

New York State Office of Indigent Legal Services

Funding Announcement

Upstate Quality Improvement and Caseload Reduction Grant

NYS Office of Indigent Legal Services Request for Proposals

The Office of Indigent Legal Services (Office) and nine-member Indigent Legal Services Board (Board) were created by legislation enacted in 2010, found in Executive Law Article 30, sections 832 and 833. As part of its statutory mission “to monitor, study and make efforts to improve the quality of services provided pursuant to Article 18-B of the county law,” the Office, operating under the direction and pursuant to policies established by the Board, assists county governments in the exercise of their responsibility to provide effective and meaningful representation of persons who are legally entitled to counsel but cannot afford to hire an attorney. The assistance provided by the Office and Board includes distributing state funds and targeting grants to counties in support of innovative and cost-effective solutions to enhance the quality of indigent legal services.

Timelines for This Request for Proposals

RFP Release Date	Thursday, August 22, 2013
Questions Due By	Thursday, September 26, 2013
Questions Posted By	Friday, October 4, 2013
Proposal Due Date	6:00 p.m. ET, Friday, October 18, 2013
Award Announcement	December 2013
Tentative Contract Start Date	February 1, 2014

Intent of this Request for Proposals

The intent of this Request for Proposals (RFP) is to support local initiatives aimed at supporting improvements in quality of representation in upstate indigent legal service provider programs. The provision of effective representation to clients is an essential component of an efficient and effective justice system. Improvements in this area can save counties money by reducing both incarceration costs and the need for other services. *Projects that produce a replicable model or practice that is usable, adaptable, or scalable by other localities or counties are encouraged.* The purpose of this grant is to fund projects or programs that demonstrate new approaches to a certain problem, in this case, counties experiencing challenges providing quality indigent legal

services. Such projects often provide a basis for decisions about critical policy issues and frequently advance the state of knowledge about the issues they address. In addition, they often result in model programs that can be adapted to other counties or regions with the anticipation of similar results. To that end, **all eligible counties are strongly encouraged to apply**, as we are interested in identifying promising practices and strategies that you put in place that can be shared with other counties.

Background

Providers of indigent legal services in New York face multiple challenges in providing effective representation to clients. The most prominent of these challenges among institutionalized providers (e.g., public defender offices, legal aid societies and conflict defender offices) is the lack of sufficient personnel to handle assigned caseloads. In assigned counsel programs, providers may face other equally problematic obstacles such as difficulties in overseeing the quality of representation to which clients are legally entitled. While the systemic problems may be different, the fundamental problem in all programs is the same: resource constraints and other obstacles prevent attorneys and programs from providing optimal representation.

The Office recognizes that excessive caseloads and insufficient resources for staffing are the principal obstacle to the delivery of effective legal services by institutional providers located in upstate counties. In New York, the 2006 report of the *Commission on the Future of Indigent Defense Services* (the ‘Kaye Commission’) reported that ‘virtually all’ the defenders it heard from labored under excessive caseloads.¹ The Commission’s report recounted the struggles of counties to adequately fund indigent legal services, and of providers shouldering workloads so excessive it was impossible for them to provide adequate representation. Referring to the Commission’s findings, Justice Pigott drew the connection between excessive caseloads and reduced quality of representation when he wrote in his dissent in the *Hurrell-Harring* case that “Legal services for the indigent have routinely been underfunded, and appointed counsel are all too often overworked and confronted with excessive caseloads, which affects the amount of time counsel may spend with any given client.”² Indeed, the ability to limit caseloads has been described as “the very bedrock of quality control.”³

The Office has sought information from providers about the principal obstacles they confront in their work, and caseload issues continually rise to the top as the most prominent issue facing institutional providers. We have heard repeatedly that offices need urgently either to recruit new attorney staff, or to recruit investigative, social worker, or administrative staff to free up attorneys’ time for their core duty of providing representation. Providers have indicated to us that such recruitment would improve client representation by facilitating more frequent attorney-client visitation, increased vertical representation, more likely representation at first appearance, and less frequent continuances due to attorney scheduling conflicts. Benefits to clients may also accrue through improved supervision of attorneys within offices, enhanced range and depth of expertise among staff and more time available for preparation.

We are encouraged by the outcomes of several research projects which have shown the benefits that accrue from reducing caseloads in institutional providers for the representation clients

¹ *Final Report of the Commission on the Future of Indigent Defense Services* (2006) at 17.

² *Hurrell-Harring et al. v. State of New York*, 15 N.Y.3d 8, 33 (2010) (Pigott, J., dissenting).

³ Norman Lefstein, *Securing Reasonable Caseloads: Ethics and Law in Public Defense* (American Bar Association, 2011) at 200 (footnote omitted).

receive. Two pilot projects in Washington State which reduced caseloads for providers of indigent criminal defense and family representation respectively showed a range of benefits in both contexts. In criminal courts, reduced caseloads were associated with increased numbers of jury trials, swifter appearance of counsel, and increased diversion away from incarceration and toward drug treatment for criminal defendants.⁴ In family court, the reductions resulted in increased rates of family reunification, improved engagement by parents with their attorneys, and speedier case resolution.⁵ A Harvard study of the Federal Defender system showed that caseload pressures were related to higher rates of guilty pleas and lengthier sentences for clients of institutionalized providers.⁶ In New York, meanwhile, a 1997 study of the Harlem's Neighborhood Defender Service suggested that the reduced caseloads of its attorneys was one of the components which allowed that program to reduce the time its clients spent incarcerated.⁷ These examples encourage ILS to believe that similar empirically demonstrable gains may be realized in New York's counties.

Assigned counsel programs represent a second, equally important system of indigent legal service provision in the state. Represented in every single county in some form, assigned counsel systems may also suffer from caseload issues when they are forced to make excessive numbers of assignments to certain attorneys, or find that it is necessary to curtail services to clients in an effort to control costs. The American Council of Chief Defenders has stressed that individual assigned counsel attorneys may become unable to provide quality representation when appointed to large numbers of cases – a problem which may be compounded where the attorney also has large numbers of paying clients.⁸ Assigned counsel programs may also suffer from unique challenges unrelated to caseload concerns. Due to resource constraints, attorneys in these programs may lack ready access to investigative or social services, and may receive inadequate training, support or oversight. As such, assigned counsel attorneys are at least as susceptible to finding themselves in challenging situations when it comes to advocating effectively for their clients in court.

The measures of quality representation laid out by ILS standards⁹ are the same, whatever system of representation is in place. Clients must have regular access to attorneys beginning at the earliest possible stage in a case. Those attorneys must have adequate access to the support and expert assistance that they require to do their jobs. They must be supported by the organizations they work for as they represent their clients' interests. They must provide

⁴ Luchansky (2010) *The Public Defense Pilot Projects: Washington State Office of Public Defense*, available at http://www.opd.wa.gov/Reports/TrialLevelServices/1006_PilotProject.pdf.

⁵ Harper, Brennan, MSW, and Szolnoki (2005), *Dependency and Termination Parents' Representation Program Evaluation Report 2005*, available at <http://www.opd.wa.gov/Reports/Dependency%20&%20Termination%20Reports/2005%20Evaluation%20Report.pdf>

⁶ Iyengar (2007) *An Analysis of the Performance of Federal Indigent Defense Counsel*, National Bureau of Economic Research, working paper series # 13187, available at <http://www.nber.org/papers/w13187>

⁷ Anderson, David C. (1997), *Public Defenders in the Neighborhood: A Harlem Law Office Stresses Teamwork, Early Investigation* available at: <https://www.ncjrs.gov/pdffiles/163061.pdf>.

⁸ American Council of Chief Defenders (2010). *Implementation of the ABA's Ten Principles in Assigned-Counsel Systems*, available at: http://www.nlada.org/Defender/Defender_ACCD/DMS/Documents/1285271312.2/NLADA%20best%20prac%209-12-10mt%20final.pdf.

⁹ In June, 2012, the ILS Board approved *Standards and Criteria for the Provision of Mandated Representation in Cases Involving a Conflict of Interest*, effective July 1, 2012. In September, 2012, the ILS Board extended these standards to apply to primary mandated representation in criminal and family trial courts, effective January 1, 2013.

effective representation for every client. While the systemic obstacles that obstruct the achievement of those goals may differ for assigned counsel and institutionalized service providers, the necessity of providing effective representation for all clients requires that the fundamental goals of each remain identical.

This RFP encourages providers of indigent legal services in New York's counties to put forward their best ideas for improving the quality of representation in upstate New York. By providing the funding to implement those ideas, the Office intends not only to tackle some of the systemic issues that frustrate the provision of effective representation, but also to assess the extent of the benefits that accrue to clients when those conditions are ameliorated. This project therefore represents an opportunity to test which approaches to improving quality work best in New York, and what progress can be made in improving the quality of representation that clients receive.

Project Description – What is this RFP Seeking to Achieve?

The Office has therefore established this RFP to assist counties to implement a model that effectively improves the quality of representation in upstate counties.

Counties should submit a proposal that is developed through consultation with representatives of each of the County Law Article 18-B criminal defense providers in the county, including the person with administrative responsibility for overseeing the assigned counsel program.

No county may submit more than one proposal.

Proposals that request funding for assigned counsel programs that have not been approved by the State Administrator (Chief Administrative Judge) *will not be funded.*

Proposals that request funding for an office of conflict defender, as that term is used in County Law § 722(3), for which a plan has not been submitted to the State Administrator (Chief Administrative Judge) in accordance with County Law § 722 (3) (b) or (c) *will not be funded.*

Proposals that rely for their implementation on statutory changes *will not be funded.*

Funding of this proposal is limited to the provision of Article 18-B services. Specifically, proposals are sought for the provision of mandated representation to eligible persons through enhancement of existing services or creation of new and innovative approaches which address the quality of representation, including reduced attorney caseloads and improved supervision of attorneys and staff, by means such as:

- ***Reduced caseloads:*** Proposals that will not only reduce excessive caseloads for attorneys providing 18-B mandated representation but ensure that the quality of such representation is enhanced are strongly encouraged. Such enhancements may relate to, for example, facilitating more frequent attorney-client visitation, increased vertical representation, more likely representation at first appearance, increased filing of motions, and less frequent continuances due to attorney scheduling conflicts.

- *Supervision and Oversight*: Proposals that promote increased oversight or supervision of attorneys and staff by supervisors or administrators who are thereby better able to promote and assess quality representation.
- *Compliance with ILS standards*: Proposals that include ways for an institutional provider or assigned counsel program to achieve greater compliance with ILS standards.
- *Increase resources*: Proposals that involve recruitment of administrative, investigative or social worker resources are encouraged. Recruitment of such staff may free up attorneys' time for their core duty of providing representation, and will also directly contribute to the improved representation of clients through increased attention to all aspects of the case.

Because the purpose of this RFP is twofold – to begin immediate improvement in alleviating the burden of excessive caseloads and to explore the most efficient and effective ways of supporting improvements in quality of representation in upstate indigent legal service provider programs – counties need not propose solutions that cover a provider's entire program of providing mandated representation. Applicants should state the bases upon which the determination was made to select those parts of the provider's program that were chosen to be included in the proposal, such as representation for certain classifications of cases (felony or misdemeanor/ criminal or family court), representation in specialty courts, geographic considerations, or amenability to collaboration among the criminal justice entities involved in the proposal. No one specific basis is required nor do the bases noted here constitute an exclusive list.

Funding and Contract Period

The total available funds for award are \$12 million (\$4 million per year for each of three years). The total available funds will not necessarily be divided equally, nor will selected applicants be guaranteed the entire amount requested.

The maximum amount to be awarded to any one county is \$100,000 per year for three years. The minimum amount to be awarded to any one County is \$60,000 per year for three years. Counties may submit proposals either at or less than the maximum amount.

Grants will be issued for a period of three years. The Office reserves the right to reduce the award amount of any application based on reasons that include but are not limited to: cost effectiveness and reasonableness of proposed budget, demonstrated need, or inconsistent appropriation levels.

Who Is Eligible To Apply for This Request for Proposals

Only New York State counties other than counties wholly encompassed by a city, are eligible to apply for funds. Proposals should be submitted by an authorized county official, employee or designee. There is no match or any other cost to the counties to participate in this project.

The RFP is available online at www.ils.ny.gov. Requests for the RFP may be made by e-mail to Karen.jackuback@ils.ny.gov or by telephone at 518-486-9713 or 518-486-2028.

RFP Questions and Updates

The Office will respond to questions that are submitted until the “*Questions Due By*” date shown on the cover of this document. Questions may be submitted in writing (email preferred) or via telephone by calling (518) 486-9713 and should be directed to Karen Jackuback (karen.jackuback@ils.ny.gov) and secondarily to Joe Wierschem (joseph.wierschem@ils.ny.gov). When corresponding by e-mail, clearly indicate the subject as: *Upstate Quality Improvement and Caseload Relief RFP*. The name of the party submitting the question will not be posted.

Questions and answers will be posted on the RFP “*Questions Posted By*” date as stated on the cover of this RFP at the following webpage address:
<https://www.ils.ny.gov/content/upstate-quality-improvement-and-caseload-reduction>.

Instructions for Completing This Request for Proposals

Application Submission (*mail, hand delivery, electronic*)

All submissions must contain the complete application.

If submitting an application by mail or hand delivery, this RFP requires the submission of **one (1) original, and four (4) copies (for a total of five)**.

Applications must be delivered to:

By mail:

Karen Jackuback, Grants Manager
Office of Indigent Legal Services
Capitol Bldg., Room 128
State Street
Albany, New York 12224

Hand delivery:

Please call the Office of Indigent Legal Services in advance to arrange for building security clearance (518-486-2028 or 518-486-9713).

Office of Indigent Legal Services
Alfred E. Smith Building (*directly behind the State Capitol Building*)
29th Floor
80 South Swan Street
Albany, New York 12210

Electronic applications:

Electronic copies will be accepted.

Submit to karen.jackuback@ils.ny.gov. Indicate in the *Subject* area of the electronic transmission that the submission is for the “**Upstate Quality Improvement and Caseload Reduction Grant.**”

Application format:

The following components must be included in the application in order for the submission to be complete:

1. Project Summary (less than one page)
2. Proposal Narrative (less than 10 pages)
3. Itemized Budget (less than 4 pages)
4. Budget Justification (1-2 pages)

All applications must be received by Friday, October 18, 2013, by 6:00 p.m. Late applications will not be considered.

Only complete applications will be reviewed and evaluated.

Proposal Application

I. PROJECT SUMMARY (not scored)

Please provide:

- Identification of the county requesting funds;
- Contact person, telephone, fax and email for this grant;
- Fiscal intermediary name and address (identify the department and/or individual responsible for fiscal reporting for this project);
- Amount of funding requested; and
- A one or two paragraph description of the proposed project.

II. PROPOSAL NARRATIVE

Please address every item listed and do so in the order and format in which they are presented, i.e., responses should be made in the same order as requested and each response should identify the specific item being addressed. Applicants will be evaluated on the information they provide. *Please do not submit any information that was not specifically requested.*

A. Plan of Action (54 points)

Problem Statement

1. Describe the issue or problem in providing quality 18-B mandated representation that your plan is intended to improve or correct, including, but not limited to, the impact of excessive caseloads in providing such quality representation, or lack of adequate supervision or monitoring of attorneys or staff. **(5 points)**
2. Document the nature and extent of the problem to be addressed, including any data collection or analysis related to the problem. **(4 points)**

Plan Implementation

3. Describe how you will implement a plan to address these obstacles to providing quality improvement. The plan must specify the specific problem(s) being addressed (e.g. excessive caseloads, absence of ancillary services available to attorneys, such as investigative, paralegal, social worker or mental health services, inadequate supervision and monitoring of attorneys and staff, etc.). **(16 points)**
4. Describe how you will structure your professional and non-professional staffing to implement your plan, including whether existing staff will perform tasks, or if new staff will need to be hired. **(10 points)**
5. Identify any training or mentoring you may need to accomplish your plan objectives, how you intend to acquire or provide such training/mentoring, and which positions, including supervisory staff, will receive the training/mentoring. **(8 points)**
6. Describe how you will assure the program is feasible, and will monitor the program such that obstacles to implementation can be identified and necessary adjustments made. **(6 points)**

Plan Objectives

7. Specify how the project will improve the quality of representation that clients receive and achieve greater compliance with ILS standards. **(5 points)**

B. Data Collection, Performance Measurement, and Evaluation (20 points)

This section will discuss how you will measure the impact of your project. Descriptions of what data will be collected and how data will be collected are required in this section.

Implementation

8. Describe how you will demonstrate that your plan has been successfully implemented. For example, if your plan will reduce caseloads, specify how you will measure caseloads in a way that is appropriate to verify the implementation of your plan. Alternatively, if your plan will increase support staff or other resources for attorneys, specify how you

will show that these resources, or attorney access to them, were increased. If your plan will improve the quality of supervision and monitoring of attorneys or staff, specify how you will show that such supervision and monitoring has improved, including, if applicable, the ratio of supervisors to attorneys. Please also provide ‘baseline’ information on any quantitative measures you propose, or a narrative account if appropriate, describing relevant features of your program as it stands at present, prior to implementation. **(7 points)**

Evaluation and Impact

9. Describe the expected improvements in quality of representation that will result from your plan, and how these will also be measured. Such measures should reflect attorney behaviors that you expect will change when your plan is implemented. Examples include the average number of attorney visits with clients or client families per case, the average number of hours attorneys spend preparing cases, attorney requests for investigative, social work, mental health or other support resources and the number of such requests that were granted, if applicable, the average number of motions, by type, filed per case, average number of attorney requests for continuances, the rate at which attorneys are present at a defendant’s first appearance in court, the rate at which attorneys are able to provide vertical representation to clients or other measures as appropriate to the quality goals of your plan. Please also provide ‘baseline’ figures for the measures you will use which reflect the situation in your program as it stands at present, if they are available. **(7 points)**

Infrastructure

10. Describe how you plan to track relevant data in relation to points 8 and 9 above for every case in ways that are valid, accurate and reliable and who will input the data. **(3 points)**
11. Describe any changes you would need to make to track required data, and how these would be accomplished. **(3 points)**

C. Applicant Capability and Personnel (6 points)

12. Who will be the lead person(s) responsible for project implementation? **(2 points)**
13. Describe how and to what extent you consulted with the leader of each provider of criminal defense and family court representation under Article 18-B of the County Law. If applicable, describe the willingness of other agencies to cooperate in the implementation of the program. **(4 points)**

D. Budget and Cost (20 points)

Grant applications will be evaluated and rated on efficient use of funds and overall cost-effectiveness, which includes budget plans that are consistent with the proposed action plan, administrative costs, justification for each requested budget line and cost benefit. Complete the attached Budget Form and return with the proposal, being sure to address the following:

14. *Budget*: Provide a detailed, **annualized three-year budget** containing reasonable and necessary costs. The budget for the proposed project must be

consistent with the terms of the RFP and provide a justification for all expenses.
(7 points)

15. *Subcontracting*: Describe whether the proposed budget will include subcontracting with another service provider in order to complete the terms described in this RFP and, if so, provide a brief description of the purpose of the subcontract. **(2 points)**

16. *Budget Justification*: Include a brief narrative for each budget line justifying the budget request and relating the requested line budget amount to the plan of action and expected results. The narrative should be mathematically sound and correspond with the information and figures provided in the Budget Form.
(7 points)

17. The *Budget Justification* must also describe how the county will monitor expenditures during the life of the grant to ensure that the project stays within the budget. **(4 points)**

Complete the attached Budget Form and return with the proposal.

Review and Selection Process

The Office will conduct a two-level review process for all submitted proposals:

- The first level entails a Pass/Fail review, conducted by Office staff, of the submitted proposals to ensure that the application is responsive to the conditions set forth in the RFP. The Office will reject any applications that do not clearly and specifically address the purposes of this funding opportunity and/or fail to meet any of the following criteria:
 1. The RFP was submitted within the designated time frames;
 2. The RFP was submitted consistent with the format requested by the Office;
 3. The applicant is an eligible entity as specified within the RFP;
 4. The proposal purpose is for that intended by the RFP;
 5. The proposal included a budget submission.
- The second level consists of a scored comprehensive proposal review that involves a thorough review of the submitted proposal specifically related to the project work plan, performance measurement and evaluation, organizational capability, overall strength of plan, and the budget and corresponding budget narrative. The proposal review and rating will be conducted using the criteria stated in this Funding Announcement. The Office will typically use staff, and others with expertise in the RFP topic area, to comprise the proposal review team. Each reviewer will assign a score up to a maximum of 100 points to each application; individual scores will be averaged to determine the applicant's score. The Office reserves the right to conduct follow-up discussions with applicants to clarify information in the submitted proposal. In addition, in the event there are any remaining funds after making awards in accordance with the Review and Selection Process, the Office reserves the right to allocate the grant funds in a manner that best suits program needs as

determined by the Office. Such a plan will be subject to review and approval by the Office of the State Comptroller.

Awarding of Grants

Contract Development Process

It is anticipated that applications will be reviewed and that successful applicants will be notified of funding decisions on or about December, 2013. All commitments are subject to the availability of state funds. The proposal review team will recommend to the Office the highest ranked proposal(s) that fully meet the terms of the RFP. All award counties will receive \$60,000 per year for three years. The balance of the funds will be awarded in rank order from the highest to the lowest proposal scores. The final total applicant score will be the cumulative total of the second level review.

The contract process and final contracts are subject to the approval of the State Attorney General and the Office of State Comptroller (OSC). Upon such approvals, the grant process will begin, and all terms of the contract become public information.

As part of the grant award process, the grantee and the Office will establish a mutually agreed upon final budget and work plan, which become the contract deliverables.

As part of the contract with the Office, grantees will be required to submit annual progress reports to the office. These reports should include narrative descriptions of successes achieved, obstacles encountered during implementation, and efforts to overcome these obstacles. Additionally, applicants should anticipate that data collected by the program in accordance with the requirements of section B of the proposal will be required to be reported in aggregate form to the office as a means of understanding the impact of the program, its successes, and the challenges that remain. ILS staff will be available to assist grant recipients with how to best collect these data in ways that are convenient to the program's capabilities, clearly assess the goals of the project, and assure the collection of information that is of the highest possible quality. The Office may suggest the use of a specific data collection protocol, or work with programs to employ existing, in-house case tracking software to produce data.

The Office reserves the right to:

- Negotiate with applicants, prior to award, regarding work plans, budget line levels, and other issues raised within the RFP review to achieve maximum impact from the grant award, and serve the best interests of New York State and ensure that budgets are consistent with proposed action plans; and
- If unable to negotiate the contract with the selected applicants within 60 days, the Office may begin contract negotiations with the next highest scoring qualified applicant(s).

Payment

Grantees may receive 25% of the total first year's award as a budget advance following contract approval by the Attorney General and the State Comptroller. Thereafter, each county will be reimbursed for expenses incurred pursuant to grant related activities including salary, benefits, travel, and related expenses. No payments will be made until the contract is fully executed and approved by the State Attorney General and the State Comptroller.

Funding Requirements

Indigent Legal Services funds distributed by the Office of Indigent Legal Services are intended to supplement county resources for supplying indigent defense services and to ensure proper legal representation for indigent defendants pursuant to Article 18-B of the County Law.

Supplanting is prohibited: Any funds awarded to a county pursuant to this RFP shall be used to supplement and not supplant any local funds, as defined in paragraph (c) of subdivision 2 of section 98-b of the State Finance Law, or state funds, including any funds distributed by the Office of Indigent Legal Services, which such County would otherwise have had to expend for the provision of counsel and expert, investigative and other services pursuant to Article 18-B of the County Law.

The issuance of this request for proposals does not obligate the Office of Indigent Legal Services to award grants.

Budget Form

County	
Budget Contact Person's Name	
Phone	
E-mail address	

Line Item	Year 1	Year 2	Year 3
Personal Service: Position (specify) Salary: Fringe Benefits:			
Personal Service Subtotal			
Contractual Services			
Contractual Subtotal			
Equipment (specify)			
Equipment Subtotal			
Other Than Personal Service (OTPS) (specify)			
OTPS Subtotal			
Miscellaneous			
Miscellaneous Subtotal			
TOTAL			
TOTAL THREE-YEAR BUDGET			