proposed postponing these grants and reallocating the money to fund the CAFA RFP. Specifically, Bill asked the board to vote to reallocate the \$1,740,278 in FY 2014-2015 funding and \$1,740,278 in FY 2015-2016 from its original purpose and direct the funds be used instead to finance the first and second years of a CAFA RFP for counties outside NYC. In addition, he recommended that the allocation of \$1,740,278 from the FY 2016-2017 Aid to Localities appropriation for the purpose of augmenting the \$4 million for the third year of the CAFA RFP.

With the actions proposed, the total available for CAFA would increase from \$4 million to \$5,740,278 for each of the three years of the successor CAFA RFP which will be issued in 2016.

Vince Doyle indicated that he was greatly troubled by postponing the Assigned Counsel Program (ACP) enhancement grants. He stated that the core mission of the board is to deal with ACPs. He noted that some counties have inadequate ACPs and keeping the private bar involved is the highest goal because you want the energy and innovation of private attorneys. He went on to say that reform efforts are generally led by state and city bars and county lawyers. In Vince's opinion, assisting the ACPs is as close to the goals of ILS as CAFA.

Bill responded that counties could use funds from their annual fall distributions to supplement the ACP funding. He noted the creativity and progress in the plans submitted. Bill also said that his office will focus on working with the other 57 counties to deal with ACP development and infrastructure.

Sheila DiTullio said that the bottom line is that CAFA progress needs to continue.

Vince requested that the reallocation requests be voted separately: one for the Wrongful Conviction Prevention Center and one for the ACP enhancement grants.

Vince Doyle moved to approve the proposed reallocation concerning the Wrongful Conviction Prevention Center; his motion was seconded by Joe Mareane and unanimously approved by the Board.

Carmen Ciparick moved to approve the proposed reallocation concerning the ACP enhancement grant; her motion was seconded by Joe Mareane; this motion received 4 supportive votes and one opposed;

Based upon the outcome of the votes, Bill noted that he would file a plan with the budget director, as authorized by the FY 2016-2017 appropriation.

Sheila reiterated that CAFA is very important and Bill added that Both Erie and Westchester counties were getting close to 100% CAFA compliance.

VI. Beyond *Hurrell-Harring*: Assessing our Progress and Planning Ahead

Bill stated that a review of the Cost Estimate Reports (generated every fall for the past three years) demonstrates some noteworthy trends as a result of ILS efforts and quality and CAFA grants. The review revealed, among other things, significant hiring increases and progress in reducing caseloads. However, Bill noted that further progress requires further funding. This should be evident in the five *Hurrell-Harring* counties but, in the remaining 52 counties (excluding NYC), continued progress is uncertain.

Bill also mentioned the Fahy-DeFrancisco bills which began as same but the DeFrancisco bill was amended to include a provision that all funding go through ILS. Bill stated that no locality will see a funding level decrease.

Bill also discussed the Eligibility Standards which currently have an effective date of 10/3/16. They apply to criminal cases outside of New York City and are intended to be a "guide" for judges. Bill is meeting with the Chief Defenders on 4/27. Of course, the concerns are increased costs without additional funding.

Joe Mareane said there is certainly a lot of angst and anger because there will be an increase in eligible cases and no top end to cost exposure by the counties. Joe Mareane noted that the ILS Office has a sterling reputation among the counties but this feels like a new unfunded mandate and that may affect the established relationships.

Bill noted that as they act to correct the Kaye Commission recommendations, costs will undeniably rise. He said that both NYSAC and Chief Defenders Association are doing cost surveys. He hopes they will share their findings so that they can be included in the next budget request.

Bill stated that training judges and lawyers is key and that his office is receiving cooperation and assistance from Judge Marks and Judge Coccoma.

VII. Presentation on the Establishment of *Padilla* Regional Immigration Assistance Centers

Joanne Macri, ILS Director of Regional Initiatives, proudly reported that the *Padilla* regional Immigration Centers are up and operational in six locations with a total staff of 20+. Joanne stated that more than 20 trainings and presentations were held and that even judges have requested brochures for their courtrooms.

On June 2, 2016, staff from all of the centers will meet to network and discuss having similar messaging across the state. They will also focus on best practices, proper screening protocols and documenting files regarding adverse consequences.

Joanne stated that educating family courts is a priority. She noted that this especially important because 1 out of 5 children have foreign born parents. Training plans are underway.

The Chief Judge applauded the progress and said that training efforts at the Judicial Institute will be reinvigorated and she'd love to have Joanne present there.

Joanne said that when there is not a lot of funding, regionalizing is a great tool and it got counties to collaborate.

Bill added that all hiring is done in consultation with Joanne who is incredibly skillful. The result is fantastic staffing at each center.

VIII. Status of Hurrell-Harring Settlement Implementation

Patricia Warth, Chief *Hurrell-Harring* Implementation Attorney, outlined some of the progress of the 5-county settlement.

- CAFA plan was issued in 11/2015 and is in the process of being implemented; Patricia noted that their eyes are open to change systems wherever possible to keep costs and burden to a minimum
- Quality standards were also issued in 11/2015; Patricia highlighted the fact that Tompkins and Schuyler counties merged their ACPs as of April 1 and it's going well - thanks to Tompkins; also, Onondaga County formalized a mentoring program with a group of committed assigned counsel providers - creating a culture of collaboration;
- Caseload relief: ILS will determine what are appropriate caseloads; a vendor was selected but not yet finalized to conduct a study and prepare a report by November;
- Eligibility Criteria: Patricia stated that created these standards were a labor of love that took to heart the language of the 2006 Kaye Commission Report; they stuck to the law and recognized that the standard was not poverty but rather the ability to pay; as discussed earlier, training discussions are underway;

IX. Reminder to File JCOPE Financial Disclosures

All board members were reminded that JCOPE financial disclosures needed to be filed by May 15, 2016.

X. Schedule of Remaining 2016 Board Meetings

- Friday, June 17
- Friday, September 23
- **Friday, December 9**

Board members were advised that there was a change in date for the last meeting of 2016.

XI. Concluding Remarks

John Dunne stated that he was very impressed by Bill and his staff and those sentiments were echoed by Chief Judge DiFiore.

Bill added that new standards always foster concern but they provide a great foundation and, over time, standards are the best support for increased funding.

The meeting was adjourned.

S 8114 DEFRANCISCO Same as [A 10706](#) Rules (Fahy)

ON FILE: 06/13/16 County Law

TITLE....Requires state reimbursement to counties the full amount of expenditures for indigent legal services

- 06/13/16 REFERRED TO RULES
- 06/16/16 ORDERED TO THIRD READING CAL.1889
- 06/16/16 PASSED SENATE
- 06/16/16 DELIVERED TO ASSEMBLY
- 06/16/16 referred to ways and means

A10706 Rules (Fahy) Same as [S 8114](#) DEFRANCISCO

County Law

TITLE....Requires state reimbursement to counties the full amount of expenditures for indigent legal services

- Currently on Assembly Committee Agenda**
- Codes (LENTOL)
- OFF THE FLOOR, Wednesday, June 15, 2016
- 06/13/16 referred to codes
- 06/15/16 reported referred to ways and means

DeFRANCISCO, AMEDORE, BRESLIN, CROCI, GALLIVAN, GRIFFO, O'MARA, RITCHIE, SERINO, SEWARD, VALESKY

Amd §722-e, County L; amd §832, Exec L; amd §98-b, St Fin L

Requires state reimbursement to counties and cities in which a county is located of the full amount of expenditures for indigent legal services.

STATE OF NEW YORK

8114

IN SENATE

June 13, 2016

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the county law, the executive law and the state finance law, in relation to indigent defense services

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative findings and declaration. It is a fundamental
2 right of all persons in the United States to be represented by counsel
3 in all criminal prosecutions. In the case of Gideon v. Wainwright, 372
4 U.S. 335, the United States Supreme Court ruled that indigent persons
5 accused in state felony cases who were unable to afford counsel had a
6 constitutional right to be defended by an appointed attorney paid by the
7 state. Subsequently, the Supreme Court determined that indigent persons
8 accused of any criminal charge that could result in imprisonment, wheth-
9 er a felony or misdemeanor, are entitled to counsel at the expense of
10 the state.

11 New York state has chosen to fulfill its obligation to provide repre-
12 sentation to indigent persons accused of a crime by requiring each coun-
13 ty outside New York city and New York city to implement and fund a plan
14 to provide such representation. In 2006 the Commission on the Future of
15 Indigent Legal Services concluded that a system of county operated and
16 funded indigent defense services failed to satisfy the constitutional
17 obligation to protect the rights of indigent persons accused of a crime.
18 Such Commission recommended that funding for indigent legal services
19 come from the State's general fund rather than from the counties.

20 New York state has entered into an agreement to settle a class action
21 lawsuit that alleged deprivation of the right to counsel in five coun-
22 ties. The agreement acknowledges that the Office of Indigent Legal
23 Services and the Indigent Legal Services Board are authorized "to moni-
24 tor and study indigent legal services in the state, to recommend meas-
25 ures to improve those services, to award grant monies to counties to
26 support their indigent representation capability, and to establish
27 criteria for the distribution of such funds." While the settlement

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD15873-01-6

S. 8114

2

1 agreement pertains to only five counties, its criteria establish a stan-
2 dard for providing indigent legal services that should apply statewide.

3 The legislature finds and declares that in all criminal proceedings
4 against people unable to afford counsel, New York state is constitu-
5 tionally required to provide public defense services. The legislature
6 further finds that the state is obligated to undertake initiatives to
7 improve the quality of indigent defense, ensure representation at
8 arraignment, implement caseload standards for providers of indigent
9 legal services, and implement statewide standards for determining eligi-
10 bility for mandated representation. Mandating counties to finance the
11 state's obligation to provide indigent legal services imposes a signif-
12 icant uncontrollable financial burden on counties dependent on real
13 property taxes to fund needed services, and subject to a state imposed
14 tax cap.

15 The legislature finds and declares that in order to fulfill its
16 constitutional obligation to provide indigent legal services, the state
17 shall pay counties the full amount necessary to ensure the delivery of
18 quality legal services for indigent criminal defendants in a consistent
19 manner throughout the State.

20 § 2. Section 722-e of the county law, as added by chapter 878 of the
21 laws of 1965, is amended to read as follows:

22 § 722-e. Expenses. All expenses for providing counsel and services
23 other than counsel hereunder shall be a county charge or in the case of
24 a county wholly located within a city a city charge to be paid out of an
25 appropriation for such purposes and shall be reimbursed by the state to
26 the county or city providing such services, provided, however, that in
27 the state fiscal year beginning:

28 (a) April first, two thousand seventeen, the state shall provide
29 reimbursement for not less than twenty-five percent of such expenses;
30 and

31 (b) April first, two thousand eighteen, the state shall provide
32 reimbursement for not less than thirty-five percent of such expenses;
33 and

34 (c) April first, two thousand nineteen, the state shall provide
35 reimbursement for not less than forty-five percent of such expenses; and

36 (d) April first, two thousand twenty, the state shall provide
37 reimbursement for not less than fifty-five percent of such expenses; and

38 (e) April first, two thousand twenty-one, the state shall provide
39 reimbursement for not less than sixty-five percent of such expenses; and

40 (f) April first, two thousand twenty-two, the state shall provide
41 reimbursement for not less than seventy-five percent of such expenses;
42 and

43 (g) every year thereafter, the state shall provide reimbursement for
44 the full amount of such expenses.

45 § 3. Subdivision 3 of section 832 of the executive law is amended by
46 adding a new paragraph (n) to read as follows:

47 (n) to adopt, promulgate, amend or rescind rules and regulations to
48 carry out the provisions of this section, including to (i) ensure the
49 presence of counsel at the first appearance of any eligible defendant
50 charged with a crime, (ii) establish caseload/workload regulations for
51 attorneys providing mandated representation, and (iii) improve the qual-
52 ity of mandated representation.

53 § 4. Subdivision 3 of section 98-b of the state finance law, as
54 amended by section 2 of part E of chapter 56 of the laws of 2010, is
55 amended to read as follows:

S. 8114

3

1 3. Amounts distributed from such fund shall be limited to amounts
2 appropriated therefor and shall be distributed as follows:

3 (a) The office of court administration may expend a portion of the
4 funds available in such fund to provide assigned counsel paid in accord-
5 ance with section thirty-five of the judiciary law, up to an annual sum
6 of twenty-five million dollars.

7 (b) [An] In addition to the amounts paid to each county and the city
8 of New York pursuant to section seven hundred twenty-two-e of the county
9 law and in accordance with sections eight hundred thirty-two and eight
10 hundred thirty-three of the executive law an annual amount [of forty
11 million dollars shall be made available to the city of New York from
12 such fund for the provision of services pursuant to article eighteen-B
13 of the county law, provided that the city of New York shall continue to
14 provide at minimum the aggregate amount of funding for public defense
15 services including, but not limited to, the amount of funding for
16 contractors of public defense services and individual defense attorneys,
17 that it provided, pursuant to article eighteen-B of the county law
18 during its two thousand nine two thousand ten fiscal year] shall be
19 paid to such counties and city equal to the amount paid from such fund
20 to such counties and city in March two thousand ten.

21 (c) ~~[Within the first fifteen days of March two thousand eleven, each~~
22 ~~county other than a county wholly contained within the city of New York,~~
23 ~~shall receive ninety percent of the amount paid to such county in March~~
24 ~~two thousand ten. Within the first fifteen days of March two thousand~~
25 ~~twelve, each county other than a county wholly contained within the city~~
26 ~~of New York shall receive seventy five percent of the amount paid to~~
27 ~~such county in March two thousand ten. Within the first fifteen days of~~
28 ~~March two thousand thirteen, each county other than a county wholly~~
29 ~~contained within the city of New York shall receive fifty percent of the~~
30 ~~amount paid to such county in March two thousand ten. Within the first~~
31 ~~fifteen days of March two thousand fourteen, each county other than a~~
32 ~~county wholly contained within the city of New York shall receive twen-~~
33 ~~ty five percent of the amount paid to such county in March two thousand~~
34 ~~ten. For all state fiscal years following the two thousand thirteen two~~
35 ~~thousand fourteen fiscal year, there shall be no required annual~~
36 ~~payments pursuant to this paragraph. Notwithstanding the provisions of~~
37 ~~this paragraph, for each of the four required payments made to counties~~
38 ~~within the first fifteen days of March two thousand eleven, two thousand~~
39 ~~twelve, two thousand thirteen and two thousand fourteen, Hamilton and~~
40 ~~Orleans counties shall receive such percentage payments based on the~~
41 ~~amounts that each county would have received in March two thousand ten~~
42 ~~had it satisfied the maintenance of effort requirement set forth in~~
43 ~~paragraph (c) of subdivision four of this section in effect on such~~
44 ~~date.~~

45 (d) Remaining amounts within such fund, after accounting for annual
46 payments required in paragraphs (a)[7] and (b) [and (c)] of this subdivi-
47 sion and subparagraph (iii) of paragraph (a) of subdivision two of
48 this section shall be distributed in accordance with sections eight
49 hundred thirty-two and eight hundred thirty-three of the executive law.

50 § 5. This act shall take effect April 1, 2017.

STATE OF NEW YORK

8079

IN SENATE

June 10, 2016

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8 accused of any criminal charge that could result in imprisonment, wheth-
9 er a felony or misdemeanor, are entitled to counsel at the expense of
10 the state.

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12 sentation to indigent persons accused of a crime by requiring each coun-
13 ty outside New York city and New York city to implement and fund a plan
14 to provide such representation. In 2006 the Commission on the Future of
15 Indigent Legal Services concluded that a system of county operated and
16 funded indigent defense services failed to satisfy the constitutional
17 obligation to protect the rights of indigent persons accused of a crime.
18 Such Commission recommended that funding for indigent legal services
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21 lawsuit that alleged deprivation of the right to counsel in five coun-
22 ties. The agreement acknowledges that the Office of Indigent Legal
23 Services and the Indigent Legal Services Board are authorized "to moni-
24 tor and study indigent legal services in the state, to recommend meas-
25 ures to improve those services, to award grant monies to counties to
26 support their indigent representation capability, and to establish
27 criteria for the distribution of such funds." While the settlement

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LBD06929-13-6



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5 tionally required to provide public defense services. The legislature
6 further finds that the state is obligated to undertake initiatives to
7 improve the quality of indigent defense, ensure representation at
8 arraignment, implement caseload standards for providers of indigent
9 legal services, and implement statewide standards for determining eligi-
10 bility for mandated representation. Mandating counties to finance the
11 state's obligation to provide indigent legal services imposes a signif-
12 icant uncontrollable financial burden on counties dependent on real
13 property taxes to fund needed services, and subject to a state imposed
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26 the county or city providing such services, provided, however, that in
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29 reimbursement for not less than twenty-five percent of such expenses;
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31 (b) April first, two thousand eighteen, the state shall provide
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34 (c) April first, two thousand nineteen, the state shall provide
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39 reimbursement for not less than sixty-five percent of such expenses; and

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41 reimbursement for not less than seventy-five percent of such expenses;
42 and

43 (g) every year thereafter, the state shall provide reimbursement for
44 the full amount of such expenses.

45 § 3. Subdivision 3 of section 98-b of the state finance law, as
46 amended by section 2 of part E of chapter 56 of the laws of 2010, is
47 amended to read as follows:

48 3. Amounts distributed from such fund shall be limited to amounts
49 appropriated therefor and shall be distributed as follows:

50 (a) The office of court administration may expend a portion of the
51 funds available in such fund to provide assigned counsel paid in accord-
52 ance with section thirty-five of the judiciary law, up to an annual sum
53 of twenty-five million dollars.

54 (b) [An] In addition to the amounts paid to each county and the city
55 of New York pursuant to section seven hundred twenty-two-e of the county
56 law and in accordance with sections eight hundred thirty-two and eight

1 hundred thirty-three of the executive law an annual amount [of forty
2 million dollars shall be made available to the city of New York from
3 such fund for the provision of services pursuant to article eighteen-B
4 of the county law; provided that the city of New York shall continue to
5 provide at minimum the aggregate amount of funding for public defense
6 services including, but not limited to, the amount of funding for
7 contractors of public defense services and individual defense attorneys,
8 that it provided, pursuant to article eighteen-B of the county law
9 during its two thousand nine--two thousand ten fiscal year] shall be
10 paid to such counties and city equal to the amount paid from such fund
11 to such counties and city in March two thousand ten.

12 (c) [Within the first fifteen days of March two thousand eleven, each
13 county other than a county wholly contained within the city of New York,
14 shall receive ninety percent of the amount paid to such county in March
15 two thousand ten. Within the first fifteen days of March two thousand
16 twelve, each county other than a county wholly contained within the city
17 of New York shall receive seventy-five percent of the amount paid to
18 such county in March two thousand ten. Within the first fifteen days of
19 March two thousand thirteen, each county other than a county wholly
20 contained within the city of New York shall receive fifty percent of the
21 amount paid to such county in March two thousand ten. Within the first
22 fifteen days of March two thousand fourteen, each county other than a
23 county wholly contained within the city of New York shall receive twen-
24 ty-five percent of the amount paid to such county in March two thousand
25 ten. For all state fiscal years following the two thousand thirteen--two
26 thousand fourteen fiscal year, there shall be no required annual
27 payments pursuant to this paragraph. Notwithstanding the provisions of
28 this paragraph, for each of the four required payments made to counties
29 within the first fifteen days of March two thousand eleven, two thousand
30 twelve, two thousand thirteen and two thousand fourteen, Hamilton and
31 Orleans counties shall receive such percentage payments based on the
32 amounts that each county would have received in March two thousand ten
33 had it satisfied the maintenance of effort requirement set forth in
34 paragraph (c) of subdivision four of this section in effect on such
35 date.

36 (d) Remaining amounts within such fund, after accounting for annual
37 payments required in paragraphs (a) [,] and (b) [and (c)] of this subdi-
38 vision and subparagraph (iii) of paragraph (a) of subdivision two of
39 this section shall be distributed in accordance with sections eight
40 hundred thirty-two and eight hundred thirty-three of the executive law.

41 § 4. This act shall take effect April 1, 2017.



Onondaga County
Executive Department
Division of Purchase

*John H. Mulroy Civic Center, 13th Floor
421 Montgomery Street
Syracuse, NY 13202
www.ongov.net
Phone (315) 435-3458
FAX (315) 435-3424*

Sean Carroll
Director

JOANNE M. MAHONEY
County Executive

June 10, 2016

Subject: Request for Proposal #16-7500-006
Indigent Defense Provider(s)

Enclosed is an Onondaga County Request for Proposal (RFP) seeking a vendor to provide indigent defense services as required by New York State statute. The County is seeking a first-rate vendor to provide high quality products and services.

Please review the attached materials and respond in accordance with the instructions in the RFP. If you have technical questions relating to the scope of services or questions relating to the RFP process, please contact me directly as per Section 4.

Onondaga County will host a non-mandatory pre-proposal meeting at Onondaga County Division of Purchase Conference Room, 421 Montgomery Street 13th Floor Syracuse NY 13202 on June 17, 2016. One original and one electronic copy of the proposal must be received by Sean Carroll at Onondaga County Division of Purchase 421 Montgomery Street, Syracuse NY 13204, no later than **4:00 p.m. EDT, July 22, 2016**. Please attach the enclosed RFP signature page with your proposal.

Thank you for your anticipated interest in this service to Onondaga County. If it is not your intention to submit a proposal, please notify us in writing before the proposal close date.

Sincerely,

Sean Carroll
Director

1. INTRODUCTION AND INSTRUCTIONS

- 1.1. **RFP Certification.** Pursuant to the provisions of New York State General Municipal Law, the Onondaga County Division of Purchase certifies that the services required are not subject to competitive bidding under the professional service exemption and Onondaga County Purchasing rules require selection of services through a Request for Proposal process.
- 1.2. **Schedule of Events.** The schedule of events set out herein represents the County of Onondaga's best estimate of the schedule that will be followed. However, delays to the procurement process may occur which may necessitate adjustments to the proposed schedule. If a component of this schedule, such as the close date, is delayed, the rest of the schedule may be shifted as appropriate. Any changes to the dates up to the closing date of the RFP will be sent out as an official, written addendum prior to the closing date of this RFP. After the close of the RFP, the County reserves the right to adjust the remainder of the proposed dates, including the dates for evaluation, negotiations, contract award and the contract term on an as-needed basis with or without notice.

Release Date:	06/10/2016	Proposal Submission Deadline:	07/22/2016
Pre-Proposal Meeting	06/17/2016	Expected Award Date:	08/22/2016
Final Date for Submission of Questions:	06/20/2016		
Addendum Answering all Questions:	06/27/2016	Expected Contract Start Date:	01/01/2017

- 1.3. **Submission of Proposals.** Sealed Proposals, (one [1] original and one [1] electronic copy in the form of a compact disk or flash drive), shall be submitted to the Onondaga County Division of Purchase 421 Montgomery Street 13th Floor Syracuse, NY 13202-2494 until July 22, 2016 at 4:00 p.m. EDT. Note: Packages not containing the required number of copies will be rejected.
- 1.3.1. No proposal will be considered which is not accompanied by pricing as requested and signed by an authorized official of the firm.
- 1.3.2. Proposals must be received on or before the time and date specified. Proposals received after the time specified will not be considered and will be returned unopened.
- 1.3.3. Proposal information is restricted and not publicly available until after the award of the Contract by Onondaga County.
- 1.4. **Modifications or Withdrawal of Proposal.** A proposal that is in the possession of the Onondaga County may be altered by a letter bearing the name of the authorized person, provided it is received PRIOR to the date and time of the opening. Fax, telephone or verbal alterations will not be accepted. A proposal that is in the possession of the Onondaga County may be withdrawn by the vendor up to the time of the opening. Failure of the successful Vendor to furnish the service awarded, as a result of this advertisement, shall eliminate the Vendor from the active Vendors list for a period of time as determined by the Purchasing Director.
- 1.5. **Award and Contract Information.**
- 1.5.1 Onondaga County expects all vendors for indigent defense to make an affirmative effort to diversify legal representatives across gender, race and other denominational categories to serve two purposes:
- 1.5.1.1. To provide legal counsel matching in diversity to the clientele of the program
- 1.5.1.2. To give equal employment opportunity to attorneys from various parts of the community, providing a diverse perspective to the services provided.

- 1.5.2. The Vendor also agrees that, should it be awarded a Contract, Vendor will not discriminate against any person who performs work hereunder because of age, race, color, sex, creed, sexual orientation, national origin, or disability.
- 1.5.3. The Vendor expressly warrants to the County that it has the ability and expertise to perform its responsibilities hereunder and in so doing shall use the highest standards of professional workmanship.
- 1.5.4. Onondaga County reserves the right to reject any or all proposals, to waive any informality or technical defect in the proposals, or to award the contract in whole or in part, if deemed to be in the best interest of the County to do so.
- 1.5.5. The successful Vendor will be required to enter into and sign a formal Contract with the County with reasonable adjustments acceptable to the County. This RFP and the response of the successful Vendor will become a part of the Contract and will be in effect for the duration of the contract period. The Contract language will control over any language contained within this RFP that conflict with the signed and fully executed Contract.
- 1.5.6. The successful Vendor shall comply with the Americans With Disabilities Act.
- 1.5.7. Onondaga County will make this contract available to all municipalities, subject to eligibility under state law. Contracted vendors can provide substantially the same goods and services under the same terms and conditions detailed in the RFP, provided local law permits and the requesting municipality makes their own payment arrangements. The vendor may not increase the price on the contract but may negotiate a reduction. Onondaga County is not responsible for determining a municipality's ability to piggyback, and that right is reserved exclusively to local counsel. Although extension of the contract to additional municipalities is optional for the vendor, providing this service is a priority for the County.
- 1.5.8. By submission of this bid, each bidder and each person signing on behalf of any bidder certifies and, in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury that, to the best of its knowledge and belief, each bidder is not on the list created as a person engaging in investment activities in Iran in accordance with section 165-a of the state finance law.

1.6. Preparation of Proposal.

- 1.6.1. No proposal will be considered which modifies, in any manner, any of the provisions, specifications or minimum requirements set forth in the Request for Proposal.
- 1.6.2. Vendors are expected to examine special provisions, specifications, schedules and instructions included in this request. Failure to do so will be at the Vendor's risk.
- 1.6.3. Failure to respond (i.e. submission of a proposal, or notice in writing that you are unable to offer but wish to remain on the active mailing list) to Request for Proposals will be understood by the Onondaga County to indicate a lack of interest and will result in the removal of the Vendor's name from the applicable mailing list.



Onondaga County
Executive Department
Division of Purchase

JOANNE M. MAHONEY
County Executive

John H. Mulroy Civic Center, 13th Floor
421 Montgomery Street
Syracuse, NY 13202
www.ongov.net
Phone (315) 435-3458
FAX (315) 435-3424

SEAN CARROLL
Director

REQUEST FOR PROPOSAL
TITLE: Indigent Defense Services
RFP # 16-7500-006

CLOSING DATE AND TIME: July 22, 2016, 4:00 P.M. EDT

DELIVER TO:
Sean Carroll

John. H. Mulroy Civic Center, 421 Montgomery Street 13th Floor Syracuse NY 13204

In compliance with the RFP specifications and the Conditions of Proposing, I, the undersigned, offer and agree to furnish any or all materials and/or services upon, which prices are offered, at the price set opposite each, to the County within the time specified. I further certify that this company is compliant with the United States Iranian Divestment Act and has not been debarred, suspended, or otherwise made ineligible for participation in a federal or state competitive purchasing process. I certify that this proposal is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a proposal for the same materials, supplies, equipment, or services and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards. I agree to abide by all conditions of the proposal and certify that I am authorized to sign this proposal for the Offeror.

Name and Address of Record

State of Incorporation _____

Telephone number _____ Fax number _____

Mailing Address _____

Federal I.D. number _____

Authorized signature _____

Typed or Printed Name _____

Title of Authorized Person _____

Receipt of Addenda Nos. _____ is hereby acknowledged. (Where none received, place the figure Zero (0) in this space.)

NO LATE PROPOSALS WILL BE ACCEPTED

ONONDAGA COUNTY GREEN AND SUSTAINABLE PRACTICES

2.1 Sustainable Practices. It is the goal of Onondaga County to limit its carbon footprint and the environmental impact of its activities through its carbon calculator by achieving 1% each year over the next 25 years. If contractor participates in any sustainable practices such as but not limited to alternative fuels in contractor vehicles, recyclable materials used in advertising, or sustainable features at any support facilities, please include them here for consideration. County may consider high priority sustainability solutions through products or services of the contractor after reviewing full and compliant responses to inquiries made in the RFP.

3. PROPOSAL SUBMITTAL

3.1. Original Proposal. The complete proposal must be submitted by mail or in person in a sealed package with one (1) original and one (1) electronic copy, prior to the opening date and time. All proposals shall be marked Indigent Defense Services RFP #16-7500-006. Vendors shall include all documents necessary to support their proposal in the sealed package. Vendors shall be responsible for the delivery of proposals during business hours to the address indicated in the cover letter. It shall not be sufficient to show that the proposal was mailed in time to be received before scheduled closing time.

3.2. Proposal Format. Proposals must be typed or printed on 8 ½" x 11" paper (larger paper is permissible for charts, spreadsheets, etc.) and placed with tabs delineating each section. Pages must be sequentially numbered within major document sections, which are clearly defined below. Sales materials or brochures, if submitted, must be in a separately bound appendix. The proposal must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated.

3.2.1. Cover Page:

3.2.1.1. Full proposal name and number.

3.2.1.2. Submission date and time.

3.2.1.3. Prime Contractor name (Onondaga County/Vendor who is responsible).

3.2.2. Table of Contents:

3.2.2.1. All items listed in Proposal Format in the sequence listed.

3.2.3. Executive Summary:

3.2.3.1. Summarize understanding of the scope of the RFP (project).

3.2.3.2. Explain how your solution or approach addresses the requirements provided in this RFP.

3.2.3.3. Provide a summary or overview of each proposed solution, for each corresponding component of Scope of Service offered in this proposal.

3.2.3.4. State exceptions and omissions to stated requirements.

3.2.3.5. Summarize any assumptions (made by the Vendor) in order to adequately respond to the requirements of this RFP.

3.2.3.6. Summarize all resources, assumed or expected, to be provided by Onondaga County [this should include the State resources outlined in Section 7.1.]. This summary should clearly identify what the Vendor expects or anticipates by way of County personnel or resources. This is to be summarized by component.

3.2.4. Compliance Statement:

3.2.4.1. State agreement with all General Provisions, Special Provisions, Equipment, Standard of Performance and Reliability.

3.2.5. Project Coordination and Scheduling

3.2.5.1. Provide a work plan with start date, duration and physical requirements. To be provided for each component if proposed separately.

3.2.6. Vendor Responsibilities

3.2.6.1. Proposal Certification, Verification, and Signature. Proposals not signed by authorized officer of the Vendor's organization will be eliminated.

3.2.6.2. It is the sole responsibility of the VENDOR to assure that they have received the entire Request for Proposal. Proposal and any addenda may be secured by contacting the Division of Purchase.

4. QUESTIONS

4.1. During the period between the earliest notice of the RFP to vendors and the contract award, no County employee can accept oral, written, or electronic contact from vendors regarding the procurement, except as authorized in Section 4.2 of the RFP. All proposals will remain sealed until after the submission deadline.

4.2. All questions regarding the RFP must be submitted in writing to:

**Kathleen M. Dougherty
Department of Law
421 Montgomery Street 10th Floor
Syracuse NY 13202**

Questions may also be directed to Kathleen M. Dougherty at KathyDougherty@ongov.net. All questions must be received by the date listed in Section 1.2 (Schedule of Events) of this RFP. The County will issue an Addendum answering all questions via email and by posting on the County's website at ongov.net/purchase on or before 06/27/2016.

5. REIMBURSEMENT/GIFTS

5.1. Denial of Reimbursement. The County will not reimburse vendors for any costs associated with the preparation and submittal of any proposal, or for any travel and/or per diem costs that are incurred.

5.2. Gratuity Prohibition. Vendors shall not offer any gratuities, favors, or anything of monetary value to any official, employee or agent of the County for the purpose of influencing consideration of this proposal.

6. GENERAL PROVISIONS

6.1. Hold Harmless, Defense and Indemnification. Vendor covenants and agrees to indemnify, defend and hold harmless, to the fullest extent permitted by law, the County of Onondaga, its officers, agents and employees and representatives in connection with this Agreement, from and against any and all loss or expense that may arise by reason of liability for damage, injury or death, or for invasion of personal or property rights, of every name and nature including but not limited to: (i) claims of property damage; (ii) claims of personal injury to Vendor if self-employed, Vendor's employees, agents, or subcontractors; (iii) claims of personal injury to third parties; and (iv) reasonable attorneys' fees, whether incurred as the result of a third party claim or to enforce this contract: arising out of or resulting directly or indirectly

from the performance, of the work or the enforcement of this Contract, irrespective of whether there is a breach

of a statutory obligation or rule of apportioned liability; and whether casual or continuing trespass or nuisance, and any other claim for damages arising at law and equity alleged to have been caused or sustained in whole or in part by or because of misfeasance, omission of duty, negligence or wrongful act on the part of the Contractor, its employees or agents. The successful Vendor further covenants and agrees to obtain the necessary insurance as required by the General Obligations Law of the State of New York and this contract to effectuate this Hold Harmless clause, and shall name the County of Onondaga as an additional insured on all applicable insurance and indemnification. (See also insurance provision).

- 6.2. Insurance. The successful Vendor shall purchase and maintain insurance of the types and coverages set forth below, written on an occurrence basis, reasonably acceptable to the County of Onondaga and which will provide primary liability coverage to the Vendor **AND WITH THE COUNTY NAMED AS AN ADDITIONAL INSURED ON A PRIMARY AND NON-CONTRIBUTING BASIS** for claims which may arise out of or result from the Vendor's operations under the Contract, including without limitation (i) claims because of bodily injury, occupational sickness or disease, or death, whether to Vendor if self-employed, Vendor's employees or others and whether or not under Workers Compensation or other similar act or law for the benefit of employees; and (ii) claims because of injury to or destruction of tangible property, including loss of use resulting therefrom.

All policies shall be written so that the County of Onondaga will be notified of cancellation or restrictive amendment at least thirty (30) days prior to the effective date of such cancellation or amendment.

Certificates or insurance from the carrier, or their authorized agent, with the appropriate additional insured endorsement attached showing the County of Onondaga as an additional insured and stating the limits of liability and expiration date, which are acceptable to the County of Onondaga, shall be filed with and accepted by the County of Onondaga before operations are begun. The intent is that this insurance, with the County of Onondaga being named as an additional insured, is to be primary over and above the County of Onondaga's own general liability coverage.

The successful Vendor agrees to obtain and maintain General Liability Insurance including Comprehensive Form, Premises-Operations, Products/Completed Operations, Blanket Broad Form Contractual, Independent Contractors, and Broad Form Property Damage Coverage with minimum limits of not less than one million dollars (\$1,000,000.00) Combined Single Limit for Bodily Injury and Property Damage.

The successful Vendor also agrees to obtain and maintain Automobile Liability Insurance for owned, hired and non-owned vehicles with minimum limits of not less than one million dollars (\$1,000,000.00) Combined Single Limit for Bodily Injury and Property Damage.

In addition, the successful Vendor shall obtain and maintain Professional Liability Insurance with minimum limits of not less than one million dollars (\$1,000,000.00).

Also, the successful Vendor shall obtain and maintain Umbrella Insurance with minimum limits of not less than one million dollars (\$1,000,000.00).

The successful Vendor further agrees to comply with the requirements of the New York State Workers Compensation Board regarding proof of compliance with the New York State Workers Compensation

Law. The New York State Workers Compensation Board requires the County to obtain from Vendor's proof of Workers Compensation insurance coverage, Self Insurance or exemption from the requirement of obtaining Workers Compensation insurance coverage. Proof must be submitted to the County on forms specified by the Workers Compensation Board and that are stamped as received by the Workers Compensation Board.

- 6.3. Assignment. The successful Vendor is prohibited from assigning, transferring, conveying, subletting, or otherwise disposing of this agreement, or Vendor's right, title, or interest in this agreement, or Vendor's power to execute this agreement, to any other person or entity without the previous consent in writing of County.
- 6.4. Independent Contractor. The successful Vendor is an independent contractor. Neither Vendor, nor Vendor's officers, employees, agents, or servants shall hold themselves out as, or claim to be, officers, employees, agents, or servants of County.
- 6.5. Conflict of Interest. At the time the Vendor submits a bid, or if no bid is submitted, prior to performing any services under this agreement, Vendor shall deliver to the County's Department of Law, the attached affidavit certifying that the Vendor has no interest and will not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services to County. The affidavit shall further state that in rendering services to County no persons having any such interest shall be employed by the successful Vendor. The Vendor assumes full responsibility for knowing whether the Vendor's officers, employees, agents, or servants have any such interest and for certifying the absence of such conflict to County.

During the course of performing services for County, the successful Vendor shall disclose immediately to County, by affidavit, every known or apparent conflict of interest and every ostensible or potential conflict of interest of Vendor, Vendor's officers, employees, agents and servants. The duty to disclose is a continuing duty. Such disclosure is a material obligation of this agreement and the successful Vendor's failure to comply with these provisions affords County the right to pursue any and all remedies for breach of agreement. In the event of an apparent or actual conflict of interest during the course of performance, the successful Vendor shall suspend all work and services, and County's payments to Vendor shall be suspended pending final approval by County or County's Board of Ethics. If the conflict cannot be resolved to the satisfaction of County, County may terminate the agreement by written notice. Nothing herein shall be construed as limiting or waiving County's right to pursue damages or other remedies.

A conflict of interest includes any circumstance that might influence or appear to influence the judgment of the successful Vendor, and Vendor shall disclose the same. The Vendor shall disclose further the acceptance of compensation, monetary or otherwise, from more than one (1) payor or party for services on the same project or related project. The Vendor shall disclose further the direct or indirect solicitation or acceptance of financial or other consideration from parties other than County for work on the project to which this agreement pertains. If applicable, the Vendor shall disclose further the direct or indirect acquisition of any interest in the real estate which is the subject of the project, or in the immediate vicinity thereof. A conflict of interest of the Vendor's officers, employees, agents or servants shall be deemed a conflict of interest of the Vendor, giving rise to the duty to disclose.

The successful Vendor shall not disclose any data, facts or information concerning services performed for County or obtained while performing such services, except as authorized by County in writing or as may be required by law.

- 6.6. Contract Representative. The successful Vendor shall appoint, by name, a representative who shall be responsible for servicing this account. The appointed representative shall be responsible to provide the services required to insure that the account will be administered in an organized systematic manner.
- 6.7. Responsiveness. Vendors are expected to examine specifications, schedules and instructions included in the package. Failure to do so will be at the Vendor's risk.
- 6.8. Effective Dates of Proposal. All terms, conditions and costs quoted in the Vendor's response will be binding on the vendor for 180 days from the last date to submit the proposal.
- 6.9. Advertising Award. The successful Vendor must receive written approval from the County before advertising the award of the contract or the services to be provided under the contract. The Vendor agrees not to refer to awards in commercial advertising in such a manner as to state or imply that it or its services are endorsed or preferred by the County.
- 6.10. Beginning Work. The primary contract between the County and Vendor will not commence until January 1, 2017. The successful Vendor will not commence any work that could be billed to the County until a valid contract has been executed between the Vendor and the County.
 - 6.10.1. The County may enter into an interim contract with the successful Vendor prior to January 1, 2017 to allow the Vendor to initiate start-up costs, including the rental of space, purchase of furniture and equipment, and interviewing of potential staff.
 - 6.10.2. Funding for an interim contract is only available through the *Hurrell-Harring* Settlement, described in section 7.1 below, and start-up costs shall be consistent with the purposes for which the Settlement funds are being disbursed.
- 6.11. Statement of Assumptions. The Vendor will clearly describe any assumptions made (by them) in order to successfully complete the proposal. These assumptions include, but are not limited to, any assumptions that Onondaga County will provide space, people, materials and other resources, etc.
- 6.12. Contract. The contract between the County and the Vendor shall include:
 - 6.12.1. The Request for Proposal (RFP) and any amendments thereto, and the proposal submitted by the contractor in response to the RFP. In the event of a conflict in language between the RFP and the proposal, the provisions and requirements set forth and/or referenced in the RFP shall govern. Onondaga County reserves the right to clarify any contractual relationship in writing with the concurrence of the contractor, and such written clarification shall govern in case of conflict with the applicable requirements stated in the RFP or the contractor's proposal. In all other matters not affected by the written clarifications, if any, the RFP shall govern.
 - 6.12.2. The standard Onondaga County Vendor contract, a copy of which is available upon request.
- 6.13. Extensions and Amendment. Contract will be for three (3) years with two (2) possible one (1) year extensions requiring mutual consent of the County and the Vendor, unless modified by the proposal and

mutually agreed upon. In performing the Contract, both parties agree to comply with all applicable state, federal, and local laws, rules and regulations.

- 6.14. Replacement Contract. In the event a replacement contract is not issued, any contract let and awarded hereto under by the County may be extended unilaterally by the County, for an additional period of one month, upon notice to the contractor, with the same terms and conditions as the original contract. With the concurrence of the vendor this extension may be for a period of up to three months, however the extension terminates should the replacement contract be issued in the interim.
- 6.15. Audit. The County or any of its duly authorized representatives shall have access to any books, papers, documents, and records of the Vendor, not including client confidences and/or records protected by attorney-client privilege, which are directly pertinent to the Contract for the purposes of making audit, examination, excerpts, and transactions.
- 6.16. Ownership of Documents/Work Product. It is agreed that all finished or unfinished documents, data, or reports, prepared by the Vendor under the Contract shall be considered the property of the County, and upon completion of the services to be performed, or upon termination of the Contract for cause, or for the convenience of the County, will be turned over to the County.
- 6.17. Proprietary Information. All RFP materials are subject to a Freedom of Information Request under the New York State Public Officers Law. If any request is received regarding this RFP, the Vendor will be afforded the opportunity to submit justification to exempt any section you have identified in your proposal as proprietary. The County will not accept any request by a potential Vendor to declare the whole RFP response as proprietary, or to declare any pricing pages as proprietary. The County reserves the right to determine whether the proposal will be released in whole or in part.
- 6.18. Appropriations. This agreement is executory only to the extent of the monies appropriated and available for the purpose of this agreement and no liability on account thereof shall be incurred by County beyond monies appropriated and available for the purpose thereof.

7. SCOPE OF SERVICE

- 7.1. Background. Pursuant to New York State County Law Article 18-b (County Law § 722, et. seq.), all New York State counties are required to implement and maintain a plan for the delivery of legal services for people who are financially unable to retain counsel in criminal cases and certain Family Court cases. In addition, Onondaga County provides for representation in parole revocation cases and extradition matters. County Law §722 provides that counties can deliver such services through a public defender office, a legal aid society, an assigned counsel plan of the county bar association, or a combination of any of these three methods.

Under Onondaga County's current plan for delivering representation to persons financially unable to retain counsel, the Hiscock Legal Aid Society provides services in Family Court matters, appeals in Family Court matters, appeals in criminal matters from dispositions in County Court, parole revocation matters, and extradition matters. The Onondaga County Assigned Counsel Program (Onondaga ACP) provides representation in criminal matters in County Court, Syracuse City Court, and all of Onondaga County's town and village courts. The Onondaga County Assigned Counsel Program also provides representation in Family Court matters and criminal appeals where the Hiscock Legal Aid Society is unable to do so because of, among other reasons, a conflict of interest.

In 2014, Onondaga County settled a lawsuit entitled *Hurrell-Harring et al. v. The State of New York, et al.*, Index. No. 8866-07 (“*Hurrell-Harring Settlement*”). A copy of the *Hurrell-Harring Settlement*, as amended, is attached. The New York State Office of Indigent Legal Services (“*ILS*”) has accepted the responsibility of working with Onondaga County and the other *Hurrell-Harring* defendants to implement the Settlement.

The *Hurrell-Harring Settlement* obligates Onondaga County and the defendants to: (1) ensure that counsel is available at arraignment to represent every defendant who is eligible for publicly funded legal representation; (2) track attorney caseloads/workloads and comply with caseload/workload caps determined by ILS; (3) implement initiatives to improve the quality of indigent defense; and (4) implement and utilize criteria and procedures for determining eligibility for assignment of counsel promulgated by ILS. The *Hurrell-Harring Settlement* requires New York State to provide the funding Onondaga County needs to comply with these obligations; Onondaga County is obligated to comply with these requirements so long as New York State funding is available to do so.

To date, New York State has fully funded the *Hurrell-Harring Settlement*. For Onondaga County, this amounts to:

- **Quality of Indigent Defense** - \$432,934 to the Assigned Counsel Program each for fiscal years 2016/2017, and 2017/2018 for initiatives to improve the quality of indigent defense;
- **Counsel at Arraignment** - \$275,791 for fiscal year 2016/2017 for creating and maintaining the structures needed to provide counsel at arraignment, which will be increased to \$560,044 for subsequent fiscal years; and
- **Caseload Relief** - \$4,250,000, or such amount as may be authorized by New York State, for fiscal year 2016/2017 for caseload relief. It is anticipated that this same, or higher, caseload relief funding will be continued in subsequent years.

Under the terms of the *Hurrell-Harring Settlement*, the funding made available to Onondaga County to achieve the Settlement’s obligations cannot supplant current County funding for the delivery of indigent defense services.

7.2. **Purpose and Objective of RFP.** This RFP is intended to select a Vendor to provide the services currently being provided by the Onondaga County Assigned Counsel Program. The successful Vendor will demonstrate the requisite experience and a commitment to the delivery of quality services for defendants who are financially unable to retain counsel. Additionally, the successful Vendor will demonstrate the ability to comply with the objectives in the *Hurrell-Harring Settlement*. In submitting proposals, bidders should assume that the funding available includes that total spent by Onondaga County for Onondaga ACP services in budget year 2015, as well as the funding available in the *Hurrell-Harring Settlement*. In terms of anticipating the total number of cases in which the successful Vendor is expected to provide representation, bidders should refer to Table 1 attached to this RFP, which outlines the number of cases, by case type, and County budget that the Onondaga ACP handled in 2015.

7.3. **Proposal Specifics.** In addition to the requirements outlined in section 3 above, all proposals must include the following information:

- 7.3.1. Describe whether the Vendor proposes to deliver services as a legal aid society or assigned counsel program, as described in County Law § 722(2).
- 7.3.2. Provide a brief organizational history and background including the number of attorneys employed or utilized and an organizational chart and description of specialties.

- 7.3.3. If the Vendor is not currently delivering services as a legal aid society or assigned counsel program, describe the steps that will be taken to create a legal service society or assigned counsel program that complies with the requirements in County Law § 722(2).
- 7.3.4. Provide a detailed work plan that lists the essential start-up and administrative management tasks to be undertaken in the proposed program and provide an anticipated timetable describing the start and end dates for each activity associated with the proposed program start-up.
- 7.3.5. Outline experience in delivering indigent defense services as well as any other relevant experience in delivering services in accordance with County Law § 722.
- 7.3.6. Provide a statement for how the responsibilities outlined in this RFP will be accomplished and what kind of priority it will be given in relationship to other contracts and obligations.
- 7.3.7. Provide a statement describing the proposed outline of tasks, products and project schedule for attorneys, and non-attorney full-time employees where appropriate, required to provide indigent defense services consistent with adopted professional standards for public defense and how each of the following will be accomplished:
 - 7.3.7.1. The supervision and training of attorneys;
 - 7.3.7.2. Attorney access to and appropriate use of the following on behalf of their clients: investigators; interpreters; sentencing advocates and/or social workers; experts (consulting and witness experts); and other non-attorney supports;
 - 7.3.7.3. Effective attorney communication with clients, including in-person interviews with clients immediately after being assigned;
 - 7.3.7.4. That attorneys have the qualifications and experience necessary to handle the specific types of criminal cases to which they are assigned.
- 7.3.8. Provide an assessment of availability of attorney(s) and other professional staff that may be assigned to this contract.
- 7.3.9. Indicate the location of the primary office.
- 7.3.10. Provide references from up to three county, city, or local courts and the name and telephone number of a contact person at such court for which similar services within the past three years have been provided.
- 7.3.11. Case Loads and Bids. The County anticipates annual 12-month indigent case assignment volumes similar to those in 2015, outlined in Table 1 below. Pursuant to the *Hurrell-Harring Settlement*, any provider delivering indigent defense services must track and record the caseloads/workloads (including any private practice caseload/ workload) of all attorneys. Describe a plan for doing so as well as any prior experience in monitoring or tracking attorney caseloads/workloads, any anticipated barriers to doing so for this Contract, and possible strategies for overcoming such barriers.

7.4. General Description. The successful Vendor will provide legal representation in compliance with the laws and rules of conduct of New York State to those who qualify for appointed counsel in criminal matters. The successful Vendor will provide defense representation in County Court and Local/City Courts for certain indigent defendants including:

- 7.4.1. Adult County Court/Felony, including Integrated Domestic Violence Court, Community Court and Syracuse Community Treatment Court to the extent required by Article 18-B of the County Law, but not including Family Court, matrimonial, parole violations and appeals, extradition and appeals.

- 7.4.2. Local/City Court/Misdemeanor, including but not limited to persons faced with jailable misdemeanor and traffic offenses commitments or incarcerations, and appeals therefrom.
- 7.4.3. Family Court or Surrogate's Court, as well as parole violations, extraditions, Supreme Court matrimonials, and appeals in all cases in which the Hiscock Legal Aid Society is unable or unwilling to provide such representation.
- 7.4.5. The successful Vendor will provide legal representation for eligible defendants, from court appointment or screening through trial, sentencing, post-conviction review and violations, and any appeals to County Court. Such cases include domestic violence cases. The successful Vendor will provide defense services at arraignments, in-custody bail hearings, and will be available to talk and meet with indigent defendants in the Onondaga County Justice Center and the Onondaga County Correctional Facility.
- 7.4.6. This scope does not include:
 - 7.4.6.1 Civil matters for which a person is not legally entitled to counsel as a matter of law.
 - 7.4.6.2. Expressly excluded from the scope of services of the contract between the successful Vendor and Onondaga County is any legal work the successful Vendor may undertake in the civil arena for persons it is representing on criminal matters. Such civil matters may include, but are not limited to, legal representation relating to landlord-tenant, liens not arising from the criminal matter, garnishment, worker's compensation, bankruptcy and all other aspects of civil law.

7.5. Term.

- 7.5.1 The successful Vendor's services will commence on or about January 1, 2017, terminating on December 31, 2019; and may be renewed for up to two (2) additional one-year terms by mutual agreement by the parties. The Vendor will notify the County of their desire to renew the contract three (3) months before contract termination.
- 7.5.2. In the event that the date of termination of the contract passes without the parties' execution of a similar contract or the County has not selected another Vendor, then the contract shall remain in force for at least 120 days, during which time monthly payments shall be paid.
- 7.5.3 The successful Vendor will continue to actively represent, faithfully and with due diligence, all cases assigned under this Agreement and complete those cases which remain pending following the termination of this Agreement; provided that, in the event there is no contract between the County and the successful Vendor, the successful Vendor will not be obligated to continue representing cases beyond thirty (30) days after termination pursuant to subsections 7.5.1. or 7.5.2., whichever is later, and the County shall compensate the successful Vendor at a reasonable fee established by the Court for said outstanding cases.

7.6. Screening. Under New York law, determinations of eligibility for assigned counsel are made by the court. Under this Agreement, the successful Vendor will screen defendants for eligibility for assignment of counsel and make a recommendation to the court, in accordance with the Criteria and Procedures for Assignment of Counsel issued by the Office of Indigent Legal Services.

7.7. Associated Counsel. All attorneys participating in this Agreement shall be admitted to practice pursuant to the rules of the Supreme Court, Appellate Division, of New York State. Sufficient counsel shall be provided to represent defendants during vacation, illnesses, and simultaneous settings in more than one courtroom.

- 7.8. Office Space. The successful Vendor shall maintain a secure and private office accessible to clients where mail is received and process is served and confidentiality preserved in Onondaga County that will be open during regular business hours, said hours to be determined by the successful Vendor. The office shall be staffed by an attorney, who is available for general consultation and advice, and a secretary/paralegal, who is available for both office support and to assist the public in referrals to other agencies. The successful Vendor must maintain a phone with answering service or equipment so they are accessible to clients.
- 7.9. Availability of Attorneys. The office will provide an attorney to represent defendants at all court appearances. To assist in the smooth operation of the courts, the successful Vendor's office will provide counsel to represent defendants, even in the absence or unavailability of a particular defendant's assigned counsel for scheduled court appearances. In addition, the successful Vendor will work with the County and the Office of Indigent Legal Services to implement a plan to ensure that counsel is available to represent defendants at arraignment.
- 7.10. Office Staffing. The successful Vendor shall have adequate staff available to respond to emergency and non-emergency calls 24 hours a day, 365 days a year. Such response is intended to satisfy requests from arrested individuals asserting their right to speak with counsel.
- 7.11. Twenty-Four Hour Telephone Access. The successful Vendor shall provide and timely update as necessary the Onondaga County Jail and 911 Dispatch Center with the telephone number or numbers at which attorneys can be reached for critical-stage advice to defendants during the course of police investigations and/or arrests twenty-four (24) hours each day. In the event the successful Vendor's attorneys are not available and other representation is provided for critical-stage advice, the successful Vendor shall be liable for the cost.
- 7.12. Conflict of Interest. The successful Vendor shall not be assigned or accept a particular appointment if it would create a true bona fide conflict of interest or would otherwise constitute an actual violation of any generally recognized ethical or professional standard common and applicable to attorneys in the state of New York. The successful Vendor shall have the right, for good cause, to decline to advise or represent, and, with consent and agreement of the Court and pursuant to Court rule, to withdraw from representing any person in any case referred or assigned to it.
- 7.13. Standards for Public Defense Services. The successful Vendor shall comply with the standards for public defense services as adopted by New York State, including implementation and compliance with the terms of the *Hurrell-Harring* Settlement.
- 7.14. Training and Continuing Legal Education. The successful Vendor will ensure that all associated counsel are in compliance with New York State's Continuing Legal Education requirements set forth in 22 NYCRR 1500, et seq.
- 7.15. Staffing Levels. Throughout the term of the contract, the successful Vendor must provide a sufficient number of attorneys to adequately staff appearances at in Onondaga County Court, Syracuse City Court, and all town and village courts located in Onondaga County.

7.16. Assignment or Subcontractors. No assignment or transfer of the contract or of any interest in the Agreement shall be made by the successful Vendor without the prior written consent of the County.

7.17 Reporting.

- 7.17.1. The successful Vendor shall file monthly reports with the County as an electronic spreadsheet in Excel delineating each client the Vendor has been appointed to represent in the year to date, including but not limited to the name(s), charge(s), cause number(s), type of case pursuant to this RFP, date of assignment, charge(s), court, assigned defense attorney, disposition, bench or jury trial, and whether an appeal was filed. The monthly reports are due on or before the tenth (10th) day after each month.
- 7.17.2. The successful Vendor shall also file third and fourth quarter reports including a detailed year-to-date expenditure report in a format consistent with the financial pro forma submitted as part of the successful Vendor's proposal or as approved by the County; including, but not limited to all personnel costs, overhead costs, rents and leases, and other costs directly associated with the successful Vendor's proposal and a projected budget for the next year. The fourth quarter report shall also list for each attorney the number and types of cases outside this scope and the number of hours billed. The third and fourth quarter reports are due on or before the tenth (10th) day after the end of each quarter (October 10th, January 10th).
- 7.17.3. In accordance with the Settlement *Hurrell-Harring* Settlement, the successful Vendor shall comply with all reporting requirements of NYS Indigent Legal Services Office.

7.18. Compensation from the County.

- 7.18.1. The successful Vendor agrees to perform the services listed herein and comply with all terms and conditions listed herein and in the executed contract for an annual payment in 2017, 2018, 2019 and 2020 as submitted in their proposal.
- 7.18.2. A monthly billing statement shall be submitted in the form specified by the County and payment shall be reviewed for approval by the appropriate County representative. Payment shall be made on a monthly basis, thirty (30) days after receipt of such billing statement. The successful Vendor shall be responsible for complying with applicable standards at their sole cost, unless mutually agreed to by the successful Vendor and the County.
- 7.18.3. Adjustments for Contracted Caseload. It is the successful Vendor's responsibility to notify the County Attorney of anticipated difficulties in complying with the caseload standards set by the Office of Indigent Legal Services in accordance with the *Hurrell-Harring* Settlement. It shall be the determination of the County Attorney, in consultation with ILS, as to whether the caseload standards are exceeded. Cases exceeding such caseload standards will be compensated as sufficient state funding is made available.
- 7.18.4. Invoicing. Invoices shall be monthly and may be submitted the month immediately preceding each month of work to be performed. Invoices shall be submitted to:

**Onondaga County Management & Budget Department
421 Montgomery Street, 14th Floor
Syracuse NY 13202**

and to:

**Onondaga County Comptroller,
421 Montgomery Street, 14th Floor,
Syracuse NY 13202.**

The County shall pay all valid invoices using its normal bill paying process.

8. EVALUATION METHODOLOGY

- 8.1. Onondaga County reserves the right to award this contract in part or as a whole to a qualified vendor or vendors. Award(s) will be selected based on evaluation of which vendor is most responsive and responsible, and not solely on the basis of prices.
- 8.2. Criteria to be evaluated by the County and may include the following:
 - Compliance with the RFP format requirements**
 - Experience**
 - Future Contract Costs and Risks**
 - Bidder Statistics**
 - Responsiveness to the items in Section 7, Scope of Work**
 - References**
 - Price**
 - Oral Presentations**
 - Credibility of Vendor**
 - Minority and Women's Business Enterprises Compliance**
 - Sustainability Solutions and Practice**

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY**

KIMBERLY HURRELL-HARRING; JAMES ADAMS; JOSEPH BRIGGS; RICKY LEE GLOVER; RICHARD LOVE; JACQUELINE WINBRONE; LANE LOYZELLE; TOSHA STEELE; BRUCE WASHINGTON; SHAWN CHASE; JEMAR JOHNSON; ROBERT TOMBERELLI; CHRISTOPHER YAW; LUTHER WOODROW OF BOOKER, JR.; JOY METZLER; VICTOR TURNER; EDWARD KAMINSKI; CANDACE BROOKINS; RANDY HABSHI; and RONALD McINTYRE, on behalf of themselves and all others similarly situated,

Plaintiffs,

Index No. 8866-07

-against-

THE STATE OF NEW YORK, GOVERNOR ANDREW M. CUOMO, in his official capacity, THE COUNTY OF ONONDAGA, NEW YORK, THE COUNTY OF ONTARIO, NEW YORK, THE COUNTY OF SCHUYLER, NEW YORK, THE COUNTY OF SUFFOLK, NEW YORK and THE COUNTY OF WASHINGTON, NEW YORK,

Defendants.

SECOND AMENDMENT TO STIPULATION AND ORDER OF SETTLEMENT

WHEREAS, the Stipulation and Order of Settlement in the above-captioned action was approved by the Court on March 11, 2015; and

WHEREAS, the parties have previously agreed to extend certain of the deadlines contained in the Stipulation and Order of Settlement by stipulation dated September 16, 2015; and

WHEREAS, the Defendants State of New York and Governor Andrew M. Cuomo ("State Defendants") and the Plaintiffs have agreed that ILS should retain a third-party expert to assist in

developing the caseload/workload standards contemplated by Paragraph IV(B) of the Stipulation and Order of Settlement; and

WHEREAS, ILS is currently in the process of retaining the third-party expert and therefore ILS and the State Defendants seek additional time to comply with the deadline provided in Paragraph IV(B); and

WHEREAS, the State Defendants are not seeking to extend the date found in Paragraph IV(D), by which the caseload/workload standards are fully implemented and adhered to by all providers of Mandated Representation in the Five Counties, nor the date found in Paragraph IV(C), by which the State shall take tangible steps to enable providers of Mandated Representation to start adding any staff and resources necessary to come into compliance with those standards; and

WHEREAS, the State Defendants seek additional time for ILS to release the draft and final criteria and procedures to guide courts in counties outside of New York City in determining whether a person is eligible for Mandated Representation and therefore seek to extend the dates found in Paragraph VI(A), as amended;

The parties to the Stipulation and Order of Settlement in the above-captioned action agree to amend it as follows:

IV. CASELOAD RELIEF

(B) (1) **No later than December 1, 2016**, ~~Within 9 months of the Effective Date~~, ILS, in consultation with the Executive, OCA, the Five Counties, and any other persons or entities ILS deems appropriate, shall determine:

(i) the appropriate numerical caseload/workload standards for each provider of mandated representation, whether public defender, legal aid society, assigned counsel program, or conflict defender, in each County, for representation in both trial- and appellate-level cases; (ii) the means by

which those standards will be implemented, monitored, and enforced on an ongoing basis; and (iii) to the extent necessary to comply with the caseload/workload standards, the number of additional attorneys (including supervisory attorneys), investigators, or other non-attorney staff, or the amount of other in-kind resources necessary for each provider of Mandated Representation in the Five Counties.

(4) ILS shall retain a third-party expert to assist in determining the numerical caseload/workload standards as set forth in paragraph IV(B)(1). ILS shall, no later than November 15, 2016, provide to the parties the recommendations of the third-party expert. No later than November 22, 2016, the parties shall meet with ILS to provide any comments on said recommendations.

(C) ~~No later than June 13, 2016, Starting within 6 months of ILS having made the caseload/workload determinations specified above in paragraph IV(B),~~ the State shall take tangible steps to enable providers of Mandated Representation to start adding any staff and resources determined to be necessary to come into compliance with the standards.

(D) (1) ~~No later than September 11, 2017 Within 21 months of ILS having made the caseload/workload determinations specified above in paragraph IV(B) (which shall be no later than 30 months from the Effective Date)~~ (the "Implementation Date") and continuing thereafter, the State shall ensure that the caseload/workload standards are implemented and adhered to by all providers of Mandated Representation in the Five Counties.

VI. ELIGIBILITY STANDARDS FOR REPRESENTATION

- (A) ILS shall, no later than ~~November 12,~~ **December 11,** 2015, provide to the parties proposed criteria and procedures to guide courts in counties outside of New York City in determining whether a person is eligible for Mandated Representation. **No later than January 11, 2016, the parties shall submit any comments on said proposed criteria and procedures to ILS. Final criteria and procedures shall be issued by ILS no later than February 12, 2016.** ILS may consult with OCA to develop and distribute such criteria and procedures. ILS shall be responsible for ensuring the distribution of such criteria and procedures to, at a minimum, every court in counties outside of New York City that makes determinations of eligibility (and may request OCA's assistance in doing so) and every provider of mandated representation in the Five Counties. The Five Counties shall undertake best efforts to implement such criteria and procedures as developed by ILS. Nothing in this paragraph otherwise obligates the Five Counties to develop such criteria and procedures. ~~No later than November 27, 2015, the parties shall submit any comments on said proposed criteria and procedures to ILS. Final criteria and procedures shall be issued by ILS no later than December 14, 2015.~~

The remainder of the Stipulation and Order of Settlement approved by the Court on March 11, 2015, as previously amended, remains in full force and effect.

Pursuant to Paragraph XIII(B) of the Stipulation and Order of Settlement, a copy of this Amendment is being provided to the County defendants, whose consent to the foregoing will be deemed to exist absent the receipt by the State Defendants and counsel for the Plaintiffs of any written objections within ten days.

*Remainder of Page Left Intentionally Empty
Signature Page Follows*

Attorneys for Plaintiffs

SCHULTE ROTH & ZABEL LLP

By: _____
KRISTIE M. BLASE

Dated:

Attorneys for Defendant New York State and Governor Andrew M. Cuomo

ERIC T. SCHNEIDERMAN,
Attorney General for the State of New York

By: _____
ADRIENNE J. KERWIN, *Assistant Attorney General*

Dated:

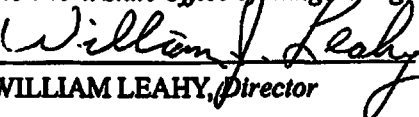
For Defendant Governor Andrew M. Cuomo

ANDREW M. CUOMO,
Governor of the State of New York

By: _____
SANDI TOLL, *First Assistant Counsel to the Governor*

Dated:

For New York State Office of Indigent Legal Services

By: 
WILLIAM LEAHY, *Director*

Dated:

REGIONAL IMMIGRATION ASSISTANCE CENTERS

GRANTEES MEETING

LOCATION: Alfred E. Smith Building
80 S. Swan St., Room 115, (1st Floor Conference Room in front of Lobby Security desk)
Albany, New York

DATE: Thursday, June 2, 2015 @ 11:00 a.m.
(Lunch will be served)

MEETING AGENDA

- **Opening Remarks & Introductions**
 - Each participant provides a brief introduction

- **Updates on Center Implementation**
 - Office Locations (i.e., geographic location, branding, info. publications, etc.)
 - Staffing of the Centers (i.e., include staff responsibilities, etc.)
 - Training of Center Staff
 - Other Center Resources

- **Updates on Program Implementation & Regional Outreach**
 - Delivery of Advisals to Defender Community – Intake Process
 - Defender Outreach & Networking Opportunities
 - Trainings and Presentations
 - Addressing Attorney Representation Needs
 - Community Advocacy & Agency Collaborations
 - Case Management & Data Reporting
 - Other Program-related Questions

- **Regional Networking of Centers**
 - Identifying Conflict Cases - Establishing a referral process
 - Sharing of Center Resources
 - Addressing Statewide Issues
 - Other Networking-related Questions
 - Best Practices and Protocol Training

- **Other Miscellaneous Issues for Discussion**

- **Scheduling a Next Meeting**

- **Closing Remarks**

New York State Office of Indigent Legal Services

REGIONAL IMMIGRATION ASSISTANCE CENTERS

Points of Contact

(As of 04/18/2016)

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