



**Implementing the Quality
Improvement Objectives in the
*Hurrell-Harring v. The State of New
York Settlement*
Final Plan**

November 12 , 2015.

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

**Final Plan to Implement Initiatives to
Improve the Quality of Indigent Defense in Accordance with the
Hurrell-Harring v. State of New York Settlement**

The New York State Office of Indigent Legal Services (“ILS”) submits this written plan to implement Initiatives to Improve the Quality of Indigent Defense in accordance with Section V(A) of the *Hurrell-Harring v. State of New York* Stipulation and Order of Settlement.

Background:

In 2007, the New York Civil Liberties Union sued the State of New York in *Hurrell-Harring*, alleging that the State was “knowingly and systematically violating the fundamental rights of its poorest citizens to meaningful and effective legal representation in criminal cases”¹ by depriving the plaintiffs – and all members of the class – of the right to counsel guaranteed by the New York and United States Constitutions. The gravamen of the complaint was that the poor quality of representation by counsel assigned to represent indigent defendants effectively denied them their constitutional right to counsel.

The resulting Stipulation and Order of Settlement (“Settlement”) fully recognizes that ensuring the right to counsel is predicated on improving the quality of public defense. Toward that end, the Settlement requires the five defendant counties (“Five Counties”) to adopt initiatives to improve the quality of indigent defense in the following categories: (1) supervision and training; (2) access to investigators, interpreters, and expert witnesses; (3) client communication; (4) qualifications and experience levels of attorneys; and, (5) in the case of assigned counsel, that attorneys are assigned to cases in accordance with County Law §18-B.² The Settlement also provides that ILS, in its implementation role, will consult with the Five Counties and establish a written plan to improve quality. To “jump start” these quality improvement initiatives, the Settlement requires the State to provide \$2 million in each of state fiscal years 2015/2016 and 2016/2017.

Faced with limited time and staff³ to develop a plan to improve the quality of defense in all Five Counties, and needing to determine how best to allocate the \$2 million set forth in the Settlement, ILS decided to approach the task of implementing quality improvements in two phases. The first phase has focused on working with the providers in each of the Five Counties to identify the most pronounced and immediate quality improvement needs so that we could

¹ *Hurrell-Harring et al. v. New York*, Index No. 8866/07 (amended class action complaint), available at: <http://www.nyclu.org/files/Amended%20Class%20Action%20Complaint.pdf>, ¶5.

² See § V of the Settlement.

³ ILS was authorized to hire staff to implement the Hurrell-Harring Settlement, but the first Hurrell-Harring staff person, Patricia Warth, Chief Implementation Attorney, did not start her employment at ILS until August 3, 2015. Amanda Oren, the Quality Enhancement Attorney, started her employment on September 14, 2015.

determine how to most effectively allocate the Settlement's \$2 million. This Plan is the culmination of this first phase.

The second phase will be the ongoing implementation of quality improvement initiatives. This phase will allow ILS to consult with a variety of sources so that we can better gauge the quality of representation in each of the Five Counties and better identify the financial resources needed to meet the Settlement's quality improvement objectives. During the second phase, ILS will periodically update this Plan to reflect the information learned about the quality of representation in each county, the concrete steps each county must take to improve quality, and the true costs of meeting the objectives set forth in § V(A) of the Settlement. The last section of this Plan outlines steps that ILS will take going forward as we implement the plan in accordance with § V(B) of the Settlement.

The *Hurrell-Harring* lawsuit, as well as the prior studies of indigent defense delivery systems in New York (the Kaye Commission report, the Spangenberg report, and the National Legal Aid and Defender Association (NLADA) "report cards"), all demonstrate that improving the quality of indigent defense delivery systems will take years, will probably require fundamental changes in the delivery systems, and cannot be solved in less than two years by an infusion of a mere \$2 million for each such year to be distributed among the Five Counties. Still, this Plan is an important first step towards achieving the Settlement's objectives.

ILS's Protocol for Developing this Plan:

To accomplish the first phase, ILS formed a working group⁴ to determine the needs of each of the Five Counties and create a Plan to distribute the \$2 million earmarked in the Settlement to improve quality. This working group used the following process to do so.

1. ILS began meeting regularly with the Five Counties.

Upon the March 11, 2015 approval of the Settlement by the Albany County Supreme Court, ILS Director Bill Leahy sent a letter to each of the County Administrators and County Executives of the Five Counties inviting them to participate in a meeting with ILS. In that letter, Mr. Leahy encouraged County Administrators and Executives to have the following people participate in the meeting: the County Attorney; the providers of Mandated Representation; and any other officials they thought should be involved. This meeting was the first of a series of regular meetings with each of the Five Counties, during which we were able to work with the counties on identifying priorities and immediate needs for improving the quality of mandated representation as well as the costs associated with addressing these needs.⁵

⁴ The working group was formed in January, 2015 and met thereafter on a weekly basis. It consisted of Joseph Wierschem, ILS Counsel; Matthew Alpern, ILS Director of Quality Enhancement for Trial Representation; Andrew Davies, ILS Director of Research; and Risa Gerson, ILS Director of Quality Enhancement for Appellate and Post-Conviction Representation. In early August, 2015, Patricia Warth, Chief Hurrell-Harring Implementation Attorney, joined the working group. In mid-September, Amanda Oren, Hurrell-Harring Quality Enhancement attorney joined the working group.

⁵ A summary of the meeting dates, attendees, and general topics of discussion are set forth in the attached County specific meeting summaries. See Exhibit A.

2. ILS solicited information from the providers of mandated representation through structured interviews.

In early April 2015, ILS contacted each of the providers in the Five Counties by letter and sent them a list of questions that we would discuss with them when we met with them personally.⁶ The questions were designed to facilitate an interview that would help us determine: (1) the baseline level of the quality indicators set out in the settlement; and, (2) the self-reported needs of each of the providers. After each of the providers received the letter, we traveled to the counties and conducted structured interviews to elicit answers to the questions. These interviews occurred as follows:

- *Onondaga County*: ILS met with Renee Captor, Onondaga County Assigned Counsel Program Administrator, and members of the Onondaga County Attorney's office on May 4, 2015. Shortly thereafter, on May 8, 2015, ILS met with Susan Horn, President and Chief Executive Officer of the Frank H. Hiscock Legal Aid Society, and members of the County Attorney's office.
- *Ontario County*: ILS met with Leanne Lapp, Ontario County Public Defender, Andrea Schoeneman, Conflict Defender and Assigned Counsel Program Administrator, along with members of the Ontario County Attorney's office on June 22, 2015.
- *Schuyler County*: On May 21, 2015, ILS met with Wesley Roe, Schuyler County Public Defender, and Jessica Saks, Schuyler County Conflict Defender.
- *Suffolk County*: ILS met with Assigned Counsel Program Administrator David Besso on May 13, 2015. On May 15, 2015, ILS met with the following representatives from Suffolk County Legal Aid Society: Assistant Chief Attorney-in-Charge Laurette Mulry, Felony Section Chief Ed Vitale, East End Bureau Chief Sabato Caponi, and District Court Bureau Chief Joe King.
- *Washington County*: ILS met with Michael Mercure, Public Defender, and his administrative assistant, Marie Drost, on April 10, 2015.

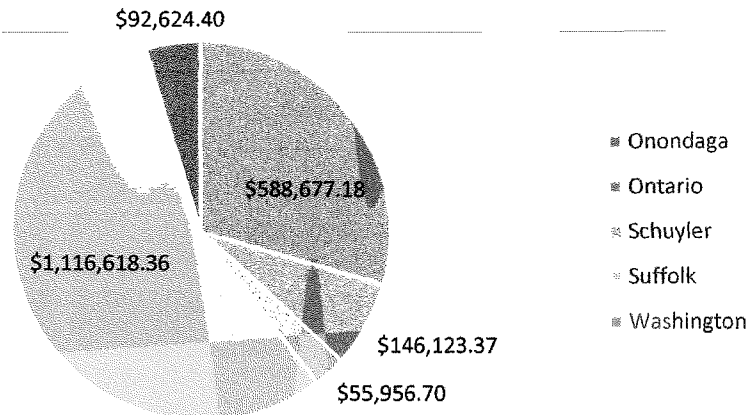
3. ILS then determined how to allocate the \$2 million in an equitable fashion among the Five Counties.

We allocated the \$2 million equitably among the Five Counties, taking into account the number of cases each county handles per year and the funding needed to make a positive impact. In order to assure that each of the Five Counties was given sufficient funds to be able to make a positive impact on the quality of legal services they provide, we first allocated each county \$50,000, and then divided up the remaining \$1.75 million based on the number of dispositions each County handled in 2014 as reported by the Division of Criminal Justice Services (DCJS). We weighted felony dispositions as equal to 2.67 misdemeanors in keeping with the counting method already employed in New York City (see Rules of the Chief Administrative Judge §127.7). Based on this formula, the allocation of the \$2 million is as follows: Suffolk County:

⁶ A copy of the template used for each letter is annexed to this report as Exhibit B.

\$1,116,618.36; Onondaga County: \$588,677.18; Ontario County: \$146,123.37; Washington County: \$92,624.40; Schuyler County: \$55,956.70.

**Funding - by total criminal court dispositions
(felonies weighted to 2.67 misdemeanors)**



4. We reviewed government task force reports and the *Hurrell-Harring* pleadings and exhibits to determine the factors that comprise quality indigent defense systems.

To assess the needed quality improvement initiatives in the Five Counties, it was necessary to identify the factors that comprise quality defense. We looked to a November 2003 summit convened by the Office of Justice Initiatives of the Office of Court Administration. This summit brought together judges, prosecutors, criminal defense lawyers, and other stakeholders in the criminal justice system who have the most knowledge and on-the-ground experience in the defense of criminal defendants. These stakeholders reached a consensus of what constitutes quality in the delivery of indigent criminal defense, identifying five factors: (1) detailed state-wide standards of practice for public defense providers; (2) meaningful training, supervision and mentoring; (3) parity in salary and resources between prosecution and defense; (4) independence of public defense offices; and, (5) development of a client-centered ethos.⁷ ILS has incorporated these factors into our working definition of quality criminal defense.

To ensure that we were addressing the most pressing problems facing the Five Counties, we re-reviewed the *Hurrell-Harring* pleadings and studied the report by Gary King, Albert J. Weatherhead III University Professor at Harvard and Director of the Institute of Quantitative Social Science, who was retained by the plaintiffs to analyze the data produced in the litigation

⁷ Although the summit did not produce a written report, it is described in the Final Report to the Chief Judge of the State of New York: Commission on the Future of Indigent Defense Services (June, 2006; “the Kaye Commission Report”), at page 13.

related to the delivery of legal services in the Five Counties.⁸ While we recognize that the Plaintiffs retained Dr. King's services for purposes of the *Hurrell-Harring* litigation, and that because of the Settlement, there was no need for the Defendants to refute the analysis and findings contained in Dr. King's final report, we found the final report a helpful tool in understanding and evaluating the current state of mandated representation in some of the Five Counties. Therefore, we considered the data from Dr. King's report where appropriate and relevant.

What follows is the written plan specified in § V(A) for each of the Five Counties. The plan is organized by county, with the following sections for each county:

- A. Overview of Mandated Representation Services in the County
- B. Information Learned Regarding Quality of Mandated Representation
- C. Preliminary and Immediate Areas to Target for Improvement
- D. Use of the Settlement's Quality Improvement Funding

The recommendations in this plan are tailored to each county's needs, and within the counties, different solutions are proposed for different providers. However, at least one common theme has emerged among all Five Counties: the need for development and enhancement - and in some counties the outright creation - of the Assigned Counsel Program.

Finally, it bears noting that this Plan takes into account the quality improvements that each of the Five Counties have already initiated using ILS funding. Annexed to this plan are charts for each of the Five Counties summarizing the funding (through distributions and competitive grants) they have received from ILS and how they have used that funding. (These charts are attached as Exhibit C). Our recommendations assume that this funding will not only continue, but increase, as it is critical to the Settlement's goal of enhancing the quality of representation.

With ILS funding, even prior to the Settlement, the Five Counties have been able to begin the quality improvement process. Many have chosen to convert part-time public defenders to full-time public defenders as well as add additional attorneys. All the counties were able to add investigative services as well as expert services. Some of the counties were able to obtain the services of social workers and mitigation specialists to address their clients' many needs and assist attorneys in advocating for better sentencing outcomes.⁹ All Five Counties have been able to begin providing more trainings to their mandated providers either through Continuing Legal Education (CLE) courses or some in-house trainings. Some counties have also been able to add interpreter services to address their clients' needs. Finally, some counties were able to add office space close to their most active courts in order to facilitate easy client contact.

⁸ In his preliminary report, Dr. King analyzed data from each of the Five Counties; in his final report, he did not include an analysis of Ontario County, because by that time, Ontario County had entered into a settlement with the plaintiffs.

⁹ While these services are needed for all clients, some of the counties were able to focus the service on their adolescent clients, hopefully diverting them permanently from the criminal justice system.

This list is by no means exhaustive but is meant to illuminate the need to at least maintain, if not increase, the funding made available to the Five Counties through ILS to implement quality improvement initiatives.¹⁰

¹⁰ For purposes of this Plan, we have focused solely on criminal defense aspects of the providers' programs. It should be noted, however, that many mandated providers have the additional obligation to provide representation in family court. Thus, many providers have used distributions to improve quality for family court services as well as criminal.

ONONDAGA COUNTY

A. Overview of Mandated Representation Services

Prior to 2004, when the County Law Article 18-B rates were raised, Onondaga County had a contract with the Hiscock Legal Aid Society to represent eligible defendants in Syracuse City Court (which handles misdemeanors and violations), parole revocation hearings, extraditions, and criminal appeals. Lawyers on the Assigned Counsel Program panel represented eligible defendants in felony cases. In March 2004, the Onondaga County Legislature voted to end its contract with the Hiscock Legal Aid Society to represent eligible clients in Syracuse City Court and awarded the contract to the Onondaga County Bar Association Assigned Counsel Plan after it submitted the lowest bid of \$4.2 million. The County estimated that the change would result in a savings to the County of \$1.1 million.

Currently, there are approximately 160 lawyers on the assigned counsel panel who handle criminal cases. In addition to these panel attorneys, the Assigned Counsel Program includes a full-time administrator (Renee Captor) and four full-time administrative staff persons. The program has four panels: homicides, felonies (including parole revocations), misdemeanors, and Family Court. There are specific criteria for admission to each of the panels. The Hiscock Legal Aid Society, which continued its representation of clients on appeal, extraditions, and parole revocation, has five full time and one part time appellate lawyer, two parole revocation lawyers, and a contract lawyer who handles the extraditions.

In 2014, a combined total of 14,731 criminal cases (which included 654 appeals) as well as 3,416 family court cases were referred to Onondaga County providers of Mandated Representation.¹¹

B. Information Learned Regarding Quality of Mandated Representation

In developing the plan for Onondaga County, we relied upon ILS's meetings with the stakeholders, the structured interviews ILS conducted with each provider of Mandated Representation, and the final report of Dr. Gary King.

i. Onondaga County Bar Association Assigned Counsel Program

Supervision and training: The Assigned Counsel Program does not supervise its panel attorneys. During meetings with ILS, the County expressed its concern that direct supervision of panel attorneys would transform the status of these attorneys from "independent contractor" to "employee" which could have significant tax and financial implications for the County. Thus, supervision is done informally between attorneys, and at their initial orientation, lawyers are encouraged to seek help from other panel attorneys if they need it. However, the Assigned Counsel Program does not monitor or track this informal supervision. The Assigned Counsel Program maintains a second-chair program through which lawyers can advance to higher level

¹¹ 2014 UCS-195 filed with the State by the providers of Mandated Representation in Onondaga County.

panels by pairing with a more experienced mentor, who may submit a voucher for the hours spent mentoring. However, the program is rarely used, and there is a cap of 40 hours for which mentoring attorneys may voucher. The program does not maintain a system to review attorney performance or require re-certification of panel attorneys. If a client complains to Ms. Captor about an attorney, she refers the complaint to the attorney and asks the attorney to respond.

Training is done solely through the delivery of continuing legal education (CLE) programs. Twice each year the Assigned Counsel Program sponsors a six hour CLE program with New York State Association of Criminal Defense Lawyers (NYSACDL). This allows panel attorneys to earn twelve free CLE credits per year. The Assigned Counsel Program has also co-sponsored some CLE programs with the Onondaga County Bar Association, including, for example, 1 ½ hour CLEs on “motion practice” and “preserving the record for appeal.” The Assigned Counsel Program does not reimburse panel attorneys for attending state-wide or national trainings. The Assigned Counsel Program handbook requires that panel attorneys attend a minimum of 50% of their state-mandated CLE credits in the practice related to the panels on which they are members.

Client Communication: When questioned as to whether there were policies regarding attorney-client communication, Ms. Captor stated that she reviews vouchers to ensure that attorneys are communicating with their clients. Ms. Captor did not articulate any policy of placing limits on the number of hours an attorney could bill for client communication.¹² She also noted that the Assigned Counsel Program will reimburse panel attorneys for collect calls from clients, but added that attorneys are accepting calls, but not billing because of the expense.

Legal Research: Ms. Captor did not know how much time attorneys spend on legal research, though she said that she likely could extract that information from the program’s voucher database. The program does not require that attorneys have accounts with Westlaw or Lexis or have access to a law library to conduct legal research.

Experts, investigators, sentencing advocates, and social workers: To involve an expert or investigator in a case, panel attorneys must apply to the court. The Assigned Counsel Program will pay the expert or investigator only if the court grants the application. Ms. Captor does not monitor the work of experts or investigators or supervise panel attorneys on using these types of services. Ms. Captor noted, however, that in 2014, the Assigned Counsel Program spent \$114,519 on investigators and experts in 81 cases.

¹² Lawyers from the Onondaga County Assigned Counsel Plan who belong to a group called the Gideon Society, met with Matthew Alpern and Risa Gerson on May 29, 2015. At that meeting, attorneys provided numerous written examples of the Assigned Counsel Program’s challenging of billing for client communication, specifically, “too many telephone calls to client” in its “Voucher Review” program. While these vouchers are older, they do identify a possible concern that ILS needs to investigate further to determine if there is a current practice of the Assigned Counsel Program challenging vouchers for too much client communication. Another disturbing practice is the Assigned Counsel Program’s rule that adjournments should be requested by phone or fax. We were provided with scores of written challenges to attorneys who had billed for in-court time that the program challenged on the basis that the case was not adjourned by phone or fax.

The Assigned Counsel Program has received funding from ILS to pay for sentencing advocacy/mitigation services, though panel attorneys must still apply to the court to authorize payment of such services. Panel attorneys can also utilize – for free and without prior court authorization – the sentencing advocacy services of the Center for Community Alternatives (CCA), though the Assigned Counsel Program does not have data on how frequently this service is used.

Assignment of attorneys to cases: Ms. Captor acknowledged that she does not assign attorneys to cases; rather, she provides judges with lists of attorneys on the different panels (homicide, felony, and misdemeanor) and judges select which attorneys are to be assigned.

In addition to obtaining information from Ms. Captor, ILS reviewed the final report that Dr. Gary King prepared for the *Hurrell-Harring* plaintiffs. His analysis of the Onondaga County Bar Association's Assigned Counsel Plan¹³ was based on a review of information obtained from vouchers from January, 2006 through January, 2013, as well as data obtained from the New York State Office of Court Administration. He focused his research on the amount of time spent communicating with clients, the number of hours billed for fundamental tasks required in representation, and the number of cases in which experts, investigators, and translators were retained. Dr. King also analyzed the data showing the number of cases each attorney on the panel handled during the subject years.

Several disturbing trends were identified by Dr. King, but three stand out.¹⁴ First, the data demonstrates that the attorneys on the assigned counsel plan were not regularly communicating with their clients. Second, attorneys were not engaging in legal research, were not filing motions, were not obtaining and reviewing discovery, and were not spending significant time preparing for trial. And, third, very few of the attorneys were conducting investigations, consulting with experts in their cases, or using translators to communicate with their clients who did not speak English.

Client communication: Dr. King's analysis showed that for cases assigned in 2010, attorneys did not bill for any time consulting with clients in 22.6% of cases (14.2% of felonies, 29.9% of misdemeanors, and 31.2% of violations).¹⁵ In 2011, the percentage of cases in which no time was billed for meeting with the client was only nominally less: 21.6% of all cases (13.7% of felonies, 28.5% of misdemeanors, and 28.7% of violations). But most troubling is that the percentage of cases in which attorneys did not bill for any time consulting with their clients dramatically increased in 2012 and again in 2013. In 2012, 26.7% of the vouchers submitted did not include any time billed for meeting with the client (14.3% in felony cases, 34.4% in

¹³ Gary King did not analyze appeals, parole revocation, or extraditions, all of which are handled by the Hiscock Legal Aid Society. The final report is dated September 24, 2014.

¹⁴ One other area of concern is that a small number of attorneys are assigned a vast majority of the cases, suggesting that a rotational system in which the cases are assigned equally among the members of the panel does not exist in Onondaga County.

¹⁵ See Onondaga Table 9, page 42.

misdemeanor cases, and 37.6% in violations). In 2013, 31% of all vouchers submitted – almost a third of the vouchers – did not include any time billed for meeting with the client (15.9% in felony cases, 38.5% in misdemeanor cases, and 39.6% in violations). The remainder of the data is of equal concern: it shows that in more than half the cases assigned, attorneys are spending no more than an hour meeting with their clients (2010 - 69.5% of cases the attorneys billed one hour or less time meeting with clients; 2011 72.7%; 2012 - 74.8%; 2013 79.9%).

*Legal research, motion practice, discovery, and trial preparation:*¹⁶ The data collected by Dr. King shows that it is only in a very small percentage of cases that attorneys are engaging in legal research, motion practice, obtaining and reviewing discovery, and trial preparation. In the years 2010 - 2013, 97.2% of the vouchers did not bill any time for legal research (93.1% felony cases, 98.6% misdemeanor cases, and 99.2% violations). In those same years, in 93.5% of all cases, no time was billed for motion preparation or motion filing (86.6% of felonies, 95.7% of misdemeanors, and 97.3% of violations).

In all cases assigned from 2010 - 2013, 69.3% of the assigned attorneys did not bill any time for obtaining or reviewing discovery (52% of felonies, 74.4% of misdemeanors, and 81.6% of violations). In those cases in which attorneys did bill for discovery, most billed between .1 and 1 hour. Very few vouchers contained bills for trial preparation: 97.7% of all vouchers contained no charge for trial preparation.

*Investigators, expert witnesses, and translators:*¹⁷ Dr. King analyzed cases in Onondaga County from 2011 - 2013. His statistical analysis showed that attorneys on the Assigned Counsel Program panel utilized investigators, expert witnesses, and translators in, at most, 0.3% of cases. Specifically, for investigators, in 2011, there were 14,183 active cases and 21 investigators were retained (0.1%); in 2012, there were 13,816 active cases and 36 investigators were retained (0.3%); in 2013, there were 11,872 active cases and 23 investigators were retained (0.2%). For expert witnesses, in 2011, of 14,183 active cases, experts were retained in 10 (0.1%); in 2012, of 13,816 active cases, experts were retained in 22 (0.2%); and in 2013, of 11,872 active cases, 17 experts were retained (0.1%). For translators, so few were retained that in 2011 and 2012 the number was statistically insignificant (3 translators of 14,183 cases in 2011 and 4 translators of 13,816 cases in 2012). In 2013, 11 translators were retained of 11,872 cases, (0.1%).

ii. **Hiscock Legal Aid Society**

Supervision and training: Hiscock's appeals unit has a formal supervision and training structure, with one supervising attorney, and another experienced appellate lawyer who also supervises the less experienced attorneys (though he does not have the title of supervisor). Each attorney is required to write a case digest, which is then reviewed by one of the supervising attorneys. Additionally, Hiscock has contracted with attorneys from Monroe County Public Defender Office's appellate unit to provide training for new appellate attorneys. The two attorneys in the parole unit do not have a formal supervisory structure, but instead rely on Susan Horn for

¹⁶ See Onondaga Table 13, page 51.

¹⁷ See Onondaga Table 14, page 53.

supervision on an “as needed” basis. For continuing legal education, the lawyers attend New York State Defenders Association (NYSDA) trainings and Onondaga Bar Association trainings.

Legal research: The appellate lawyers spend about 25% of their time on legal research. The parole revocation attorneys seldom conduct legal research, as most of their time is spent at the jail interviewing clients and conducting hearings.

Investigators, experts, and translators: Hiscock has a contract with the Multicultural Association of Medical Interpreters for their translation needs. The appeals attorneys do not have a need for mitigation services, though Hiscock has obtained funding through the Division of Criminal Justice Services for a contract with the Center for Community Alternatives (CCA) to obtain alternatives to incarceration for its parole revocation clients. Though the contract allows for up to ten cases per year, the two parole revocation attorneys utilize CCA services in far more than just ten cases per year. As of October 2015, however, Hiscock has learned that the DCJS funding for this contract will be dramatically reduced, impacting the service. The office does not use investigators; in the few cases in which parole lawyers deem it necessary to investigate, they will do the investigation themselves.

Assignment of cases: All cases are assigned to attorneys internally. The appeals unit uses a “wheel” for assignments, though this system is often adjusted to take into account attorney experience, ability, and caseload. Notably, the appeals unit has an extensive backlog of cases; at the close of 2014, there were 239 appeals pending, which means that defendants must wait for years before an attorney is assigned to handle their appeal. The parole revocation unit also uses a “wheel,” though because the cases are more comparable, there typically is no need to make adjustments.

C. Preliminary and Immediate Areas to Target for Improvement

Like all the counties in this litigation, Onondaga’s most critical and immediate need is to improve the quality of its Assigned Counsel Program by creating a formal structure for supervision, training, mentoring, and on-going evaluation of the panel attorneys. Once in place, this supervision structure needs to monitor attorneys to ensure that they are: regularly and effectively communicating with their clients; engaging in basic pre-trial practice, including, but not limited to, legal research, filing motions, obtaining and reviewing discovery and spending significant time preparing for trial; conducting investigations; and consulting with and utilizing experts, translators, and sentencing advocates. These conspicuous shortfalls seriously undermine the quality of representation provided by the Assigned Counsel Panel in Onondaga County and must be remedied.

Additionally, there exists the ongoing issue of case assignments. In Onondaga County, attorneys are selected by individual judges to serve as assigned counsel on cases. They are not selected on a rotational basis by the Assigned Counsel Program Administrator as required under County Law

Article 18-b.¹⁸ In fact, many of the assignments in Syracuse City Court are given to a “core” group of attorneys without any objective criteria of how the “core” group of attorneys is chosen or how an attorney applies for or is removed from the judge’s list. And in the local justice courts, the process of selecting attorneys from the assigned counsel panel is left entirely to the court magistrates. This process has the significant potential to create a culture in which attorneys feel beholden to the judges upon whom they rely for assignments, thereby chilling the attorneys’ ability to advocate zealously for their client.

In regard to mandated services provided by the Hiscock Legal Aid Society, the most pressing need at this time is reducing the case backlog in the appeals unit so that defendants are not waiting years to have an attorney start working on their appeal. Currently, the backlog is approximately 2 ½ years long, meaning that the appeals unit attorneys have just started working on the appeals of cases from 2013. Going forward, ILS needs to further explore the issue of client communication to gauge whether the appeals unit attorneys are visiting clients. For the parole revocation unit, ILS needs to further explore the issue of supervision and training, since this unit seems to lack a formal supervision and training structure at this time.

D. Use of the Settlement’s Quality Improvement Funding

ILS has allocated Onondaga County \$588,677.18 of the \$2 million in funding to improve quality of criminal defense representation. Since Onondaga provides all its criminal representation except for appeals and parole matters through the Assigned Counsel Program, there was consensus that most of the funding should be allocated to the Assigned Counsel Program to address its pressing need of supervision and training. The Hiscock Legal Aid Society will receive funding to address the significant backlog in its appeals unit.

i. Assigned Counsel Program - \$432,980

Onondaga County proposed to meet the Settlement’s quality objectives for the Assigned Counsel Program in two key ways: 1) making more money available for training, including scholarships for panel attorneys to attend intensive, hands-on training programs that typically last several days; and 2) creating a comprehensive mentoring program that will use a pool of qualified and experienced attorneys as mentors to train and supervise panel attorneys. The County’s proposal will be funded as a pilot program, to be monitored by ILS, with the following budget. The budget reflects specific modifications from what was originally proposed, which are discussed further below:¹⁹

¹⁸ Specifically, County Law § 722(3) provides that where a county has an Assigned Counsel Program, criminal defense services must be “rotated and coordinated by the administrator” of that program.

¹⁹ Onondaga County’s proposed budget included supervision for family court. Although we agree that family court attorneys also need the same support as criminal attorneys, the Settlement does not provide direct funding for family court services. Thus, the proposed money for supervision of family court attorneys is redistributed to needed criminal services.

- **Training - \$34,000²⁰**

This amount of funding will enhance the Assigned Counsel Program's current CLE programs and allow for scholarships to regional and national high-caliber, "hands-on" training programs. ILS will consult with the Assigned Counsel Program in developing a list of acceptable trainings for these scholarships.

- **Mentoring & Enhanced Second-Chair Program - \$112,500**

This amount will allow mentoring for new attorneys; it will also enhance the Assigned Counsel Program's "second-chair" program so mentors can be compensated for more hours for serving as second chair to felony trials of attorneys new to the felony panel.

- 10 hour minimum @ \$150/hour (50 new attorneys per year): **\$75,000**
- First Felony trial – \$7500 per case (5 cases each year): **\$37,500**

- **Supervision - \$222,100**

This amount will pay for mentor time to observe attorneys during court appearances and then meet with attorneys to discuss their observations.

- Court Monitoring (City Court) – 10 hours/wk @ \$150/hour: **\$75,000**
- Court Monitoring (Town Courts) – 10 hours/wk @ \$150/hour + travel (\$50): **\$77,500**
- Court Monitoring (County/Supreme Courts) – 5 hours/wk @ 150/hour: **\$37,500**
- Consultation – 144 hours annually @ \$150/hour: **\$21,600**
- Complaints – ACP staff time & court reporter (10 hours @ \$50/hour): **\$500**
- Computer Modifications – 100 hours @ \$100/hour: **\$10,000**

- **Quality Standards Coordinator - \$64,380**

This amount pays for a part-time Assigned Counsel Program staff person to coordinate mentor schedules.

- Part time (\$30,000) plus benefits: **\$46,380²¹**
- Rent for additional office space (\$1350/mo): **\$16,200**
- Office Furniture & computer station setup: **\$1,800**

This budget allocates Onondaga's Assigned Counsel Program a total of **\$432,980** for each of the two years. Notably, in the first year of funding, there are \$11,800 of one-time costs that should be used in the second year to enhance supervision and training.²² After year one, the Assigned

²⁰ This budget is decreased by the \$1000 that the County had proposed for the Assigned Counsel Program's time and materials for "orientation." We believe that orientation costs are a current function of the Assigned Counsel Program, and therefore, should not be included as part of a Quality Improvement budget.

²¹ This is at a part-time salary of \$30,000 plus a .546 fringe benefit rate.

²² These one-time costs are: 1) \$10,000 for computer modifications; and 2) \$1,800 for office furniture and computer or the new part-time ACP staff person.

Counsel program, in consultation with ILS, can determine where this additional funding should be targeted.

The foregoing budget modifies the County's proposed budget in five ways. First, it lowers the hourly rate to be paid mentors to better reflect the hourly rate paid to attorneys for comparable services in the other Five Counties.²³ Second, this budget allocates more resources to training. Third, in recognition that all attorneys – even experienced attorneys – need ongoing supervision and access to other attorneys with whom to consult, the supervision program includes a consultation component.²⁴ Fourth, ILS increased the amount of time allocated for mentors to monitor panel attorneys in town and city courts and meet with the attorneys to discuss the mentors' observations.²⁵ Fifth, County Court will be included in the mentors' observations so that all attorneys on the panel are mentored.²⁶

Mentors will be selected in consultation with ILS and in accordance with written criteria that will be developed in consultation with ILS. Taking these steps is necessary to ensure that the mentors are high-caliber criminal defense attorneys with recent experience serving as defense counsel in serious felony cases – especially cases that have been completed by way of trial.²⁷ Additionally, the Assigned Counsel Program, in consultation with ILS, will develop written

²³ Onondaga County has proposed an hourly rate of \$250 per hour. The lower rate of \$150 per hour rate is twice the assigned counsel hourly rate for felonies, so it should be sufficient to draw experienced, motivated attorneys to serve as mentors. Lowering the hourly fee has the added benefit of allocating more hours to mentoring.

²⁴ Since attorneys of the Assigned Counsel Program are not institutional providers, many do not have access to the resources of an institutional provider. The most important support that institutional providers have that assigned counsel attorneys do not have is the collective knowledge base and ability to brainstorm problems with respected colleagues. ILS has included a budget to mentor consultation time so mentors will be available to consult with attorneys about case-specific issues that arise.

²⁵ Observing in and of itself is not sufficient – mentors need to be paid for the time they spend with attorneys after the court observations discussing what was observed, identifying what was done well, and talking about areas of needed improvement. Moreover, observation should not be limited to new or younger attorneys.

²⁶ We acknowledge that more experienced attorneys may not need as much supervision, but the panel should be ensuring that experienced attorneys have access to mentors and are keeping up with and utilizing cutting edge theories of defense as well as continuing to represent their clients zealously.

²⁷ The mentors must have recent experience with cultivating positive client relationships, investigating cases, identifying factual and legal issues, appropriately using experts and investigators, conducting research, writing and arguing motions, making important strategic decisions, engaging in plea negotiations, advising clients about possible pleas, conducting juror selection, cross-examining witnesses, submitting proposed juror instructions, etc. Moreover, though the County proposed a pool of 20-25 mentors, we believe that this number is too large and unwieldy. ILS will work with the County on selecting 5-10 experienced attorneys to serve as mentors. Because there will be fewer mentors, it is not necessary for the Assigned Counsel Program to have a full-time Quality Standard Coordinator, so we have allocated funding for a part-time staff person.

protocols to guide the mentors in supporting and supervising attorneys. Such protocols are needed so that mentors can productively intervene to help attorneys resolve performance issues, and if issues persist even after appropriate interventions, they can take necessary corrective action, including commencing steps which could lead to suspension or removal from the Assigned Counsel Program panel.

ii. Hiscock Legal Aid Society - \$155,697

As stated above, the most immediate issue for the Hiscock Legal Aid Society is the significant backlog in its appeals unit. Hiscock Legal Aid's allotment under the settlement will be allocated to hire two additional attorneys to help reduce the appeals backlog. The cost of two full-time attorneys with benefits would be a total of **\$137,830**. There would also be a one-time cost of **\$9,000** for furniture and computers the first year, which can be re-allocated for salary raises the second year. There are other ancillary costs including liability insurance, phone and internet use, etc. that amounts to **\$8,867** for a total of **\$155,697**.

ONTARIO COUNTY

A. Overview of Mandated Representation in Ontario County

In the wake of the Kaye Commission report and the National Legal Aid and Defender Association's (NLADA's) 2009 "report card" which gave failing grades to Ontario County's assigned counsel program, Ontario County appointed a committee to recommend whether the county should change its method of providing legal representation to criminal defendants who cannot afford counsel. In 2009, the county created a Public Defender office, and the Board of Supervisors appointed Thomas Kidera as Public Defender. He resigned in 2011, and later that year, Leanne Lapp was appointed Public Defender.²⁸ Currently, the Public Defender's office employs 12 lawyers: the Public Defender Leanne Lapp and 11 other attorneys. Five attorneys handle felony cases, two attorneys handle misdemeanor and DWI cases, two attorneys handle misdemeanors and parole violations, two attorneys are assigned to the office's Counsel at First Appearance program, and one attorney has a mix of family court and town court cases.

In 2013, through Ontario Local Law 3 of 2013, Ontario County created a Conflict Defender office which opened in July, 2014.²⁹ The Conflict Defender is appointed by the Board of Supervisors. Andrea Schoeneman has been the Conflict Defender since July 1, 2014; her office consists of herself and a confidential secretary. Ms. Schoeneman also acts as the Assigned Counsel Program administrator and has the responsibility of assigning cases to an Assigned Counsel attorney where the Conflict Defender Office cannot take the case because of a conflict or because of capacity.³⁰ There are approximately twelve attorneys on the Assigned Counsel list. There are separate panels for class A felonies, class B and C felonies, class D and E felonies, Sex Offender Registration Act cases, parole revocation cases, and appeals. Nine of the panel attorneys can receive assignments to the more serious felony cases.

²⁸ The Daily Record, March 10, 2011, <http://nydailyrecord.com/blog/2011/03/10/ontario-co-seeks-new-public-defender/>

²⁹ On June 20, 2014, the Plaintiff Class entered into a settlement agreement with Ontario County ("Ontario Settlement"), and the Court approved the settlement on September 2, 2014. As part of the Ontario Settlement, Ontario County agreed to establish an Office of Conflict Defender, which would include, at a minimum, a full-time position of Conflict Defender. The Conflict Defender's minimum qualifications, duties, compensation and benefits are set forth in Local Law 3 and were incorporated into the Ontario Settlement.

³⁰ The Ontario Settlement specifically provides that, in criminal cases, where the Public Defender's Office is conflicted (or assignment of additional cases would cause the Public Defender's Office to exceed caseload/workload standards), mandated representation must be provided by the Conflict Defender's Office, or in cases where the Conflict Defender's Office is conflicted (or additional cases would cause the Conflict Defender's Office to exceed caseload/workload standards), by an Assigned Counsel attorney *appointed by the Conflict Defender* (see Ontario Settlement, p. 2, subd. 2). We note that, at a minimum, there is an appearance of a conflict in having the Conflict Defender responsible for making these assigned counsel appointments.

In 2014, a combined total of 3,151 criminal cases as well as 101 family court cases were referred to Ontario County's providers of Mandated Representation.³¹

B. Information Learned Regarding Quality of Mandated Representation

i. The Public Defender Office

Supervision and training: Ms. Lapp and her First Assistant supervise the staff attorneys, with Ms. Lapp focusing on the felony attorney staff and her First Assistant focusing on local court attorneys. Notably, they must do this in addition to handling their own cases, so the time they can devote to supervision is limited. The felony staff meet weekly over lunch to discuss their cases. Ms. Lapp also meets with local court attorneys every other week for one-on-one supervision. Additionally, there is a great deal of informal supervision and mentoring, as both Ms. Lapp and her First Assistant have an "open door" policy, and the felony attorneys, all of whom are very experienced, discuss their cases with each other and mentor less experienced attorneys. The Public Defender's office has received funding from ILS for continuing legal education ("CLE") programs and it presented three CLE training programs in the past year; it also has a budget to send lawyers to out-of-county and out-of-state trainings.

Client communication: With respect to client communication, the protocol is for attorneys to note all contact with clients on their files. Ms. Lapp characterized her office staff's communication with jailed clients as "very good," though it seems that the jail is not allowing legal visits to occur in a confidential setting.

Legal research: Ms. Lapp could not quantify how much time staff attorneys spend on legal research. Staff attorneys have access to Lexis, and Ms. Lapp circulates significant new court decisions when she learns of them.

Experts, investigative, and sentencing advocacy services: In addition to the legal staff, the Public Defender's Office employs three full-time investigators, one of whom supervises the other two. Ms. Lapp stated that initially, staff lawyers were not fully utilizing the investigators, so she began to assign an investigator to every felony case and certain misdemeanors (such as sex offenses). The Public Defender Office also has one part-time alternatives-to-incarceration specialist on staff who assists with clients in need of mental health or substance abuse services. Finally, the office has a budget to retain other experts, which is most often used for evaluations of people charged with a sex offense, though in previous years, the office has retained computer experts, medical experts, and accident reconstructions experts.

ii) The Conflict Defender and Assigned Counsel Program

Supervision, training. There is no supervision or mentoring provided to the Conflict Defender, nor is there a structure in place to supervise, train, and mentor the attorneys on the Assigned Counsel Program panel. Ms. Schoeneman is currently working on a system for applying to and

³¹ 2014 UCS-195 forms filed with the State by providers of Mandated Representation in Ontario County.

being re-certified to be on the Assigned Counsel Program panel. The Assigned Counsel Program has a budget for attorneys to attend CLEs and Ms. Schoeneman forwards the attorneys information about upcoming CLE programs sponsored by other entities. The budget has allowed for several of the panel attorneys to attend the annual New York State Defenders Association (“NYSDA”) training in Saratoga.

Client communication: The vouchers submitted by Assigned Counsel Program panel attorneys set out the number of hours each attorney bills for client communication. Additionally, Ms. Schoeneman requires attorneys to visit their incarcerated clients within 24 hours of assignment and at least once every two weeks thereafter.

Legal research: The Conflict Defender does have access to Lexis for legal research. Assigned Counsel Program panel attorneys are expected to engage in legal research, though if they voucher for more than five hours, they must identify the subject matter. At present, the Assigned Counsel Program does not provide panel attorneys access to Lexis or Westlaw to conduct legal research.

Experts, investigative, and sentencing advocacy services: To retain the services of an expert or investigator, Assigned Counsel Program panel attorneys must apply to the court to have the expert appointed. Ms. Schoeneman encourages panel attorneys to use experts and investigators and she provides them with a list of potential experts and investigators. However, she states that the panel attorneys do not use them as often as they should.

C. Preliminary and Immediate Areas to Target for Improvement

Like the other counties in this litigation, Ontario County’s most pressing issue is providing the necessary training, supervision, and mentoring for the Assigned Counsel Program panel attorneys. Ms. Schoeneman’s role as administrator is primarily to assign cases to panel attorneys when the Conflict Defender Office cannot take a case; she does not provide on-going training and supervision. Ms. Schoeneman is in the process of developing the Assigned Counsel Program plan, which includes developing a Handbook for the program that sets forth the practice standards for attorneys on the Assigned Counsel Program panel. The Ontario County Bar Association is currently in the process of reviewing this Handbook.³² This is but a first step toward formalizing the much-needed ongoing training, supervision, and mentoring of Assigned Counsel Program attorneys. Additional steps are needed to support the program, including, for example, steps to ensure that panel attorneys have access to legal research supports, and that they also have access to (and are trained on how to effectively use) investigators, experts, and interpreters.

In addition to ensuring that the Assigned Counsel Program panel attorneys have ongoing training and supervision, the Conflict Defender Office needs an attorney with more experience in

³² One of the issues currently being discussed is whether Ms. Schoeneman should have the discretion to make changes to the Handbook without having to obtain Bar Association approval.

criminal defense representation. The County is aware of this need, and intends to address this using ILS distribution funding.

The Public Defender Office's most persistent issue is the need for more legal staff so that Ms. Lapp and her First Assistant will not need to represent as many clients as they currently do, which would free up more of their time for supervising and supporting staff attorneys. Currently, Ms. Lapp and her First Assistant's heavy caseloads prevent them from having guaranteed, dedicated time for supervision of the staff. Moreover, though the Public Defender Office has taken great strides towards effectively using their investigators, the office would benefit from added resources, including additional investigators, experts, and legal research support. The office would also benefit from a dedicated mitigation specialist for sentencing advocacy.

D. Use of the Settlement's Quality Improvement Funding

As set forth above, ILS has allocated Ontario County \$146,123.33 of the Settlement's quality improvement funding. The County and mandated providers have agreed that a significant portion of this funding should go to supporting and improving the Assigned Counsel Program, with some money allocated to the Public Defender Office for a part-time legal staff person. Accordingly, Ontario County's quality funding will be used as follows:

i. Assigned Counsel Program and Conflict Defender Office - \$111,123

- **\$30,000** to contract with an experienced, quality attorney to support, supervise, and help train the Assigned Counsel Program panel attorneys. This attorney will be paid \$100 per hour, for a total of 300 hours. The County has identified a high-caliber, practicing defense attorney who is interested in this position. This attorney has recent experience in cultivating positive client relationships, investigating cases, identifying factual and legal issues, conducting research, writing and arguing motions, making important strategic decisions, engaging in plea negotiations, advising clients about possible pleas, conducting juror selection, cross-examining witnesses, submitting proposed juror instructions, etc.
- **\$40,000** fund for investigators and experts. From this fund, \$20,000 will be available to the Assigned Counsel Program and \$20,000 to the Conflict Defender Office.
- **\$30,000** for social worker/sentencing advocacy services. From this fund, \$15,000 will be available to the Assigned Counsel Program and \$15,000 to the Conflict Defender Office.
- **\$10,000** to initiate a pilot project to identify possible meritorious post-conviction claims, to research and investigate the claims, and where appropriate, to file a motion under Criminal Procedure Law § 440.10 or § 440.20. Doing so is consistent with the ILS Appellate Standards and Best Practices (January 15, 2015).³³
- **\$1,123** to create a dedicated computer terminal in the Assigned Counsel Program office so attorneys can access Lexis.

³³ See Standard XX.

ii. Public Defender Office - \$35,000

The remaining **\$35,000** will be allocated to the Public Defender Office for a part-time legal staff person (either an attorney or a paralegal). This position will not completely alleviate the Public Defender Office's need for more attorneys. Additionally, the Public Defender Office does not have adequate space for its current staff. As more staff is added, the space problem will only worsen. Though the Settlement's quality improvement money is insufficient to completely address the needs for more staff and more space, efforts should continue to secure these resources for the Public Defender Office. The County is encouraged to request use of ILS distribution funding to acquire or renovate the office space needed to accommodate the addition of staff.

SCHUYLER COUNTY

A. Overview of Mandated Representation Services

Schuyler County is one of the smallest counties in New York State. As of July, 2014, it had a population of approximately 18,479³⁴ in a geographic area of approximately 329 square miles. Schuyler County was one of the ten counties assessed by the NLADA in 2009 and found to have an inadequate public defense delivery system.

The county has had a full-time Public Defender since 2004. Currently, the Public Defender Office is staffed by the Public Defender, Wesley Roe, one full-time staff attorney and one part-time staff attorney. Schuyler County has a contract with an attorney, Jessica Saks, to act as the Conflict Defender when there are cases that the Public Defender's Office cannot take. Schuyler County does not have a formal Assigned Counsel Program; instead, when there are cases that the Public Defender Office and the Conflict Defender cannot take, the Public Defender's office manager assigns the case to an attorney from a list of attorneys who accept assigned criminal defense cases. There are approximately eight attorneys on this list.

In 2014, a combined total of 561 criminal cases as well as 207 family court cases were referred to Schuyler County providers of Mandated Representation.³⁵

B. Information Learned Regarding Quality of Mandated Representation

i. Public Defender

Supervision and training: With only three attorneys on staff (one of whom works part time), there is no formal supervisory structure, although the attorneys talk to each other about their cases every day, and as a result, Mr. Roe is well-aware of what is going on with his staff attorneys' cases. Again, due to small size, there is no formal, in-house training program, although the Public Defender Office does have a budget to send its lawyers to NYSDA training programs in Saratoga, Utica, and Binghamton, as well as a budget for its attorneys to participate in on-line CLE programs.

Client communication: The Public Defender Office staff attorneys keep track of client communication by noting it on their files; office staff also input the information into the NYSDA case tracking system. Visits to incarcerated clients can be tracked by reviewing the jail logs.

Legal research: The attorneys in the Public Defender's office have access to Lexis as well as hard copy legal treatises such as Gilbert's *Criminal Practice Manual* and *Handling a Criminal*

³⁴ See, United States Census, Quick Facts, <http://www.census.gov/quickfacts/table/PST045214/00>

³⁵ 2014 UCS-195 forms filed with the State by the providers of Mandated Representation in Schuyler County.

Case in New York, by Gary Muldoon. Mr. Roe estimated that the attorneys in his office spend about 5 hours per week in legal research.

Experts, investigators, and sentencing advocates: The Public Defender's office has a contract with an investigator for \$15,000, and last year spent approximately \$9,000 for investigations; the Public Defender also has a budget of \$15,000 for expert witnesses, but it is not clear if staff attorneys are using this money for experts.

ii. Conflict Defender

The Conflict Defender is a single attorney, Jessica Saks, who has a contract with the county to work part-time as the Conflict Defender. Ms. Saks also has several other part-time positions, including a contract to work as the attorney at first appearance for Chemung County, assigned counsel work as part of Chemung County's Assigned Counsel Program, and a private practice. Schuyler County does not have a formalized system for on-going supervision, training, or mentoring for the Conflict Defender. Instead, Ms. Saks stated that she utilizes the resources of NYSDA and maintains an informal network of attorneys with whom to brainstorm about her cases. Ms. Saks does not have a budget for CLE programs and must pay out of her own pocket to attend trainings. She reported that the County will not allow her to contract with an investigator unless that person is licensed, which can make it challenging for her to find an investigator. In the past year, she contracted with an investigator only once; more often, she conducts her own investigations when she feels that an investigation is necessary. She maintains telephone contact with her clients by taking calls on her cell phone³⁶ and visits her incarcerated clients in the evenings and on weekends.

Currently, the Conflict Defender handles approximately half of all the cases that the Public Defender Office cannot take, with the remainder of the cases going to an assigned counsel attorney. The County budgets approximately \$30,000 each year for the Conflict Defender contract, and an additional \$90,000 for assigned counsel attorney fees for the cases that the Conflict Defender cannot take. Given that Ms. Saks handles about the same number of cases each year as those that are handled by assigned counsel attorneys, it is evident that the Conflict Defender contract currently saves the County at least \$60,000 each year. But this cost-savings comes at a price – the Conflict Defender is very under-resourced, and if the County elects to continue using a Conflict Defender, it is imperative that her salary and resources be increased.

iii. Assigned Counsel Program

As previously stated, Schuyler County does not have a formal Assigned Counsel Program, and relies on the Public Defender's office manager to maintain a list of attorneys (currently eight)

³⁶ Jessica Saks reported that while clients who are incarcerated in the local jail may call her, female clients, who are housed in Chemung County jail do not have access to the phone, and that this is a problem.

and determine assignments based on geography and competence.³⁷ There are no criteria or formal requirements to be included on this list. Nor is there a structure for supervision or training of the attorneys on the assigned counsel list. Mr. Roe had no information about how, or whether, the attorneys who accept these assignments use mentors or seek out advice about their cases.

Mr. Roe understands that the Public Defender Office staff should not also act as the administrator of the assigned counsel program, recognizing the inherent conflict of this system. As a small county, however, Schuyler has grappled with the issue of economies of scale – paying for a full time Assigned Counsel Administrator to oversee a small panel of attorneys and relatively few cases when there is a very small tax base to support the program. To that end, County officials began a series of meetings with Julia Hughes, the Assigned Counsel Program Coordinator in neighboring Tompkins County, along with Tompkins County officials, to explore the idea of creating a regional assigned counsel plan to oversee the two counties.³⁸ The status of this plan is discussed more fully below.

C. Preliminary and Immediate Areas to Target for Improvement

From the structured interviews and our meetings with Schuyler County, ILS gleaned that Schuyler County faces several areas of need to improve the quality of representation. There is no formal supervision or training program for any of the providers. The Conflict Defender is critically under-resourced and wholly lacking in support and resources for on-going training. Her ability to contract with investigators is limited by the County's requirement that she use only licensed investigators, and as a result, she does most case investigation work herself. The assigned counsel list is just that – a list. It is not a formal plan, and not surprisingly, has no formal application procedure or minimum requirements for eligibility and no minimum requirements regarding CLEs and ongoing training. An assigned counsel attorney's performance is not evaluated and there is no requirement to recertify to remain on the panel. Additionally, assigned counsel attorneys are assigned by the Public Defender's office which creates a conflict of interest.

There is a budget for investigators for all cases in Schuyler County, however, there is no oversight whether attorneys are using investigators. Moreover, there is little use of experts and no oversight as to when an expert is or should have been utilized. None of Schuyler County's providers have a formal system for assessing collateral consequences or forensic issues, and they do not use any kind of mitigation specialists for sentencing advocacy. Finally, there are only a

³⁷ Schuyler County recognized this deficiency and agreed to create an assigned counsel program as part of the settlement it entered into with the plaintiffs on September 29, 2014.

³⁸ At the first meeting with Schuyler County in April, 2015, ILS encouraged the County to explore possibilities of developing an assigned counsel program with neighboring counties. At that meeting, Schuyler County suggested Yates County with which it is already engaged in a shared resources agreement. Chemung and Tompkins Counties were also identified as possibilities.

limited number of attorneys available for assignment creating a shortage of qualified attorneys to address the needs of defendants in Schuyler County.

Schuyler County's most glaring needs regard its Conflict Defender and assigned counsel list. The County should create an Assigned Counsel Program to remove the administrative operation of this program from the Public Defender's Office and to establish a formal administrative, supervision, and support structure. Similarly, it is not possible for the County to meet the Settlement's quality objectives if it continues with its current Conflict Defender contract, which leaves the Conflict Defender lacking in resources and support.

In its discussions about a regional Assigned Counsel Program with Tompkins County, Schuyler County has also discussed the idea of not renewing its Conflict Defender contract (which is up for renewal), and instead having the regional Assigned Counsel Program handle all cases that the Public Defender Office cannot take. While we strongly support this approach, we recognize that, for two reasons, doing so will result in additional costs for Schuyler County.³⁹ First, the cost for Tompkins County to administer the regional Assigned Counsel Program would significantly increase, since the number of assigned counsel cases would essentially double if there is no Schuyler County Conflict Defender. Second, as stated earlier, Schuyler County estimates that it would incur \$70,000 in increased attorney fees.⁴⁰ Despite these increased costs, there is consensus that the best option is to have the regional Assigned Counsel Program handle all cases that the Public Defender Office cannot take. Doing so is the best way to meet the Settlement's quality objectives since, as discussed further below, the regional Assigned Counsel Program would create the structure needed for supervision, training, and on-going support of attorneys.

D. Use of the Settlement's Quality Improvement Funding

As set forth above, ILS has allocated to Schuyler County \$55,956.70 of the Settlement's quality improvement funding. Schuyler County has decided to use this money to create a regional Assigned Counsel Program with Tompkins County that will handle all of the cases that the Public Defender Office cannot take, and in so doing, has decided to discontinue its Conflict Defender contract. In addition to establishing a program that will improve the quality of assigned counsel representation in Schuyler County, establishing a regional Assigned Counsel

³⁹ These additional costs are inevitable if the County is to enhance the quality of representation in the County, though these costs are likely less than it would otherwise cost the County if it sought to enhance the level of supervision, training, and support for two providers (a Conflict Defender and Assigned Counsel Program) as opposed to just one provider (an Assigned Counsel Program).

⁴⁰ As stated previously, the Conflict Defender currently handles about the same number of cases as the assigned counsel attorneys. The County budgets \$90,000 for assigned counsel attorneys which means that, as a rough estimate, the Conflict Defender currently does about \$90,000 worth of work in exchange for her contract of about \$30,000 per year. Terminating the contract means that the County would have to cover the difference between \$90,000 and \$30,000, which is \$60,000. This \$60,000 is likely an underestimate of how much the increased costs to Schuyler County will be in the coming year, since professionalizing the Assigned Counsel Program will likely lead to attorneys doing more work on cases, and thus, billing more per case. The County estimates that its additional costs will likely be closer to \$70,000.

Program will address a longstanding concern with the shortage of available, qualified criminal defense attorneys in Schuyler County. As well, it would allow for full supervision and oversight of the Assigned Counsel Panel attorneys.

To that end, both Schuyler and Tompkins Counties have been actively engaged in taking the steps necessary to develop a regional Assigned Counsel Program. Schuyler County drafted an inter-municipality agreement and key officials from the two counties met on October 19, 2015 to discuss it. Schuyler County is in the process of revising the inter-municipality agreement to reflect its decision to transition all conflict cases to this regional Assigned Counsel Program. The counties have also resolved one of the more challenging issues: assigned counsel eligibility determinations, agreeing as to the criteria and processes that will be used to make these determinations. There is also agreement on other key features of this regional program.

In terms of agreement on the broad contours of the regional Assigned Counsel Program, both counties agree that the program should include the following components, which are currently part of the Tompkins County's Assigned Counsel Program:

- i) A mentoring program – All newer attorneys must have a mentor; attorneys who have been on the panel for at least five years must serve as mentors for the newer attorneys.
- ii) Second Chair – More experienced attorneys are paid to serve as “second chairs” of trials handled by less experienced attorneys.
- iii) Training – Tompkins County currently uses ILS funding to provide free CLE training to its panel members. Topics for training are solicited from the panel members.
- iv) Attorney Qualifications – For prospective members of the Assigned Counsel Program panel, the Assigned Counsel Program Administrator conducts an initial interview to gauge qualifications. The applicant is then interviewed by the Supervising Attorney.
- v) Caseload limits – Panel attorneys are subject to a limit of 50 active cases.
- vi) Supervision – Both the program Administrator and the Supervising Attorney are actively involved in monitoring and supervising panel attorneys. If the program Administrator learns of a possible performance issue, she immediately brings it to the attention of the Supervising Attorney, who typically meets with the attorney to address and resolve the issue.

After the inter-municipality agreement is finalized, each County legislature will need to approve it. Schuyler County anticipates that the regional Assigned Counsel Program will be implemented on or before March 1, 2016.

The cost of the program, however, exceeds the \$55,956.70 allocated for quality improvement through the Settlement funding. The fee for Tompkins County to administer all of Schuyler County's conflict cases is \$58,446, which is \$2,489.30 more than the Settlement's quality money. Schuyler County will have to pay for not only the administrative cost of the program, but also the actual fees for the attorneys' work. As stated above, Schuyler County estimates such fees to be an additional cost of \$70,000 beyond its current budget for the cost of the conflict

cases. In other words, the combined total costs of the regional Assigned Counsel Program could be approximately \$72,000 more than what is currently available in the Settlement.

Schuyler County recognizes that the regionalization of its assigned counsel program, with the added supervision, oversight and training, is what is needed to provide quality defense for cases that the Public Defender Office cannot take. Therefore, Schuyler County is taking on this additional cost to provide quality defense in anticipation that the State will provide the necessary funding sources to continue this program.⁴¹ This shortfall reinforces the dire need for additional and continued avenues of State funding to address quality improvement in Schuyler County as well as the other counties.⁴² Seventy-thousand dollars is a significant amount of money for a small county with limited resources.

It is worth emphasizing that this cross-county collaboration will be a model that can be replicated throughout the State to improve the quality public defense in a cost-effective manner within small counties. Given the potential for this program to be a statewide model, this is a responsibility that the State should be willing to fund wholeheartedly.

⁴¹ ILS will meet with Schuyler County in six months to review the implementation of the regional Assigned Counsel Program, including reviewing the actual number of cases handled and the actual costs incurred by Schuyler County for implementing a program that meets the quality improvement goals. In the meantime, ILS will work with the County to re-allocate Distribution money, as needed, to cover the increased costs of attorney fees until more funding is made available from the State.

⁴² ILS recognized early that the \$2 million allocated for quality improvement would not be sufficient to meet the true cost of providing quality representation in the Five Counties. This shortfall is one example of why ILS has requested an additional \$1 million dollars, for a total of \$ 3 million, for quality improvement money in its Fiscal Year 2016-2017 budget.

SUFFOLK COUNTY

A. Overview of Mandated Representation Services

Suffolk County is the largest of the Five Counties by both geography and population. There are approximately 1.5 million residents of the county and it encompasses 912 square miles. In terms of population, Suffolk County is the fourth largest county in New York State, and the largest county outside of New York City.

The primary provider of mandated representation is the Legal Aid Society of Suffolk County (LAS) which employs approximately 158 employees located in three different offices. One hundred and five of these employees are attorneys - 47 working in the District Court Bureau, 12 in the County Court Bureau, 10 in the East End Bureau, and 5 in the Appellate Bureau. The Central Islip office houses the Administrative, Family Court, and District Bureaus of LAS. The Riverhead office houses LAS' County Court, Appellate, and East End Bureaus, while a third office houses the Attorney-for-the Child Bureau. LAS is run by Robert C. Mitchell, Attorney-in-Charge, and Laurette D. Mulry, Assistant Chief Attorney-in-Charge.

Suffolk County's Assigned Counsel Program handles all homicide cases as well as conflict cases. David Besso is the Administrator for the Assigned Counsel Program, which is currently only a part-time position. Mr. Besso also has his own private practice. There are approximately 175 attorneys on the Assigned Counsel Program panel.

In 2014, a combined total of 31,342 criminal cases as well as 8,554 family court cases were referred to Suffolk County's providers of mandated representation.⁴³

B. Information Learned Regarding Quality of Mandated Representation

i. Legal Aid Society

Supervision and training: LAS has an extensive supervision program: in the District Court Bureau (covering misdemeanors) there are 6 supervisors for 47 attorneys, including specific supervisors assigned to: (1) Courtroom D-11, which is the daily operations and arraignment part; (2) a "put out the fire" supervisor who deals with emergencies that arise; (3) a supervisor who assists the Bureau Chief with motions, writing, and special situations; and, (4) an attorney with a master's degree in social work who supervises the social work staff. Attorneys receive direct supervision when they begin employment in this bureau and shadow more experienced attorneys. When a new attorney starts, the attorney must shadow more experienced attorneys two to three times per week. New attorneys are divided into classes of five to six people and receive approximately 20 one-hour lectures on substantive topics. There are also monthly lunch-time

⁴³ 2014 UCS-195 forms filed with the State by the providers of Mandated Representation in Suffolk County.

meetings in this Bureau. Recently, LAS hired a retired supervisor as a contract attorney to help District Court lawyers think strategically about their cases.

In the County Court Bureau, based in Riverhead, the lawyers are highly experienced (having worked at LAS between eight to thirty years) and the supervision is more informal. Since the attorneys are housed in the same office, they are able to brain-storm with each other about their cases. LAS made a conscious decision to house the appellate unit in the Riverhead office, so that the appellate attorneys are a resource for the trial attorneys in this office.

In the East End Bureau, in which LAS represents clients charged with misdemeanors, violations, and pre-indictment felonies in the local courts, the supervision is tailored to the needs of the specific attorney because the experience levels in that bureau vary widely. Sabato Caponi, the Bureau Chief, supervises lawyers in person, and when that is not possible, by text. Mr. Caponi also tries to “second seat” trials so he can critique lawyers on their performance.

In addition to the supervision and training noted above, LAS also pays for its lawyers to attend trainings presented by the Suffolk County Criminal Bar Association. There is a budget to send lawyers to out-of-county trainings, and last year two attorneys attended NYSDA’s Basic Trial Skills Program and 14 attorneys attended the Bronx Defender’s Trial Training program. Three attorneys were sent to the “Big Apple CLE” put on by New York State Bar Association.

Experts, Investigators and Social Workers: LAS has investigators on staff, and with ILS Distribution #3, was able to create a social worker bureau that currently staffs four social workers. LAS believes it is more proactive with regard to sentencing advocacy because of its social work staff. LAS does not have its own budget for experts and must make an application to the court for an expert to be assigned to the case. LAS expert witness fees are paid out of the County Law Article 18-B budget. In 2010 - 2011, expert vouchers were submitted in only 17 cases.⁴⁴ LAS also has four social workers on staff, but only one investigator. Mr. Caponi emphasized the need for additional investigative resources.

Client communication – meeting with incarcerated clients: Client files have a place to note client communication, but the thoroughness of how well this is noted varies from attorney to attorney. LAS accepts collect phone calls from incarcerated clients. Additionally, the office has the capacity to video-conference with incarcerated clients. Dr. Gary King examined the jail logs to determine the frequency with which LAS lawyers met with their clients in-person at the Suffolk County jail and through video-conferencing. He found that only 13 of 46 attorneys met with their clients in a significant number of cases.⁴⁵ The lawyer who visited incarcerated clients the most made 304 visits to the jail from 2008-2013, the lawyer who visited the next-most made 140 visits in the same time frame, and the lawyer with the third most frequent visits made 85 visits during that time period. Eighteen lawyers did not visit the jail at all, although many of

⁴⁴ As reported by Gary King in his report submitted to the plaintiffs.

⁴⁵ It is unclear why the data examined by Dr. King included only 46 lawyers. It is likely that he was reviewing the visits of only the lawyers assigned to the District Court Bureau.

these lawyers did participate in video-conferencing. During the relevant time period, three lawyers never met with their clients at jail, nor participated in the video conferencing.

Other issues: LAS did not know how much attorney time is spent on legal research; the office currently maintains a Lexis subscription, but with only 45 passwords for the 105 attorneys. In terms of assessing collateral consequences of a conviction, Ms. Mulry identified this as an “unmet need” in the office. Of note, LAS has received funding from ILS to establish a regional immigration assistance center to better serve clients who may have immigration issues arising as a consequence of their arrest.

ii. Assigned Counsel Program

Supervision and training: David Besso, the Assigned Counsel Administrator, is currently funded to run the program part-time. Understandably, the size of the panel and number of vouchers submitted places a heavy burden on him and limits his ability to provide on-going supervision. He told us that currently, his supervision of panel lawyers consists primarily of reviewing their vouchers. His secretary and paralegal initially review all vouchers, checking for mathematical errors and making sure that attorneys have not “double-billed.” After their initial review, Mr. Besso reviews the voucher, looking for irregularities. For example, he stated that a voucher showing that the client pled guilty to all of the charges is a “red flag,” which prompts him to talk to the lawyer to discern why that occurred. Since the NYSDA case management system has been installed, Mr. Besso makes sure that attorneys are filing motions and conducting hearings. He also keeps track of attorneys who are relieved more than occasionally, looking more carefully into their cases. As far as day-to-day supervision, the attorneys rely on casual conversations with each other or Mr. Besso in the hallways of the court house. There is also a mentoring program whereby less experienced attorneys are assigned to more experienced attorneys, although the mentors are not paid to participate.

Training and Qualifications for the Panel: The Assigned Counsel Program offers CLE training for its members and members must either attend the live session, the video replay, or borrow the video and watch it on-line in order to remain on the panel. Last year, there were five substantive CLE programs, which are free to panel members; the funding was obtained from an ILS grant. There is an application that must be submitted to be placed on the panel. Lawyers must have “suitable experience,” though there is no specific criteria. A screening panel consisting of five to six lawyers makes a determination as to whether the applicant may join the panel. The ACP maintains separate panels for murder, felony, misdemeanor, appellate, and parole revocation cases, although Legal Aid handles most of the parole revocation cases. There is no formal recertification process, although Mr. Besso reviews vouchers to ensure that panel lawyers are adequately representing their clients.

Client communication: Mr. Besso stated that the ACP tracks communication between clients and attorneys (presumably through a review of the vouchers). He noted that client communication is “sometimes a problem” particularly for a “busy attorney.” He elaborated that incarcerated clients are much more “demanding,” and that some clients want to be visited very week, and that is just not possible. There is no dedicated telephone line in the jail for

incarcerated clients to call their lawyers. On the contrary, Mr. Besso reported it is very difficult for incarcerated clients to call their lawyers -- the client must open a special account, telephone calls may only be made to cell phones, the calls cost \$15.00 per call, and collect calls are not permitted. While attorneys may meet with their incarcerated clients as much as they want, they are not reimbursed for travel.

Experts, Investigators and Social Workers: Attorneys on the Assigned Counsel Program panel may apply to the court for experts, investigators, and social workers, and Mr. Besso stated that attorneys did retain investigators, experts, and social workers to prepare pre-sentence reports. He stated that vouchers could be reviewed to determine how often these services are used. He said that there are lists of investigators and experts and that there are services in both Nassau and Queens Counties that prepare pre-sentence reports which Suffolk Assigned Counsel Program panel lawyers can use.

C. Preliminary and Immediate Areas to Target for Improvement

Suffolk County is similar to the other counties in regard to its Assigned Counsel Program. As stated above, Mr. Besso administers the Assigned Counsel Program on a part-time basis, which he admits "has become a lot." Suffolk County's Assigned Counsel Program needs an administrator who can work full-time to formalize a supervisory and mentoring structure for the members of the panel. Given the Assigned Counsel Program's large size and the volume and type of cases they handle (including homicides), the necessity for a formal and extensive supervision program cannot be overstated. Even though more senior attorneys can mentor younger attorneys, the senior attorneys are not paid for this work. Additionally, there is no formalized training or tracking in regard to the use of investigators, experts, or social workers.

The Legal Aid Society handles the bulk of criminal matters in Suffolk County. A glaring problem for the organization has been the County's 2009 decision to terminate its contribution to the pension plan which has demoralized many LAS attorneys, resulting in some of the more experienced attorneys leaving LAS for better-paying positions. LAS's ability to retain experienced attorneys is a serious concern. The lack of a pension and the lack of parity of salary with the district attorneys as well as other municipal lawyers is likely to result in a continual exodus of experienced attorneys.

Despite their formal supervisory structure, LAS still needs a systematic, in-house training program that would include intensive trial training. Additionally, given the number of staff attorneys, current supervisors struggle to meet the high demands of supervision and LAS would benefit from increased supervision capacity. LAS lacks sufficient on-line legal research services, having only 45 passwords for 105 attorneys. Although LAS has access to some investigators, they need additional investigative services, particularly in their East End office where many attorneys have to conduct the investigations themselves. Furthermore, LAS attorneys have retained experts in a very small percentage of cases. Further, in cases where expert consultation is necessary, (but not necessarily retaining an expert for testimony), LAS attorneys must rely on the good nature of experts to provide this service for free, as there is no funding available to pay experts for consulting. But this good nature goes only so far. Thus, LAS needs funds that

attorneys can use for consulting, testing, and testifying experts. The ever-growing caseloads and the diversity of persons who reside within Suffolk County bring with it the need for more social workers and additional interpretative services. Finally, as LAS expands to meet the needs of its clients, it will require additional office space to house its increasing staff.

One area that ILS has not yet been able to investigate with regard to LAS is that of vertical representation, which emerged as pronounced problem in the *Hurrell-Harring* litigation. ILS needs to further evaluate and assess the manner in which LAS assigns lawyers to cases and the extent to which representation changes as the case progresses.

D. Use of the Settlement's Quality Improvement Funding

As set forth above, ILS has allocated to Suffolk County \$1,116,618.36 of the Settlement's \$2,000,000 quality improvement funding. This funding is to be distributed as follows:

i. Assigned Counsel Program - \$424,047 year one; \$313,147 year two.

At meetings with Suffolk County officials, it was agreed that a substantial portion of this funding should be allocated to the Assigned Counsel Program, which currently is being run by Mr. Besso, a part-time administrator, out of his private office. Enhancing and better developing the Assigned Counsel Program involves hiring a full-time Administrator and ensuring that this Administrator has the staff necessary to assist in managing the administrative tasks and in overseeing training, supervision, and mentoring of the panel attorneys. Additionally, the Program needs dedicated space for staff. The following budget reflects these needs:

- Hiring a full-time Assigned Counsel Program Administrator to be paid a base salary of \$150,000 (and \$37,475 fringe), for a total of **\$187,475**. It was agreed that this base salary is the minimum necessary to draw an experienced, qualified attorney.
- Elevating a current administrative position to a full time Deputy Administrator position to be paid \$90,000 per year. It was agreed that Mr. Besso's current administrative assistant should serve this function as she is well-respected in the community, brings with her a great deal of institutional knowledge about the program and the County, and will play a critical role as the Assigned Counsel Program transitions to a full-time Administrator. ILS grant funding currently allows the Assigned Counsel Program to pay her a \$75,000 salary. A salary of \$90,000 will honor her enhanced responsibilities in the new Assigned Counsel Program. To increase her salary to \$90,000, **\$17,347** (\$15,000 plus the increased fringe associated with the higher salary) will be allocated from the quality improvement funding.
- Contracting for a part-time Grants Coordinator, to be paid an annual rate of **\$40,000**. This position would alleviate the coordination of grants currently done by Mr. Besso, and allow for the Assigned Counsel Program Administrator to devote more time to supervision and mentoring of panel attorneys.

- Equipment for new and current staff at a cost of **\$39,225** (\$30,900 of which is a one-time fee and \$8,325 of which are annual fees). This equipment includes the following: Word/Excel programs for 4 staff (\$4,800); server (\$4,000); network (\$1,000); cable/computer lines for 4 staff (\$500); phones for 4 staff (\$600); copier rental (\$3,600); furniture for office and staff (\$20,000); case management data-base annual fees (\$1,125); IT monthly fees (3,600).
- Build-out of office space at a cost of **\$80,000**.⁴⁶ The Assigned Counsel Program is currently run out of Mr. Besso's private office and the Program will need office space for new and current staff. Suffolk County will locate and provide the office space, but there will be one-time renovation costs for the new office space.

Though not proposed by the County, ILS has concluded that there needs to be money set aside to contract with Mr. Besso to provide two critical services: 1) assist the Administrator in mentoring attorneys and 2) consult with the new Assigned Counsel Program Administrator about the running of the program. Mr. Besso has indicated that, at least for the short-term, he is willing and able to do this work, and the County Attorney has told ILS that he believes this is a good idea. Thus, **\$60,000** will be allocated to contract with Mr. Besso, at \$180 per hour for 333 hours.

The staff listed above will be supplemented by Assigned Counsel Program staff currently funded by the County, ILS funding, and other grants. This staff includes: an Administrative Assistant, and Secretary/Intake Clerk, and a Quality Enhancement/Control staff person.

The total costs for the above are \$424,047 for the first year and \$313,147 for the second year.

ii. Legal Aid Society – \$692,571.36 year one; \$803,471.36 for year two

The remaining portion of the quality funding will be allocated to the Legal Aid Society for the following year one costs:

- **Retention fund of \$240,000** – As stated above, the Legal Aid Society has lost many mid-level, experienced attorneys since the County stopped funding pensions. Indeed, in the months of August and September 2015 alone, LAS lost six staff people, all of whom left for higher-paying positions. LAS intends to use this retention fund for one-time bonuses to retain staff who have demonstrated a high level of commitment and ability to provide quality representation.
- **Online Legal Research fund of \$50,000** – LAS currently is not able to provide online legal research services to all staff attorneys. Online legal research is critical to motion practice, training, and conducting any legal research. LAS has negotiated a contract with

⁴⁶ The County is still in the process of identifying the County space to be used for the Assigned Counsel Program, so this is not a precise number but is instead the County's best estimate.

Lexis that, for an additional \$50,000, will allow all criminal staff attorneys a Lexis account.

- **Training fund of \$52,571.36** – The Legal Aid Society will use this training money to focus on the training needed to enhance representation in the specialized courts, including the County’s DWI Courts, Drug Courts, Mental Health Courts, Veterans Courts, Human Trafficking Courts, Domestic Violence Courts, and Felony Youth Court.
- **Expert fund of \$50,000** – This fund will allow LAS attorneys to access experts for the consulting and testing services necessary, amongst other things, to read forensic reports, test certain evidence when appropriate, prepare to cross-examine prosecution experts, and assist in overall trial preparation.
- **Investigator fund of \$80,000** – This fund will give LAS staff attorneys much needed access to investigative services, which is critical to fact-finding, identifying and interviewing potential witnesses, collecting physical evidence, and preparing a defense in many cases.
- **Quality Control Supervisor fund of \$150,000** – Using ILS funding, LAS has contracted with a “quality control” attorney to help supervise its felony bureau using a former, highly-respected LAS attorney. This model has worked well. A Quality Control Supervisor fund will allow LAS to expand the program to contract with two additional attorneys for “quality control” supervision.
- **Social Worker/Case Manager fund of \$50,000** – ILS funding has allowed the Legal Aid Society greater access to social workers to help identify client needs and connect clients to much needed resources, and to provide holistic sentencing advocacy. This fund will allow the Legal Aid Society to expand this much-needed program by contracting with an additional social worker.
- **Interpreter Services fund of \$20,000** – The Legal Aid Society has an increasing number of clients who are not fluent in English. This fund will allow LAS staff to obtain much needed interpreter services.

Total Cost of year one: \$692,571.36.

For year two, LAS will contract with an attorney to serve as a Training Director to develop an in-house training curriculum for new attorneys and to help coordinate the CLEs for more experienced attorneys. **\$75,000** should be allocated for this Training Director. Additionally, in year two, the retention fund should be increased to **\$275,900**.

Total Cost of year two: \$803,471.36

WASHINGTON COUNTY

A. Overview of Mandated Representation Services

Washington County is a rural county of approximately 835 square miles, with a population of approximately 63,400.⁴⁷ The county has two county court judges and 24 town, village, and city courts. The county provides mandated criminal defense services primarily through a Public Defender, Mike Mercure, who is employed full-time, with three, full-time assistant Public Defenders and four, part-time assistant Public Defenders.⁴⁸ The part-time assistant Public Defenders are only paid for 30 hours of work weekly. Washington County was one of the ten counties assessed by the NLADA in 2009 and found to have an inadequate public defense delivery system.

Conflicts are handled by attorneys on the assigned counsel list, which is administered by Marie Drost, a secretary at the Public Defender's office. There are approximately 28 lawyers on the criminal court list and 21 attorneys on the family court list.

In 2014, a combined total of 1,284 criminal cases as well as 242 family court cases were referred to Washington County's providers of mandated representation.⁴⁹

B. Information Learned Regarding Quality of Mandated Representation

i. Public Defender

Supervision and training: With only seven lawyers in the Public Defender's office, only three of whom recently transitioned to full-time status, there is no formal supervision, although Mr. Mercure has daily contact with all of the assistant Public Defenders, and communicates with them via text when problems arise.⁵⁰ The Public Defender does not carry a full caseload, and spends approximately 5-10% of his time on supervision. Although no in-house training is offered, the office does have a budget for its staff attorneys to attend trainings, and five of the lawyers attended the annual NYSDA training in Saratoga in 2014. The office also pays dues for its public defenders to join NYSDA. The Washington County Bar Association provides free

⁴⁷ NLADA Report card (2009)

⁴⁸ Notably, until just recently, the Public Defender Office was staffed by only one full-time employee, Mike Mercure, and seven part-time Assistant Public Defenders. In September, three of the part-time Assistant Public Defender positions were upgraded to full-time. The County has indicated that it will be submitting a proposal to use ILS distribution monies to fund these upgrades.

⁴⁹ 2014 UCS-195 forms filed with the State by the providers of Mandated Representation in Washington County.

⁵⁰ Currently, the part-time staff attorneys maintain their own private offices and do not have shared office space in the Public Defender's Office, though the County is planning on expanding the office to accommodate the new full-time staff.

CLE trainings for its members and most of the Public Defenders (as well as most lawyers on the assigned counsel list) are members of the Bar Association and attend those trainings.

The Public Defender's office does not have specific hiring criteria, nor is there a formal procedure for assigning cases to attorneys based on their level of experience, although all of the assistant Public Defenders currently have at least 20 years of experience. Mr. Mercure said that attorneys are "given cases that they can handle."

Client communication: Client communication is not tracked, though Mr. Mercure stated that someone from the Public Defender's Office is at the jail nearly every day of the week. He noted that jail visits could be tracked by reviewing the jail logs. The jail has a telephone system set up so that incarcerated clients may call their lawyers for free, including on their cell phones. The jail also allows incarcerated individuals to set up an email account for \$80/month and those who do so have email contact with their attorneys.

Legal research: The Public Defender's Office has a Westlaw subscription for legal research, but the part-time attorneys must maintain their own research subscriptions. Mr. Mercure suspects that most of them are unable to afford the high costs of this service. Mr. Mercure was unable to estimate how much time attorneys spend on legal research, though he could likely get this information from vouchers.

Experts, investigators, and sentencing advocates: The Washington County Public Defender's office does not utilize sentencing advocates for mitigation in sentencing, and there is no formal approach to sentencing advocacy. Mike Mercure stated that he would welcome the opportunity to be able to use mitigation services. The Public Defender's office does have a budget for investigators and expert witnesses. Last year, \$89 was spent on a contract investigator, and approximately \$6,000 was spent on experts.⁵¹

ii. Assigned Counsel Plan

Washington County does not have an Assigned Counsel Program that complies with the requirements of County Law Article 18-b. The Public Defender's secretary, Maria Drost, maintains a list of attorneys who accept assignments for criminal cases. There are approximately 28 attorneys who accept criminal cases and 21 attorneys who receive family court assignments. There is no formal supervisory structure or training, although most members of the panel are members of the Washington County Bar Association and may attend their trainings at no cost. There is no application or criteria to join the assigned counsel list, nor are the attorneys on the list periodically evaluated. Although there are not separate panels for serious felonies, homicides, misdemeanors, appeals, and parole revocations, we were told that, "an informal assessment of attorneys' abilities are made and the cases are assigned accordingly."

⁵¹ In his final report, Dr. King reported that in 2011, investigators were retained in 2 out of 1303 cases (.15%); in 2012, investigators were used in 2 out of 1377 cases (.15%); and in 2013, investigators were used in 1 out of 1282 cases. In the years 2011-2013, only one expert was used. This expert was used in 2011, out of that year's 1303 cases (.08%) See King Report, page 127, Washington Table 17.

C. Preliminary and Immediate Areas to Target for Improvement

Like the other counties, Washington County's most glaring deficit is the lack of a formalized Assigned Counsel Program. The Assigned Counsel Program needs to be developed and formalized by hiring dedicated staff, implementing requirements to join the panel, and developing a training, mentoring, and supervision component as well as periodic review of the panel members' qualifications. The program needs not only a dedicated administrator, but additionally, an experienced criminal defense and family court attorney to provide supervision and mentoring.

The Public Defender's office needs to develop a more systemic and formalized training structure. Moreover, now that the Office has more full-time staff, there is a significant need for clerical and administrative support. In the long-term, the Office could benefit by converting all part-time attorney positions to full-time. Doing so would not only reduce caseloads to a more manageable size, it would also facilitate supervision and retention since part-time positions with salaries that are not commiserate with other county attorneys makes it challenging to retain quality lawyers. As the office grows, it will require adequate office space to house the full-time staff.

Investigative, expert, and sentencing advocacy services are a glaring need for both Washington County providers. These services have been almost non-existent, although they are necessary for quality representation. A more systemic and formalized training structure would allow for there to be specific training on how to use these resources for all mandated providers. Moreover, all mandated providers would benefit immensely from in-house trainings (provided by the Public Defender's office), access to national and state trainings, and specialized trainings for criminal cases that require additional expertise.

D. Use of the Settlement's Quality Improvement Funding

The Settlement's allocated \$92,624.40 to Washington County will be spent as follows.

i. Assigned Counsel Program - \$44,500

Everyone involved in the discussions about quality improvements for Washington County agree that the Public Defender's secretary cannot continue to serve as the *de facto* Assigned Counsel Program administrator and that the Assigned Counsel Program needs its own staff and office space. The first step to accomplishing this is to hire a full-time Assigned Counsel Program Administrator. The County has done so, transitioning Marie Drost out of the Public Defender Office to an Assigned Counsel Program Office, and elevating her salary to honor the additional responsibilities that come with this new position. The County has indicated that it will be requesting the use of ILS distribution funding for these costs. Additional steps include:

- Hiring a part-time Administrative Assistant for the Assigned Counsel Program at a cost of approximately **\$27,500**. This person will assist the Administrator and conduct clerical and data-entry tasks. The County will use the Settlement's quality improvement money for this position.

- Contracting with an experienced lawyer to provide supervision, training, and mentoring of the attorneys in the Assigned Counsel Program panel. The County proposes that **\$15,000** of the Settlement's quality improvement funding be allocated for this purpose. ILS believes that more money should be allocated for this role, and therefore is recommending that **\$17,000** be allocated for contracting with an experienced lawyer.

This is a total of **\$44,500** of the Settlement's quality improvement funding.

While the County is to be credited for initiating the steps necessary to develop the Assigned Counsel Program, we believe that the supervising attorney role is of critical importance to ensuring that the Assigned Counsel Program provides quality representation consistent with the objectives set forth in the Settlement. This is why more of the Settlement's quality funds will be allocated for this position. In addition, specific criteria must be developed for the selection of the attorney to serve this role. This criteria should include years of experience as a criminal defense attorney, with a focus on hiring a person who not only is knowledgeable about criminal law, but also has recent experience with investigating factual issues, researching legal issues, writing and arguing motions, effectively using experts and investigators, engaging in plea negotiations and sentencing advocacy, and serving as a defense counsel in criminal trials. This supervising attorney will be selected in consultation with ILS. If an attorney who meets this criteria is not available in Washington County, an attorney from outside the County shall be selected for this role.

ii. Public Defender Office - \$48,124.40

The Public Defender Office has long struggled with a morale problem stemming from the significant disparity in pay between the Public Defender, who makes approximately \$82,000, and the District Attorney, who makes approximately \$150,000. Additionally, the assistant Public Defenders are all underpaid. This problem is caused, at least in part, by a pay scale for County employees that is less than the pay for similar work in the private sector.⁵² Other than the District Attorney, whose salary is supplemented by non-county sources, most county employees are paid significantly less than their counterparts in the private sector. Therefore, the County's Board of Supervisors is resistant to enhancing the Public Defender Office staff salaries, because doing so would place them on a different pay scale from other County employees.

Still, if left unaddressed, the salary disparity and low-pay problem in the Public Defender Office will likely turn into a retention problem as Public Defender Office staff leave for higher paying positions in the private sector or in other counties.

⁵² As explained to us during the meetings with the County, the annual salaries of the department heads in Washington County, with the exception of the District Attorney, are roughly the same. For example, the annual salary of the County Administrator (with decades of experience) is approximately \$77,000; the County Attorney's annual salary is currently \$83,000 and the Public Defender's annual salary is \$82,000. Likewise, the annual salaries of the Assistant Public Defender positions are roughly equivalent to the annual salaries received by Assistant District Attorneys.

But, as set forth above, retention is not the only immediate need of the Public Defender Office. As the Office transitions from a primarily part-time staff model to a full-time staff model, there is enhanced need for training and for administrative support.

Faced with these multiple, immediate needs, and only \$48,124 Settlement quality improvement money available to address these needs, ILS, in consultation with Washington County, has decided that there are two alternative plans:

Preferred Plan That Will Help to Address Retention Problem:

1. Step increases for Public Defender Office staff – The Public Defender Office staff are paid according to the number of years they have worked for the County and not according to the number of years they have practiced as attorneys. While some County employees are paid based on years of service with the county, law enforcement are paid based on years of actual law enforcement experience. Accordingly, ILS urges the County to pay the Public Defender Office staff attorneys based on years of legal experience, which would result in most staff attorneys receiving a slightly higher salary. This total cost is **\$14,560**.
2. Hiring a part-time administrative assistant to provide administrative support, which would cost approximately **\$27,500**.
3. Allocating **\$6,064** to provide additional training resources for Public Defender Office staff and Assigned Counsel Panel Attorneys.

If the County Board of Supervisors will not approve the step increases outlined above, then the **\$48,124** will be used to hire a full-time administrative assistant for the Public Defender Office to better support the staff attorneys.⁵³ Adopting this “back-up” approach does not mean that ILS will abandon the need to increase the salary of the Public Defender Office staff to facilitate the retention of quality, dedicated staff. Instead, we will continue to work with the County to resolve this issue. Additionally, this “back-up” approach also does not provide funding for training. ILS will continue to work with the County and the parties to the Settlement to secure funding for much-needed training for all of Washington County’s providers of mandated representation.

⁵³ The County indicated that the total cost of a full-time Administrative Assistant position, with benefits, is \$51,866. We would recommend that the difference between this figure and available Quality funding, \$48,124, be addressed by proposing the use of the ILS distribution funding in one of its submissions.

ILS' Plan to Update this Quality Improvement Plan

The primary goal of this Plan is to determine the most pronounced and immediate needs of the Five Counties so that the \$2 million allocated in the Settlement for state fiscal years 2015/2016 and state fiscal year 2016/2017 can be used effectively to initiate quality improvements in each of the Five Counties. There is no question, however, that \$2 million does not address the providers' complete needs to improve the quality of representation; moreover, ILS is not yet able to identify the comprehensive scope of additional resources the providers in the Five Counties will need to meet the quality objectives outlined in § V(A) of the Settlement.⁵⁴

It is imperative that the Five Counties receive additional funding to improve the quality of representation.⁵⁵ As we implement the Settlement, we will continue to work with the Five Counties to identify their progress towards meeting the objectives in § V(A) of the Settlement and whatever additional resources they need. To do so, we will gather more information from a wider variety of sources, including the following:

- *Obtaining data from the Five Counties to quantify improvement and areas where improvement is needed.* Our efforts will be facilitated by the improvements in case tracking that is being done in accordance with § IV of the Settlement. When necessary and appropriate, we will also seek out data from the providers themselves and other sources, such as jail visit logs and court files.
- *Obtaining qualitative information from a wide variety of sources.* ILS will continue to meet regularly with the Five Counties. In addition, we will seek to meet with other stakeholders, including, but not limited to, defense attorneys, government and not-for-profit agencies that work with defendants, former defendants and possibly defendants' families.
- *Observing criminal court proceedings.* ILS will regularly conduct court observations at all levels of courts throughout the Five Counties, including justice courts, district courts, city courts, county courts and supreme courts.⁵⁶

⁵⁴ As stated earlier in this Plan, ILS acknowledges that there are many issues that we have yet to address and were unable to investigate fully given the limited time frame and funding of the Settlement. Some examples of these issues are vertical representation, denying or reducing vouchers for appropriate services, and the practice of having judges select counsel from an Assigned Counsel Program panel list rather than having the program administrator on a rotational basis in accordance with County Law Article 18-b. These are issues we will further investigate and address in the future.

⁵⁵ As previously noted, in our state FY 2016-17 ILS Budget Request, ILS has requested funding for Quality Improvements in addition to the \$2 million provided for in the Settlement Order.

⁵⁶ Court observations alone will be an immense undertaking given the number of criminal courts throughout the Five Counties. Onondaga County has 30 courts that handle criminal cases, Ontario County has 20 courts, Schuyler County has 11 courts, Suffolk County has 24 courts, and Washington County has 25 courts.

- *Obtaining more information from providers.* ILS will seek to obtain more information from providers through site visits, speaking with staff attorneys and other provider staff members, and attending in-house trainings.

Another area of concern that directly implicates quality is that of parity between mandated providers and the prosecution. In at least two of the Five Counties - Suffolk and Washington - there is a significant disparity in salaries between the District Attorney's Office and the institutional provider.⁵⁷ It is likely that further investigation will reveal disparities in overall resources between the prosecution and the mandated providers in all Five Counties. This is contrary to the American Bar Association's *Ten Principles of a Public Defense Delivery System* (2002), which provides, in Principle #8, as follows:

There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system. There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense.

Going forward, ILS will be attentive to this issue, and the costs associated with addressing it.

As ILS acquires more information and works with the Five Counties on implementation of the Settlement, we will be updating and revising this Plan to: i) better reflect each of the Five Counties' progress towards meeting the objectives outlined in § V(A) of the Settlement; ii) set forth what additional financial resources are needed from New York State to meet these objectives; and, iii) where appropriate, identify systemic changes that would facilitate achieving the objectives in § V(A) of the Settlement. ILS will submit updated Plans annually over the course of the Settlement's seven year monitoring period. The first updated Plan will be submitted by October 13, 2016.

⁵⁷ In Suffolk County, this salary disparity exists at all staff levels; in Washington County, the salary disparity exists between the Public Defender and the District Attorney.

EXHIBIT A

Summaries of ILS Meetings
with the Five Counties

Onondaga County discussions

Date	Topic	ILS attendees	Onondaga County attendees
4.3.15	1 st meeting	Bill, Joe	Lori Tarolli (Acting County Attorney), Carol Rhinehart (County Attorney's office), and Marthe Ngwashi (County Attorney's office)
5.4.15	Tracking/ACP	Andy, Peter, Joe	Lori Tarolli (Acting County Attorney), Carol Rhinehart (County Attorney's office), and Marthe Ngwashi (County Attorney's office); Renee Captor (Assigned Counsel Administrator); Frank Walters, Board member for ACP
5.4.15	Quality #1 ACP	Risa, Matt, Joe	Lori Tarolli (Acting County Attorney), Renee Captor (Assigned Counsel Administrator), Sheldon Gould (Board member of the Onondaga County Bar Association Assigned Counsel Program) Kathy Dougherty (County Attorney's office), Carol Rhinehart (County Attorney's office), Marthe Ngwashi (County Attorney's office); and Dan Hammer, Onondaga County Budget office (part of meeting).
5.8.15	Tracking/Hiscock LAS	Andy, Peter, Risa, Joe	Susan Horn, Darren, Faye and Michelle of Hiscock LAS; Marthe Ngwashi (County Attorney's office)
5.8.15	Quality #1 Hiscock Society	Risa, Matt, Joe	Lori Tarolli (Acting County Attorney), Carol Rhinehart (County Attorney's office), and Marthe Ngwashi (County Attorney's office); Susan Horn (Hiscock LAS)
5.27.15	CAFA #1	Joanne, Matt, Joe	Lori Tarolli, Acting County Attorney, Carol Rhinehart, Marthe Ngwashi and Kathy Dougherty (County Attorney's office) and Renee Captor (ACA).
7.22.15	CAFA #2/Quality #2 (ACP/Hiscock)	Joanne, Matt, Risa, Joe	Bob Durr, Onondaga County Attorney; Lori Tarolli, Carol Rhinehart, Marthe Ngwashi and Kathy Dougherty (County Attorney's office); and Renee Captor (ACA).
8.27.15	CAFA #3/Quality #3 (ACP/Hiscock)	Joanne, Matt, Patricia, Joe	Bob Durr, Onondaga County Attorney; Lori Tarolli, Carol Rhinehart and Marthe Ngwashi (County Attorney's office); Renee Captor (ACA); and Dan Hammer, Onondaga County Budget office (part of meeting).
10.2.15	Quality #4/review CAFA	Matt, Amanda, Patricia, Joe	Bob Durr, Onondaga County Attorney (part of meeting); Lori Tarolli, Carol Rhinehart, Marthe Ngwashi, Carol Rhinehart and Kathy Dougherty (County Attorney's office); Renee Captor (ACA); Susan Horn, Hiscock Society (part of meeting); and Dan Hammer, Onondaga County Budget office.

Onondaga County: Comprised of County Court, Syracuse City Court and 28 Town & Village Courts. The Assigned Counsel Program (ACP) coordinates representation in the 28 Town and Village courts, before 44 judges; the Hiscock Legal Aid Society handles criminal appeals and parole violations. The Town & Village Courts account for approximately 1/3rd of assignments received by ACP each year).

CAFA

Current Coverage

- **Syracuse City Court:**
 - **AM arraignments:** (since 2001) (County funded) (365 days/yr.) (2-3 attorneys/day) (conduct interviews in jail) (3,500 – 4,000 cases/yr.)
 - **Community Court arraignments:** ("problem solving court") (since 2001) ("quality of life") (arraignments once/week) (60-100 cases/yr.) (meets at 9:30 one/day wk.)

- **PM Arraignments:** (since 2007) (Federal funding/JAG grant/CNY Services) (165-220 cases/yr. - number of cases dropping yearly) (3 year grants; most recent grant period started Oct. 1, 2014)
- **AM+ arraignments:** (since 2013) (ILS Distribution #2 funding) appearance tickets and warrants/provides for 2 attorneys (2,000-2,300 cases/yr.)
- **Town & Village Courts:**
 - **Regular Sessions:** (since 2014) (ILS Counsel at First Appearance grant award) arraignments at 14 of the 28 largest justice courts covered (in larger courts, 2 attorneys – one felony-qualified and one misdemeanor-qualified; in smaller courts; 1 attorney - felony qualified). Provides coverage at over 90% of arraignments at regular justice court sessions (estimated 4,500 – 5,000 cases/yr. covered when fully implemented) (the remaining 14 courts accounted for 329 assignments in 2014). Recently, ACP has added a 15th justice court using ILS Counsel at First Appearance grant funding, but this funding will only be available until the end of 2015).

Coverage Assumptions for CAFA (continued ILS funding):

- **Town & Village Courts (ILS Counsel at First Appearance grant program)** – assumes continued ILS funding of 18-B attorneys for coverage at regular sessions in 14 of the largest justice courts (2 attorneys – one felony qualified and one misdemeanor qualified) in larger of these courts; 1 attorney in the smaller courts - usually felony qualified).
- **Syracuse City Court**
 - **non-custodial defendants (ILS Distribution #2)** – assumes continued funding for representation at arraignment of non-custodial defendants who appear in Syracuse City Court on appearance tickets (and some warrants) (Onondaga has yet to submit a Distribution #5 proposal, although Onondaga has verbally indicated that it will propose using Distribution #5 funding to continue this program).

Coverage Gaps:

- **City Traffic Court:** no coverage at Traffic Court arraignments (e.g., DWI; DAS). Daily sessions at 9:30 am.
- **Town & Village Courts**
 - **Regular Sessions.** 13 of the 28 smaller justice courts (15 are currently covered by ILS Counsel at First Appearance grant program).
 - **Off-hour arraignments:** all 28 Town & Village courts (includes unscheduled arraignments on weekends and weeknights)
 - Notification system needed for on-call arraignment attorneys
 - **Town and Village Court arraignments held in courtrooms in Syracuse City Court.**

Coverage Options

- **City Traffic Court:** Expand arraignment coverage provided in Syracuse City Court to include Traffic Court (Traffic Court meets weekdays 9:30 am). Participating attorneys would receive \$200/day. Onondaga estimates that it would cost \$60,194 to cover Traffic Court arraignments.
- **Regular sessions at 13 Town & Village Courts.** Expand arraignment coverage at regular court sessions in fifteen (15) Town & Village courts (ILS Counsel at First Appearance grant program) to cover regular court sessions at all twenty-eight (28) Town & Village courts (\$90/session for felony-eligible attorneys; \$75/session for misdemeanor-eligible attorneys).
- **Town and Village Court arraignments held in courtrooms in City Court.** Provide “on-call” arraignment coverage for Town and Village court arraignments held in courtrooms in Syracuse City Court (\$90/arraignment).

- **Off-hour arraignments in 28 Town & Village Courts.** Establish 24/7 on-call system providing counsel at arraignment at off-hours in all 28 Town and Village courts, with fourteen (14) 18-b panel attorneys divided into six geographic regions (weekends, weeknights and unscheduled, individualized weekday arraignments other than arraignments held in courtrooms in Syracuse City Court – see above). On-call attorneys would receive a \$25/day stipend and \$150 per arraignment.

Estimated CAFA Costs

Coverage	Cost Description	Costs
Regular sessions at thirteen (13) Town & Village courts	Expand arraignment coverage at regular court sessions of fifteen (15) Town & Village courts (ILS Counsel at First Appearance grant program) to include regular sessions at all twenty-eight (28) Town & Village courts (\$90/session for felony-eligible attorneys; \$75/session for misdemeanor-eligible attorneys).	Total cost estimate: \$76,500
Syracuse City Traffic Court (meets daily)	Expand arraignment coverage provided in Syracuse City Court to include Traffic Court (\$200/day)	Total cost estimate: \$60,194
Local Court arraignment held in City Court	Expand arraignment coverage provided in Town and Village courts to include local court arraignments held in Syracuse City Court (\$90/arraignment).	Total cost estimate: \$15,600
Off-hour arraignments (all 28 Town & Village Courts)	Provide 24/7 on-call system of providing counsel at off-hour arraignments in the twenty-eight (28) Town and Village Courts, with attorneys participating in program divided into six regions. On-call attorneys (14) would receive a basic stipend of \$25/day (total cost: \$127,750/yr.), with an additional stipend of \$150 for each arraignment covered (\$165,000). Two ACP staff positions would be added to (1) monitor day-to-day operations (troubleshoot) (\$50,000/yr.) and (2) perform administrative tasks, such as tracking data (\$40,000/yr.) Other program costs: computer & supplies (\$5,000/yr.); dispatch fees (telephone) (\$20,000 yr.)	Total cost estimate: \$407,750
Total Cost to close gaps in coverage .		Total cost estimate: \$560,044

Alternatives

- **Consolidation of arraignment/Town and Village courts.** For contiguous Town & Village Court jurisdictions, some consolidation of “off-hour” arraignments is occurring (“it’s happening”), but it is not being done systematically and the extent to which it is occurring is not known.
 - **Indirect costs.** To initiate consolidation of Town & Village Court arraignments, County requests funding for law enforcement costs of transporting defendants to centralized arraignments and costs of holding defendants overnight in holding facility.

Longer term issue:

- **Appointment of 18-B attorneys:** Onondaga County is a judge-assign county.

Quality Improvement

Funding breakout

- **Onondaga County:** \$588,677 for each of two years

Quality Assumptions (continued ILS funding):

- **ACP**
 - **ACP contractor** (track time spent in jail; bail posted) (CAFA) – assumes continued funding of ACP contractor position to collect data.
 - **Volunteer Initiative Program** (CNY Services) (Distribution #2) – assumes continued funding for Program to coordinate volunteer services (court diversion) in Town, Village and City Courts.
 - **Case management services position** (Adolescent Diversion) (Distribution #4) – assumes continued funding of case management services position to assess offender’s needs for referral and follow-up
 - **Extend 18-B representation** (e.g., VTL 1157; traffic infraction) (Distribution #4) – assumes continued funding of extended 18-B representation.
 - **Extend 18-B representation** (problem solving courts) (Distribution #3) – assumes continued funding to provide representation at problem solving courts
 - **Veteran’s Advocate** (Distribution #4) – assumes continued funding of Veteran’s Advocate to assist veterans arrested for offenses committed as result of disabilities, including coordinating services.
 - **Mitigation experts** (sentencing advocacy) (Distribution #4) – assumes continued funding of mitigation experts in sentencing advocacy, particularly for youthful offenders.
 - **CLE training (assigned counsel panel)** (Distribution #3) – assumes continued funding for CLE training for 18-b panel attorneys
 - **Investigative, interpreter, expert services** (Distribution #3) – assumes continued funding for investigative, interpreter, expert services

- **Hiscock Legal Aid Society**
 - **Staff attorney position** (Appeals Program) (Upstate Caseload) - assumes continued funding of staff attorney position in Appeals Program
 - **Senior attorney upgrade** (Appeals Program) (Upstate Caseload) – assumes continued funding to upgrade senior attorney to midlevel supervisory position in Appeals Program
 - **Salary adjustments** (Distribution #2) – assumes continued funding for cost-of-living salary adjustments and benefits/fringe in mandated representation programs.

Topics Discussed:

ACP

- **Formal supervisory/mentoring structure.**
 - **RFP/Creation of Mentoring program.** Develop RFP or create mentoring program to establish panel of experienced attorneys to provide oversight/support of panel of assigned counsel panels
 - **Components of RFP/Mentoring program.**
 - Components discussed include developing structured mentoring program for younger attorneys (currently 2nd chair program infrequently utilized; 3-4 times/yr.; mentoring currently done informally); availability of panel as resource to attorneys (provide advice; assist in complex cases; schedule meetings with panel attorneys); attorney performance evaluations (supervision; observe attorneys in court; re-certification of panel attorneys - currently re-application process consists of updating basic information); developing and/or mandating training programs (currently 50% of CLE credits must be obtained in 18-B practice areas).
 - **Role of ILS in process.**

- **Onondaga/ACP Meetings.**
 - **Erie County.** Onondaga County met with Erie County ACP (Bob Convissar) to discuss Erie County ACP (supervision, mentoring, resource, training).
 - **Tompkins County.** Onondaga County conference calls with Julia Hughes; planning to meet to discuss Tompkins program re: supervision, mentoring, resource, training.
- **Training.**
 - **Enhance specialized training resources**
 - Currently, ACP offers training through NYSACDL twice a year to panel attorneys at no charge.
 - Panel attorneys required to obtain 50% of state-mandated CLE credits in 18-B practice areas.
- **Investigative/Expert services**
 - **Increase access to investigative/expert services**
 - Currently, attorneys must apply to court for investigative, expert services

Hiscock LAS

- **Appeals Backlog**
 - At close of 2014, 239 cases pending
- **Violations of Parole**
 - Significant increase in caseloads experienced in past few years.
- **Training/CLE**

Estimate Quality Improvement Costs

Item	Description	Costs
<p>ACP priorities.</p>	<p>Training Fund. Enhance training resources by increasing funding for CLE programs, noon-time programs ("lunch and learn"), and add scholarships for National Criminal Defense College (2) and Trial Skills Program in Batavia.</p> <p>Mentoring. Create mentoring program for new attorneys and for attorneys trying "first felony." Would require five hours of mentoring for attorneys to join and remain on assigned counsel panel. Attorneys trying first felony would "second chaired" by mentor. County proposed establishing panel of 20-25 mentors who would paid \$250/hr.</p>	<p>Training Fund (\$34,000). Per discussions with County, would increase availability of funding for training (to \$34,000) and expand availability of training programs to include regional and national programs. County had originally proposed \$26,250 for training.</p> <p>Mentoring (\$110,000). Per discussion with County, would increase the amount of required mentoring time for new attorneys (doubled); and enhance availability of "second chairing." This can be accomplished by reducing the hourly rate of mentors from \$250/hr. to \$150/hr. – a rate deemed more than adequate to attract a quality, committed group of about 10 mentors.</p>

	<p>Supervision. Create supervisory program that includes court monitoring of cases handled by ACP attorneys in City Court, Family Court and Town and Village courts. To handle client complaints, would upgrade AC Peeper system to collect complaint information.</p> <p>Quality Standards Coordinator. Add full-time non-lawyer position in ACP office to recruit and coordinate scheduling for mentors. Would include rent for additional space for new position, along with furniture and computer costs.</p>	<p>Supervision (\$222,100). Per discussion with County, would redirect the court monitoring funding for Family Court to criminal cases and add County and Supreme Court. By reducing the hourly rate paid to the mentors from \$250/hr. to \$150/hr., would increase the number of available hours to spent monitoring court cases by about 40%. It also allows for the addition of mentoring/consultation time for more experienced attorneys</p> <p>Quality Standards Coordinator (\$64,380). Per discussion with County, duties of Coordinator are limited, so would recommend funding a part-time position (with benefits), along with the cost for rent for additional space, furniture and computer set-up.</p> <p>Total: ACP \$430,480</p>
<p>Hiscock Legal Aid Society priorities</p>	<p>Reduce Appellate Backlog. To reduce the appeals backlog, either hire or contract with appellate lawyers; currently Hiscock LAS has a two year backlog of 233 appellate cases, of which 214 are criminal appeals.</p>	<p>Reduce Appellate Backlog (\$157,493). Per discussion with County, would hire two appellate lawyers with some experience at \$50,000/yr. (plus benefits), along with costs for purchasing furniture and computers.</p> <p>Total: Hiscock LAS \$158,197</p> <p>Overall plan total: \$588,677</p>

Longer Term Issues:

- **Quality of representation.** Onondaga County is a judge-assign county and "quality is monitored by the judges."
- **Voucher cutting.** More information needed on practices of ACP on cutting payment vouchers submitted by panel attorneys.

Tracking

Attorney Caseload/Workload

- ACP has added attorney workload fields (18-B/non-18-B) to AC Peeper program.
- Hiscock LAS to provide spreadsheet (electronic) of attorney workloads (18-B/non-18-B)

Ontario County discussions

Date	Topic(s)	ILS attendees	Ontario County attendees
4.7.15	1 st meeting	Bill, Joe	Michael Reinhardt (Assistant County Attorney); Nancy (paralegal; County Attorney's office); Leanne Lapp (Public Defender); Andrea Schoeneman (Conflict Defender, ACA)
5.7.15	CAFA #1	Joanne, Matt, Joe	Michael Reinhardt (Assistant County Attorney); Nancy (paralegal; County Attorney's office); Leanne Lapp (Public Defender); Andrea Schoeneman (Conflict Defender, ACA)
5.7.15	Quality #1 (PD, Conflict, ACP)	Risa, Joanne, Matt, Joe	Michael Reinhardt (Assistant County Attorney); Nancy (paralegal; County Attorney's office); Leanne Lapp (Public Defender); Andrea Schoeneman (Conflict Defender, ACA)
6.27.15	CAFA #2; Quality #2 (PD, Conflict, ACP)	Joanne, Matt, Risa, Joe	John Garvey (County Administrator); Michael Reinhardt (Assistant County Attorney); Lea Nacca (Assistant County Attorney); Nancy (paralegal; County Attorney's office); Leanne Lapp (Public Defender); Andrea Schoeneman (Conflict Defender, ACA)
8.3.15	CAFA #3; Quality #3 (PD, Conflict, ACP)	Joanne, Matt, Patricia, Joe	Michael Reinhardt (Assistant County Attorney); Lea Nacca (Assistant County Attorney); Nancy (paralegal; County Attorney's office); Leanne Lapp (Public Defender); Andrea Schoeneman (Conflict Defender, ACA); John Garvey (County Administrator) (briefly);
8.28.15	CAFA #4; Quality #4	Joanne, Matt, Patricia, Joe	Michael Reinhardt (Assistant County Attorney); Lea Nacca (Assistant County Attorney); Nancy (paralegal; County Attorney's office); Leanne Lapp (Public Defender); Andrea Schoeneman (Conflict Defender, ACA); John Garvey (County Administrator) (briefly)
10.6.15	Quality #5; (CAFA review)	Amanda, Patricia, Joe, Deborah	Michael Reinhardt (Assistant County Attorney); Lea Nacca (Assistant County Attorney); Leanne Lapp (Public Defender); Andrea Schoeneman (Conflict Defender, ACA)

Ontario County: Public Defender (12 attorneys, including Public Defender); ACP panel (approximately 12 attorneys/criminal).

CAFA**Current Coverage (centralized arraignments)**

- **Town & Village Courts**
 - **Centralized arraignments are conducted in Canandaigua City Court and Geneva City Court**
 - **Exceptions**
 - **Two Town Courts.** Two Town courts do not participate in the centralized arraignment program and conduct late night, off-hour arraignments (after 10 pm) on weeknights and weekends (estimate two weeknight/arraignments per week)

Coverage Assumptions for CAFA coverage (continued ILS funding)

- **Town & Village Courts (ILS CAFA RFP):** assume continued funding of two (2) Assistant Public Defender positions to primarily handle arraignments.

Coverage Gaps:

- **Weeknights**

- **Non-DA nights:** coverage of arraignments on non-DA nights is not available (approximately 10 non-DA nights/week).
- **Off-hour arraignments (after 10 pm) on weeknights:** estimated four weeknight arraignments/wk. in the two Town Courts that do not participate in the centralized arraignment programs.
- **Weekends**
 - **Off-hour arraignments (after 10 pm) on weekends:** late night arraignments in the two Town Courts that do not participate in the centralized arraignment program.

Coverage Options:

- **Off-hour weeknight and weekend night arraignments (after 10 pm).**
 - **Two Town Courts.** Develop on-call, off-hour rotational system of 18-b assigned counsel or other private attorneys (contractual) to provide counsel at arraignment in the two Town Courts not participating in the centralized arraignment program.
- **Non-DA nights**
 - **Add Public Defender staff.**
 - Add two (2) additional full-time attorney positions in the Public Defender office to cover non-DA nights countywide. Adding staff to the Public Defender's office to cover non-DA nights would have following benefits:
 - **Coverage of regular sessions.** With added staff, arraignments at all court sessions in Ontario County (including non-DA nights) would be covered.
 - **Sustainability of CAFA coverage.** With additional positions in Public Defender office, current staff coverage of arraignments could be restructured to ensure sustainability of current evening off-hour and weekend coverage.
 - **Enhanced Supervision.** Adding additional attorney positions would allow Public Defender to reduce caseload and provide more effective supervision within the office.

Alternatives

- Law enforcement (Sheriff, State Police, City police) issue desk appearance tickets for "DA night."
- Early notification to Public Defender office of arraignment calendar on non-DA nights would alleviate need for attorneys to attend non-DA night court sessions when arraignments not scheduled.
- Late night, on-call coverage of arraignment would not be needed if the two Town Courts currently conducting such arraignments participated in the centralized arraignment program.

Estimated CAFA Costs

Coverage	Cost Description	Costs
Non-DA nights (regular sessions)	Non-DA nights. Add two additional Assistant Public Defender positions to cover local courts. Number of arraignments on non-DA nights not known. Cost: \$210,000/yr. (includes fringe). Note: does not include incidental costs such as office space, computers, training, etc.	Total cost for non-DA night coverage: \$210,000/year

<p>Off-hour weeknight and weekend/holiday arraignments</p>	<p>Weekend/Holiday. Contract with 18-B attorney(s) or other attorneys to cover off-hour arraignments; "on-call" flat rate stipend of \$150/weekend day and \$300/holidays plus actual costs of providing representation at arraignment at statutory rate of \$75/hr. (includes travel time and mileage reimbursement). Average of five (5) arraignments per weekend day expected.</p> <p>Weeknights. Contract with 18-B attorney(s) or other attorneys for "on-call" flat rate stipend of \$75/night (10 pm until 8:30 am) plus actual costs of providing representation at arraignment at statutory rate of \$75/hr. (includes travel time and mileage reimbursement). Average of four calls/week anticipated.</p>	<p>Weekend total cost: \$55,125</p> <p>\$150/weekend day stipend = \$15,600/yr. Five (5) arraignments/day at \$75/hr. = \$39,000 \$300/holiday stipend = \$1,200 Five (5) arraignments/holiday at \$75/hr. = \$1,500</p> <p>Weeknights total cost: \$34,800</p> <p>\$75/weeknight stipend (254 weeknights/yr.) (\$19,200) and average of four (4) arraignments/wk. at \$75/hr. (\$15,600) plus mileage reimbursement = \$34,800</p> <p>Estimated mileage reimbursement for weeknight and weekends: \$5,000</p> <p>Total cost for off-hour arraignments: \$97,100</p>
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Quality Improvement

Funding breakout

- **Ontario County:** \$146,123 for each of two years

Discussions:

Conflict/ACP

- **Build up Conflict Defender office.** Conflict office currently consists of one attorney, the Conflict Defender.
 - **Experienced criminal defense attorney position.** The County is committed to building up the Conflict Defender office; including adding an experienced criminal defense attorney position to handle serious felonies and providing other support resources, e.g., additional staff. At present, the addition of the criminal defense attorney position is in the process of being approved by the County legislature.
 - **Funding of experienced defense attorney position.**
 - **Distributions #4-#5.** The County has indicated that it plans on using ILS distribution funding for this position
- **ACP/Formal supervision/mentoring structure.**
 - Supervising/mentoring/resource attorney position desired (Tompkins County ACP model)
 - Concern raised of finding a suitable candidate.

- At 10.6.15 meeting, an experienced, highly regarded attorney who currently mentors 18-b attorneys in Ontario County on an informal basis was reported as being interested in performing this role.

- **Experts/Investigator Resources/Training**

- Funding to enhance use of expert/investigative services

Public Defender's office

- **Enhance Supervision.**

- Additional supervisory capacity is sought; adding additional legal staff would allow more time for PD and 1st Assistant Public Defender to perform supervisory function
 - Currently, the Public Defender and 1st Assistant Public Defender divide supervisory responsibilities, but both carry heavy caseloads.
 - Regular meetings are currently conducted with felony attorneys to discuss cases.

- **Access to Investigators, Experts and Support Services.** Enhance the availability of support services, such as investigative services, experts, and legal research.

- **Social worker/mitigation.**

Estimated Quality Improvement Costs

Item	Description	Costs
<p>Conflict Defender and ACP priorities</p>	<p>Investigator, interpreter, expert fund. Funds would be available to encourage more frequent use of investigators, interpreters and experts.</p> <p>Retainer for panel attorney mentor/supervisor. ACP would contract with an experienced criminal defense attorney who would be available to panel attorneys as a resource and mentor.</p> <p>Social workers and sentencing advocates fund. Funds would be available to encourage use of social workers and sentencing advocates.</p>	<p>Investigator, interpreter, expert fund (\$40,000). Per discussions with the County, the total amount of \$40,000 would be split between the Conflict Defender Office and ACP. Initially, the County had proposed using a total of \$50,000 for this purpose, but additional funding was needed for the supervising/mentoring attorney contract.</p> <p>Retainer for panel attorney mentor/supervisor (\$30,000). Per discussion with the County, a contract with the mentor would call for an hourly rate of \$100 and a minimum of 300 hours/yr., for a total cost of \$30,000. Initially, the County had proposed a contract for up to 200 hours/yr. (total cost: \$20,000), but it was thought additional hours would be needed to fulfill this task.</p> <p>Social workers and sentencing advocates fund (\$30,000). The total amount of \$30,000 would be split</p>

<p>Public Defender Office priorities</p>	<p>Lexis access for panel attorneys.</p> <p>NYSDA PDCMS licensing fees. Not part of County written proposal; discussed at meetings.</p> <p>Filing of 440 motions. Not part of written proposal; discussed at meetings.</p> <p>Part-time Assistant Public Defender position. Adding a part-time APD position would allow for the Public Defender to reduce caseload and devote additional time to supervision within the PD office.</p>	<p>between the Conflict Defender Office and ACP, as initially proposed.</p> <p>Lexis access for panel attorneys (\$1,123). A total amount of \$1,123 would be available to dedicate a computer terminal in the Assigned Counsel Program office to ensure Lexis access for all assigned counsel panel attorneys. Initially, the County had proposed dedicating \$1,000/month (estimated) for 15 attorneys on the criminal panel to have access to Lexis at a total cost of \$15,000, but cost is high and providing Lexis access to each attorney not a priority – panel attorney access to a terminal in the Conflict Defender office will accomplish desired objective.</p> <p>NYSDA PDCMS licensing fees. No cost estimate provided; thought that the single source contract with NYSDA may cover these costs.</p> <p>Filing of 440 motions (\$10,000). A total of \$10,000 would be used to fund the preparation and filing of 440 motions, which is currently not a reimbursable cost under Article 18-b. Simple and complex cases expected.</p> <p>Total: Conflict and ACP \$111,123</p> <p>Part-time Assistant Public Defender position (\$35,000). A total of \$35,000 would be available to hire an Assistant Public Defender, in part to reduce the overall caseload of the office and allow the Public Defender additional time to provide supervision within the office. As an alternative, an existing part-time paralegal position within the PD office would be upgraded to a full-time paralegal position, which would serve the purpose of reducing caseload pressures of the Public Defender and 1st Assistant Public Defender.</p> <p>Total: Public Defender \$35,000</p> <p>Overall plan total: \$146,123</p>
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Tracking

Attorney Caseload/Workload

- NYSDA has added attorney caseload fields to PDCMS in PD office and ACP.
- NYSDA installed PDCMS in Ontario Conflict Defender office and ACP on September 9-10.

Schuyler County discussions

Date	Topic(s)	ILS attendees	Schuyler County attendees
4.15.15	1 st Meeting	Bill, Joe	Tim O'Hearn, County Administrator; Geoff Rossi, County Attorney; Wes Roe, Public Defender
5.21.15	CAFA #1	Matt, Joanne, Joe	Tim O'Hearn, County Administrator; Geoff Rossi, County Attorney; Wes Roe, Public Defender; Sheriff
5.21.15	Quality #1	Matt, Risa, Joanne, Joe	Wes Roe, Public Defender; Jessica Saks, Conflict defender & ACA
7.10.15	Quality #2/CAFA #2	Matt, Joanne, Joe	Tim O'Hearn, County Administrator; Geoff Rossi, County Attorney; Wes Roe, Public Defender; and Julia Hughes, ACP of Tompkins County.
8.5.15	Quality #3/CAFA #3	Joanne, Matt, Patricia, Joe	Tim O'Hearn, County Administrator; Geoff Rossi, County Attorney; Wes Roe, Public Defender; and Julia Hughes, ACP of Tompkins County
8.28.15	Quality #4/CAFA #4	Joanne, Matt, Patricia, Joe	Steve Getman, County Attorney; Wes Roe, Public Defender
10.6.15	Quality #5/review CAFA	Matt, Amanda, Deborah, Patricia, Joe	Steve Getman, County Attorney; Wes Roe, Public Defender
11.4.15	Quality #6/review CAFA	Amanda, Deborah, Patricia	Tim O'Hearn, County Administrator; Steve Getman, County Attorney; Wes Roe, Public Defender

Schuyler County: Schuyler County has a County Court and 11 Town & Village Courts.

CAFA

Current Coverage:

- **Weekdays:**
 - All courts covered from 8:30 am – 11:30 pm
 - Non-DA night exception. Sheriff has agreed to issue desk appearance tickets for DA nights (see below), so coverage not needed on non-DA nights; however, a small number of arraignments for desk appearance tickets issued by State Police (and Park Police) may still be scheduled on non-DA nights.
 - With addition of holding facility (see below), off-hour arrests covered

Coverage Assumptions for CAFA coverage (continued ILS funding):

- **Town & Village Courts (Upstate Caseload RFP):** continued funding of part-time Assistant Public Defender position to cover regular local court sessions, individualized arraignments (4:30 pm to 9:00 pm), and handle some appeals.
- **County Court (CAFA RFP):** continued funding of upgrade of part-time Assistant Public Defender to full-time to cover County Court arraignments and “float” to cover justice court arraignments.
- **Upgrade Legal Secretary position (CAFA RFP):** continued funding of upgrade of legal secretary position to assist with data collection

Coverage Gaps:

- **Town & Village Courts:**
 - Weekend arraignments
 - Non-DA night sessions for desk appearance tickets issued by State Police and Village Police.

Coverage Options:

- **Weekend arraignments:**
 - **Public Defender Office:** establish three attorney rotation in Public Defender office and provide stipend for each such attorney to cover every third weekend (9am – 9pm), but, to ensure sustainability of rotation system (avoid burn-out), build in flexibility to contract with other attorneys to substitute in the rotation.
- **Non-DA nights:**
 - **State Police.** With Sheriff’s office agreeing to write desk appearance tickets with return dates on DA nights, non-DA nights may still have arraignments for desk appearance tickets issued by the State Police (and Park Police).

Notification:

- **Weekend arraignments.** A dispatch system is used in Schuyler County to notify attorneys, so notification of attorneys is not a concern in Schuyler County.

Noteworthy:

- **Holding facility.** Schuyler County has recently obtained the necessary authorization for a holding facility, which would allow for the holding of defendants overnight, thereby alleviating the need to provide coverage for late night, off-hour arraignments.
- **Desk appearance tickets/DA nights.** The Sheriff has agreed to have his deputies issue desk appearance tickets for DA nights only, thereby alleviating need for counsel to be present for arraignments on non-DA nights. The Sheriff’s office issues about 90% of the desk appearance tickets. State law enforcement has agreed to work with ILS/Schuyler County to develop program to issue appearance tickets for DA nights. ILS needs to finalize/formalize.

Estimated CAFA costs

Coverage	Cost Description	Costs
Weekend/holiday arraignments	On-call rotational system of three attorneys in Public Defender office to provide coverage every third weekend from 9 am to 9 pm, with flexibility to add 18-B or private counsel into rotation. Would receive stipend (\$200/day); total cost estimate of \$30,000 would include cost of cell phones and mileage reimbursement (\$4,400).	Total cost to cover weekends/holidays from 9 am to 9 pm: \$30,000.
Non-DA nights (State Police/Park Police desk appearance tickets)	Add two Assistant Public Defender positions – one full-time position (salary: \$55,000/yr. plus \$37,000 fringe) and one part time position (\$40,000/yr. plus \$29,000 fringe) (both positions subject to 4% annual	Total cost for a full-time and part-time Assistant Public Defender positions: \$161,000 w/4% annual increases.

	increase)) to provide coverage on non-DA nights. Cost of office space, computers, equipment not included.	Costs not necessary if all law enforcement agree to issue appearance tix for DA-nights.
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Quality Improvement

Funding breakout

- **Schuyler County:** \$55,956 for each of two years

Quality Assumptions (continued ILS funding):

- **Investigative services** (Distribution #3) – continued funding for investigative services in PD office
- **Arc of Schuyler** (Distribution #3) – continued funding with Arc of Schuyler to transport clients without access to public transportation to and from court and office conference.

Topics Discussed

ACP

- **Regional Assigned Counsel Program.**
 - **Tompkins County/Schuyler County regional assigned counsel program.** Schuyler County and Tompkins County have held and continue to hold meetings to discuss establishment of a regional assigned counsel program. Schuyler County has drafted an inter-municipality agreement (IMA) which, Tompkins has reviewed and sent back to Schuyler; this agreement sets forth the scope of the duties and responsibilities of the two counties. Both counties agree on all key, substantive issues, though Schuyler needs to amend the IMA to reflect its recent decision to terminate its contract with its Conflict Defender, and have the regional ACP handle all cases that the Public Defender Office cannot take. Tompkins County would administer the regional assigned counsel program for the attorneys in both counties; current Tompkins County ACP program requirements and features would apply to participating Schuyler attorneys, with the exception that Schuyler County attorneys would not be expected to be on-call one day/month to handle off-hour arraignments (all Tompkins County panel attorneys are required to be on-call one day/mo.). Likewise, Schuyler County would be expected to establish its own Counsel at First Appearance program, which would be administered by Schuyler County. Some current requirements and features of the Tompkins ACP that would be included in a regional ACP with Schuyler County include:
 - **Mentoring program.** All attorneys must have a mentor; panel attorneys who have been on a panel for five or more years must be mentors for younger or inexperienced attorneys;
 - **2nd Chair.** For younger attorneys, experienced attorneys are compensated to 2nd chair trials.
 - **Training Curricula/Free trainings.** Tompkins County ACP offers free trainings to its panel members (ILS funded); some recent and upcoming trainings include Peter Gertzenstein (DWIs), conditional sealing orders and prosecutorial misconduct. Topics for trainings are solicited from panel attorneys. Tompkins County has invited Schuyler County 18-b attorneys to participate in current CLE programs, even before there is agreement to establish a regional assigned counsel program.

- **Attorney Qualifications.** In order to become a member of an assigned counsel panel, there is an Initial review of attorney qualifications, followed by an interview with the supervising attorney. Tompkins County is currently utilizing the services of an interim supervising attorney while it actively seeks a full-time replacement for its recently deceased supervising attorney (Wes McDermott).
- **Caseload Limits.** Panel attorneys are subject to a 50 caseload limit.
- **Supervising Attorney.** A policing function is performed by the supervising attorney (along with Julia Hughes, the Administrator of the ACP)

In addition to establishing a program that would improve the quality of assigned counsel representation in Schuyler County, the program would greatly expand the available pool of attorneys who could provide assigned counsel representation in Schuyler County - addressing a longstanding concern of a shortage of available attorneys in Schuyler County.

Main issue for Schuyler – keep Conflict Defender contract, or terminate contract and merge cases with regional ACP? Tompkins gave 2 estimates of cost: 1) \$33,446 without Conflict Defender cases; 2) \$58,446 with Conflict Defender cases. Schuyler estimates that terminating Conflict Defender contract will cost an estimated additional \$70,000 for county in panel attorney fees. Despite these costs, Schuyler has determined that terminating Conflict Defender contract is best means of meeting Settlement’s quality objectives, but is going forward on good faith that ILS/State will provide funding to cover additional costs.

Public Defender:

- **Specialized trainings.**
 - Some ILS funding is available for trainings; need for more specialized trainings; out-of-state trainings
- **Social workers**
 - Currently social workers are not utilized

Estimated Quality Improvement Costs

Item	Description	Costs
ACP priorities	Regional Assigned Counsel Program. Development of regional assigned counsel program with Tompkins County	<p>Regional Assigned Counsel Program (\$58,446 plus increased attorney fees estimated at \$70,000). Participating in a Regional Assigned Counsel Program with Tompkins County will use the full allotment of Quality funding available to Schuyler County, with additional costs.</p> <p style="text-align: right;">Total: estimated \$128,446/yr (Quality funding is \$55,956/yr)</p>

Tracking

Attorney Caseload/Workload

- NYSDA adding attorney workload fields to PDCMS in PD office.
- Until regional assigned counsel program finalized, whether NYSDA will install PDCMS in Conflict Defender office and ACP is on hold. Currently looks like there will be no need for PDCMS in Conflict Defender; Tompkins County's case tracking will need to be updated. (November 13th deadline will have to be extended).

Suffolk County discussions

Date	Topic(s)	ILS attendees	Suffolk County attendees
4.24.15	1 st meeting	Bill, Joe	Hon. Randall C. Hinrichs, District Administrative Judge; Hon. Glenn A. Murphy, Supervising Judge of the District Court; Robert Quinlan, Principal Law Clerk to Judge Hinrichs; David Besso, 18-B Administrator; Dennis Brown, County Attorney; Dennis Cohen, Chief Assistant County Executive; William Ferris, President of the Suffolk County Bar Association; Harry Tsills, representative from the Suffolk County Bar Association; Angela Blekht, President of the Suffolk County Criminal Bar Association. Legal Aid attendees: Laurette Mulry, Deputy Attorney in Charge; Philip J. O'Reilly, Administration; Edward Vitale, Bureau Chief, County Court; Sabato Caponi, Bureau Chief, East End; Michael Ahern, Quality Control Supervisor
5.13.15	Quality #1 (ACP)	Matt, Risa	Dave Besso, 18-B Administrator
5.14.15	CAFA #1	Joanne, Matt, Joe	Hon. Randall C. Hinrichs, District Administrative Judge; Hon. Glenn A. Murphy, Supervising Judge of the District Court; Robert Quinlan, Principal Law Clerk to Judge Hinrichs; David Besso, 18-B Administrator (1st half of meeting); Dennis Brown, County Attorney; Angela Blekht, President of the Suffolk County Criminal Bar Association; Laurette Mulry, Deputy Attorney in Charge; Edward Vitale, Bureau Chief, County Court; Sabato Caponi, Bureau Chief, East End; Joe King, Acting Bureau Chief, District Court Bureau .
5.15.15	Quality #1 (LAS)	Matt, Risa	Laurette Mulroy (Asst. Attorney-in-Chief); Ed Vitale (Felony Section Chief; Sab Capone (East End Bureau Chief); and Joe King (District Court Bureau Chief)
7.14.15	Quality #2/CAFA #2 (ACP & LAS)	Joanne, Matt, Risa, Joe	Hon. Randall C. Hinrichs, District Administrative Judge; Hon. Glenn A. Murphy, Supervising Judge of the District Court; David Besso, 18-B Administrator; Dennis Brown, County Attorney; William Ferris, President of the Suffolk County Bar Association. Legal Aid attendees: Laurette Mulry, Deputy Attorney in Charge; Edward Vitale, Bureau Chief, County Court; and Sabato Caponi, Bureau Chief, East End.
8.11.15	Quality #3/CAFA #3 (ACP & LAS)	Joanne, Risa, Patricia, Joe	Hon. Randall C. Hinrichs, District Administrative Judge; Hon. Glenn A. Murphy, Supervising Judge of the District Court; David Besso, 18-B Administrator; Dennis Brown, County Attorney; Robert Quinlan, Principal Law Clerk to Judge Hinrichs. Legal Aid attendees: Laurette Mulry, Deputy Attorney in Charge; Edward Vitale, Bureau Chief, County Court; Sabato Caponi, Bureau Chief, East End; Joe King, Acting Bureau Chief, District Court Bureau .
9.8.15	CAFA #4	Joanne, Risa, Patricia, Joe	Hon. Randall C. Hinrichs, District Administrative Judge; Hon. Glenn A. Murphy, Supervising Judge of the District Court; David Besso, 18-B Administrator; Dennis Brown, County Attorney; Robert Quinlan, Principal Law Clerk to Judge Hinrichs. Legal Aid attendees: Laurette Mulry, Deputy Attorney in Charge; Edward Vitale, Bureau Chief, County Court; Sabato Caponi, Bureau Chief, East End; William Ferris, past President of the Suffolk County Bar Association; and Donna England, President of the Suffolk County Bar Association.
9.30.15	Quality #4/review CAFA	Matt, Amanda, Risa, Patricia, Joe	Hon. Randall C. Hinrichs, District Administrative Judge; Hon. Glenn A. Murphy, Supervising Judge of the District Court; David Besso, 18-B Administrator; Dennis Brown, County Attorney; Robert Quinlan, Principal Law Clerk to Judge Hinrichs; William Ferris, past President of the Suffolk County Bar Association; and Donna England, President of the Suffolk County Bar Association. Legal Aid attendees: Laurette Mulry, Deputy Attorney in Charge; Edward Vitale, Bureau Chief, County Court; Sabato Caponi, Bureau Chief, East End; Joe King, Acting Bureau Chief.

Suffolk County: 2nd largest county by geographic area in New York State (86 miles long and 26 miles wide at its widest point); comprised of 10 Towns, with 5 Towns in the Western portion (suburban and urban) ("West End") and 5 Towns in the Eastern portion (largely rural; geographically remote) ("East End"). There are a total of fourteen (14) justice courts on the East End of Suffolk County. Of these fourteen (14) justice courts, nine (9) are relevant for purposes of providing counsel at first appearance (the Towns of Riverhead; Southampton; Southold; East Hampton; and Shelter Island; and the Villages of Southampton; Quogue; Sag Harbor; and Westhampton Beach)

CAFA

Current Coverage

- **West End:** arraignments are covered throughout the West End. District Court (District Court arraignment parts – LAS & 18-B coverage) (Street Appearance Part – desk appearance tickets; 18-B coverage); West End Village Court arraignments - covered by LAS.
- **East End: Weekdays:** coverage weekdays at four (4) East End justice courts (Towns of Riverhead; Southampton; Southold; East Hampton).

Coverage Assumptions for CAFA coverage (continued ILS funding):

- **East End:** "Arraignment Team" (CAFA RFP) – continued ILS funding of two LAS attorney positions whose "sole responsibility" is to be physically present for arraignments at two high volume town courts (Southold & East Hampton).
- **West End:** "Arraignment Attorney" (CAFA RFP) – continued ILS funding of 18-B attorney for expanded coverage in District Court arraignment parts ("ensure that counsel will be physically present in the District Court arraignment part whenever Court is in session").
- **West End:** Street Appearance Part (Distribution #5 funding) - continued ILS funding for two (2) full-time 18-B attorneys to staff Street Appearance Part (desk appearance tickets)
- **West End:** D-11 Arraignment Part (Distribution #5 funding) – continued ILS funding for one (1) full-time 18-B attorney to staff D-11 Arraignment Part

Coverage Gaps:

- **East End:**
 - **Weekdays:** coverage is currently unavailable at five (5) East End justice courts with arraignments (Town of Shelter Island; Villages of Southampton; Quogue; Westhampton beach and Sag Harbor)
 - **Weekends; holidays:** coverage is currently unavailable at the nine (9) East End courts with CAFA needs.

Coverage Options

- **East End:**
 - **Weekdays:** add two (2) LAS attorneys to provide complete coverage for the nine (9) East End courts (estimated cost: \$173,080) (would establish two coverage zones.
 - **Weekends:** three options discussed to cover weekend (and holiday) arraignments in the nine (9) East End courts
 - **LAS hire contingent of nine (9) staff attorneys on part-time basis:** 9 attorneys "in season;" reduce to 6 attorneys "off-season." (est. cost/per LAS: \$270,860; includes mileage)
 - **concerns:** recruitment of part-time attorneys; overstaffing "in-season" (reduce staff "off-season"); retention of staff; no "spare bodies" (back-up); part-time hires runs counter to LAS preference for exclusive employment
 - **viability:** this proposal generated little discussion or interest and is not considered viable.

- **LAS use of existing staff:** in theory a potential pool of up to 100 LAS attorneys; would allow for vertical representation) (estimated range of costs/per LAS: a maximum cost: \$344,631; maximum cost with two on-call attorneys: \$443,974; minimum cost: \$224,460; minimum cost with two on-call attorneys: \$270,860. Includes mileage reimbursement.
 - **Phased-in approach.** LAS also proposes implementing this proposal in three phases, or all at one time.
- **Contract with attorneys outside LAS:** LAS, private or 18-B recruited (paid hourly, per diem or flat rate);
 - **Request for Qualifications.** County to develop Request for Qualifications (RFQ) to attract eight (8) 18-b or private counsel to cover weekend and holiday arraignments in eight East End justice courts, with two attorneys assigned per court. Program would be administered by the Suffolk County Assigned Counsel Program. County to gauge interest in program by holding two meetings in September on East End.
 - **concerns:** limited number of lawyers on East End; transition of cases to LAS or private attorney post-arraignment.

Estimated CAFA Costs

Coverage	Cost Description	Costs
Weekday coverage at five (5) additional East End justice courts.	Add two (2) LAS attorneys to provide complete coverage for the nine (9) East End courts (would establish two coverage zones).	estimated cost: \$173,080
Weekend coverage at nine (9) East End justice courts.	<ul style="list-style-type: none"> • Option #1: LAS hire contingent of nine (9) staff attorneys on part-time basis: 9 attorneys "in season;" reduce to 6 attorneys "off-season" • Option #2: LAS use of existing staff: potential pool of up to 100 LAS attorneys. This proposal could be implemented in three phases, or all at one time. • Option #3: Contract with private or 18-B attorneys per RFQ process. 	<ul style="list-style-type: none"> • Option #1: estimated cost: \$270,860 • Option #2: estimated costs: Maximum cost: \$344,631 to \$443,974; Minimum cost: \$224,460 to \$270,860 • Option #3: estimated cost: up to \$400,000

- **Alternatives**
 - **Consolidation of arraignments into single (or fewer) locations**
 - **Concerns:** East End justices approached and express little interest in consolidation.
 - **Staggering arraignments or setting "cut off" time for arraignments.**
 - **Concerns:** East End justices approached and express little interest in staggering arraignments or setting a "cut off" time.

Noteworthy:

- **Client communications.** Suffolk LAS recently successful in an Article 78 regarding confidential meeting spaces for custodial defendants; private meeting spaces being added to East End Justice Courts

Quality Improvement

Funding breakout

- **Suffolk County:** \$1.1 million for each of two years

Quality Assumptions (continued ILS funding):

- LAS
 - “Social Worker” Bureau (Distribution #3) - continued funding of four social worker positions and investigator;
 - Quality Control Supervisor (Upstate Caseload RFP) - continued funding of Quality Control Supervisor (Michael Ahern) for trial preparation in District Court (no caseload);
 - “Padilla Compliance Team” (Distribution #3) - continued funding of senior staff attorney position dedicated to immigration (2 days/wk. in Riverhead; 3 days/wk. in Central Islip)
 - Spanish speaking positions (Distribution #2; continued in Distribution #5) - attorneys (4); PT secretary (1); client advocate (1)
 - Salary parity adjustment (includes healthcare insurance benefits) (Distribution #4) – continued funding of salary parity adjustment and healthcare insurance benefits
 - Enhanced training/CLE (Distribution #5) – continued funding for enhanced training/CLE, e.g., intensive trial preparation training courses, sex offender and DWIs.
- ACP
 - Qualitative/Quantitative Assistant (Upstate Caseload RFP) – continued funding of ACP Qualitative/Quantitative Assistant.
 - Electronic Voucher System (Distribution #4) – continued funding for web-based electronic voucher processing system and Technician Assistant position to enter voucher data into Electronic Voucher System.
 - Salary parity adjustment (Distribution #4) – continued funding for parity adjustment for Assigned Counsel Plan staff
 - Investigator position (Distribution #5) – continued funding for investigator position in D-11 arraignment part
 - Administrative allocation (Distribution #5) – continued funding for administrative allocation to administer Street Appearance Program.

Discussions:

ACP

- **Formalized 18(b) office.** Upgrade of ACA position to full-time (currently ACA position “pro bono”); obtain ACP office space (ACP currently housed in ACA’s law office)
 - **ACA full-time position:**
 - **Salary parity:** per NLADA Standards for Administration of Assigned Counsel Systems, ACA position would have salary parity with other county officials
 - **Funding source:** County appears interested in using HH Quality Improvement funding to upgrade ACA position.
 - **ACP office space:**
- **Formal supervision/mentoring/resource structure.**
 - **Supervision/mentoring/training:**

- Discussions whether supervision/mentoring/resource function should be position separate from new full-time ACA position or whether new full-time ACA in Suffolk could provide supervision, mentoring, resource function, given that there are support staff to perform day-to-day functions of office.
 - Currently, voucher review process and some Informal supervision (ACA spends 5-10 hrs./wk. providing supervision for 175 attorneys). With NYSDA CMS, will be able to monitor whether motions filed, hearings conducted, whether investigator used.
 - Mentoring for younger attorneys currently done informally, with attorney initially expected to locate mentor.
- **Enhanced Training/Training Director.**
 - Currently, free mandated CLEs for panel members, but need for more specialized trainings
- **Experts/Investigator Resources**
 - Funding to enhance use of expert/investigative services

LAS

- **Retention Fund (Compensation/Parity).** LAS seeks a one-time stipend for staff attorneys (merit based) in order to retain staff; increasingly, LAS attorneys are leaving for better salaries and benefits, leaving LAS with a staff of either very young attorneys – or the very experienced.
- **Enhance Supervision.** Add three experienced attorneys in supervisory roles, as per the Quality Control Supervisor position added with Upstate Caseload funding, to assist with compliance with professional standards and reporting.
- **Formal, systematic training program.** Would create a formal, systematic training program that would include intensive trial training, individualized and specific training to meet needs of attorneys, and funding to rent meeting space and hire speakers.
- **Access to Investigators, Experts and Support Services.** Enhance the availability of support services, such as investigative services, experts, and legal research.
- **On-line Legal Research.** At present, only a portion of LAS attorneys have passwords to Lexis or Westlaw – would increase the number of licenses by 110.
- **Social worker/language interpretation services.** Would expand the current ILS funded Social Worker Bureau and interpretative services
- **Technology/Client communication/technology.** Provide funding for technology to enhance client communicate (i.e., via iPads).
- **Office Space.** LAS is in need of additional office space to address a growing staff.
- **Special Litigations Bureau.** Suffolk LAS was recently successful in an Article 78 regarding confidential meeting spaces; this Bureau would be dedicated to protecting due process rights of LAS clients and righting systematic problems.

Estimated Quality Improvement Costs

Item	Description	Costs
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<p>ACP priorities</p>	<p>To professionalize Assigned Counsel Program:</p> <p>Create full-time ACA position. Strong consensus that to professionalize the ACP, need a full-time ACA.</p> <p>Upgrade Deputy Administrator position. To retain services of Deputy Administrator when ACP office is upgraded.</p> <p>Part-time Grants Manager position. With an ever increasing number of ILS distributions and grants, this position would reduce the administrative burden on the ACA.</p> <p>Equipment and Start Up Costs for ACP. To outfit the new ACP office with equipment, computer technology, phones, etc.</p> <p>ACP Office Renovation. To renovate the County office space currently being identified for housing the ACP. At present, the County is considering three different locations for the office.</p> <p>ACP Consulting Attorney. To assist the new full-time ACP to acclimate to running the ACP, including mentoring of ACP panel attorneys. Per discussions with County, need for an attorney to mentor ACP panel attorneys discussed.</p>	<p>Create full-time ACA position (\$187,475). Per discussion, initial County proposal to offer a salary of \$125,000/yr. (plus benefits), but increased to \$150,000/yr. (plus benefits) in order to attract experienced, high-quality, well-regarded candidates.</p> <p>Upgrade Deputy Administrator position (\$17,347). Per discussion with County, would increase salary of Deputy Administrator position from \$75,000/yr. to \$90,000/yr. (plus benefits).</p> <p>Part-time Grants Manager position (\$40,000). Per discussions with County, County would contract for these services to obtain a quality Grants Manager.</p> <p>Equipment and Start Up Costs for ACP (\$39,225, \$30,900 which is start-up and \$8,325 ongoing internet, copier, & other monthly fees).</p> <p>ACP Office Renovations (\$80,000). Until the County is able to decide on a location for the ACP and can price out the costs of renovation, this figure of \$80,000 is a placeholder.</p> <p>ACP Consulting Attorney (\$60,000). Although not discussed during meetings with County, the current ACA has expressed interest in providing this contractual service.</p> <p>Total costs: ACP \$424,047</p>
<p>LAS Priorities</p>	<p>Retention Fund (Compensation/Parity). LAS seeks one-time stipends (for each of the two years of Quality funding) for staff attorneys (merit based) in order to retain staff; increasingly, LAS mid-career attorneys are leaving for better salaries and benefits, leaving LAS with a staff of either very young attorneys – or the very experienced.</p> <p>Enhance Supervision. Add additional experienced attorneys in supervisory roles, similar to the Quality Control Supervisor position added with Upstate Caseload funding, to assist with compliance with professional standards and reporting.</p>	<p>Retention Fund (Compensation/Parity) (\$240,000). Per discussion with County, the amount originally requested for the retention fund - \$200,000 – was increased to \$240,000.</p> <p>Enhance Supervision (\$150,000). Would make available a total of \$150,000 to contract for these positions.</p>

	<p>Specialized Courts Training program. Would create a training program to enhance quality of representation in the many specialized courts, e.g., DWI courts, Mental Health Courts, Veterans Courts, Human Trafficking Courts and Domestic Violence Courts.</p> <p>Access to Investigators. To enhance the availability of support services, such as investigative services.</p> <p>Access to Experts. To enhance availability of expert services.</p> <p>On-line Legal Research. At present, only a portion of LAS attorneys have passwords to Lexis or Westlaw – would increase the number of licenses by 110.</p> <p>Social worker Services. Would expand the services provided by the current ILS funded Social Worker Bureau.</p> <p>Interpreter Services. Would enhance funding for interpretative services to address increasing number of non-English speaking clients.</p>	<p>Specialized Courts Training program (\$52,571). Would providing funding for trainings re: specialized courts, including rental costs for space to accommodate large group trainings.</p> <p>Access to Investigators (\$80,000). Would provide funding to contract for investigative services</p> <p>Access to Experts (\$50,000). Would provide funding to contract for expert services.</p> <p>On-line Legal Research (\$50,000). Would make online legal research available to all LAS attorneys.</p> <p>Social worker/language interpretation services (\$50,000). Would provide funding to contract for these services.</p> <p>Interpreter Services (\$20,000). Would provide funding to contract for interpreter services.</p> <p>Total costs: LAS \$692,571</p> <p>Total plan costs: \$1,116,618*</p>
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Some of the items contained in this chart represent one-time costs – use of the second year of Quality funding will need to be redirected

Tracking

Attorney Caseload/Workload

- NYSDA PDCMS has been installed in Suffolk ACP.
- NYSDA has added attorney caseload fields to PDCMS in LAS and ACP.

Washington County discussions

Date	Topic	ILS attendees	Washington County attendees
4.1.15	1 st meeting	Bill, Joe	Kevin Hayes, County Administrator; Roger Wickes, County Attorney; Mike Mercure, Public Defender
4.10.15	Quality #1	Matt, Risa	Mike Mercure; Maria DeCarlo-Drost
5.20.15	CAFA #1	Joanne, Matt, Joe	Kevin Hayes, County Administrator; Roger Wickes, County Attorney; Mike Mercure, Public Defender (part of meeting); Al Nocette, County Treasurer (part of meeting); Cillian Flavin (guest), NYS Division of Budget; Nicolle Richardson (guest), NYS Division of Budget; Judge Roger Forando, Village Court Judge (Granville, NY)
7.7.15	Distributions #3-#5 CAFA #2/Quality #2	Joe	Kevin Hayes, County Administrator; Roger Wickes, County Attorney; Mike Mercure, Public Defender (part of meeting); Al Nocette, County Treasurer
7.29.15	Distributions #3-#5 CAFA #3/Quality #3)	Joe	Roger Wickes, County Attorney; Mike Mercure, Public Defender; Kevin Hayes, County Administrator (part of meeting)
8.31.15	CAFA #4	Joanne, Matt, Patricia, Joe	Roger Wickes, County Attorney; Mike Mercure, Public Defender; Kevin Hayes, County Administrator
9.2.15	CAFA #5	Patricia, Joe	Mike Mercure, Public Defender; Kevin Hayes, County Administrator; Tony Jordan, District Attorney; Judge Roger Forando, Village Court Judge (Granville, NY)
10.1.15	Quality #4/review CAFA	Matt, Patricia, Joe	Kevin Hayes, County Administrator; Roger Wickes, County Attorney (part of meeting); Mike Mercure, Public Defender,

Washington County: Washington County has 24 Town and Village Courts, County Court and Supreme Court. Currently, the Public Defender office consists of eight (8) attorneys, including Mike Mercure, the Public Defender. Mike is currently the only full-time attorney in the Public Defender office (the seven Assistant Public Defenders are part-time; 30 hrs./wk. w/o benefits), however, Washington County will be upgrading three of the part-time Assistant Public Defenders positions to full-time (w/benefits) in September. The assigned counsel program is currently run out of the Public Defender's office, but Washington County is in process of establishing a separate assigned counsel office with Maria DeCarlo, the current Executive Assistant in the Public Defender's office, running the day-to-day operation of the program. Washington County is the only HH settlement county that did not participate in ILS's counsel at first appearance grant.

CAFA**Current Coverage:**

- **County Court:** arraignment covered (Judges insist on DA and PD presence)
- **Town and Village Courts:**
 - **Regular scheduled court sessions:**
 - "DA nights:" "usually" covered by the PD office, but "not necessarily."
 - "PD nights:" DA nights that are covered by the Public Defender office.
 - "Non-DA nights:" "not covered regularly."
 - **Off-hour arraignments:**
 - covered only "situationally" (PD office may get call for very serious offenses)

- **Off-hour arraignment coverage concerns:**
 - **Lawyer availability.** difficult for lawyers in southern part of county to cover off-hour arraignments in northern part of county (few lawyers live in northern part of county; some panel attorneys do live in neighboring counties)
 - **Holding Facility.** no holding facility in Washington County
 - **Cell phone service.** lack of cell phone service in some Town and Village courts (Judges do have land lines)
- **Key to off-hour arraignment success**
 - **Early notification of attorneys for off-hour arraignments** (following arrest, law enforcement currently contacts the court and DAs office; Sheriff's office willing to notify on-call attorneys using beeper system. Thought that State Police and Village police would be willing to do the same.

Coverage Gaps:

- **Unscheduled arraignments during business hours.** Public Defender's office currently unable to have an attorney available to appear at unscheduled arraignments during business hours.

Current Coverage Options (county wide coverage):

- **Unscheduled arraignments during business hours.**
 - **Upgrade of APD position to full-time.** With upgrade of one part-time Assistant Public Defender position to full-time, Public Defender would have on-call attorney available during business hours to provide representation at unscheduled arraignments (\$36,498/yr. with benefits included).
- **"Off-business hour arraignments."**
 - **Off-business hour rotation.**
 - **On-call rotation.** Proposal to have twelve (12) attorneys (4 private attorneys & eight (8) Public Defenders) rotate on an on-call weekly basis, providing on-call coverage from 4:30 pm to 8:30 am each business day and weekends and holidays. Each of the twelve (12) attorneys would be on-call for one week of each quarter year (so roughly four weeks/year). Participation by members of the Public Defender office would be mandatory.
 - **Stand-by rotation.** Twelve (12) attorneys would also rotate to provide on-call weekly back-up coverage (4 private attorneys and eight (8) Public Defenders). Participation by members of the Public Defender office would be mandatory
 - **Costs.** On-call attorneys would receive a weekday stipend of \$100/day and \$200/day for weekends. Back-up attorneys would receive a weekday stipend of \$50 and \$100/day for weekends. The private bar attorneys would also be paid \$75/hr. for covering an arraignment, with the expectation that there would be an average of three arraignments to cover each night.

Estimated CAFA Costs

Coverage	Cost Description	Costs
Unscheduled arraignments during business hours	With upgrade of one part-time Assistant Public Defender position to full-time, the Public Defender's office would have available an on-call Assistant Public Defender to provide coverage at unscheduled arraignments during business hours.	\$46,762/yr. for salary and fringe.

<p>"Off-business hour arraignments"</p>	<p>Twelve (12) attorneys rotate on an on-call basis, providing on-call coverage from 4:30 pm to 8:30 am each business day and for the entirety (24 hour) of weekend days and holidays. A second twelve (12) attorney rotation would provide stand-by coverage in the event the on-call attorney is unable to cover an arraignment. Estimate of 3 arraignments for each day.</p>	<p>On-call stipends: \$100/weekday and \$200/day for weekends and holidays; Stand-by stipends: \$50/weekday and \$100/day for weekends and holidays.</p> <p>Total costs for stipends: \$91,125/yr. (includes 25% fringe).</p> <p>Arraignment costs (\$75/hr.) (for private attorneys only) (estimated 3 appearances/day; 2.5 hrs./arraignment): \$70,875/yr.</p> <p>Communication equipment (pagers/phones) = \$10,000/yr. Carrying costs (pagers and phones): \$5,000/yr. Training (CLE) = \$2,500/yr.</p> <p>Total cost: \$217,850</p>
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- **Alternative**
 - **centralization of arraignments**
 - Some informal centralization of arraignments is beginning to occur, but only by a few Magistrates, so cannot currently be factored into providing coverage or cost estimate.
 - **Washington County position:** set up notification system to get attorneys to arraignments; best to let Magistrates figure out if there is a way to consolidate arraignments. If Magistrates told to do so, then Magistrates will become more resistant.

Noteworthy:

- **Desk appearance tickets/PD nights.** The District Attorney has asked law enforcement agencies issue desk appearance tickets for PD nights only, thereby alleviating need for counsel to be present for arraignments on non-PD nights.

Quality Improvement

Funding breakout

- **Washington County:** \$92,624 for each of two years

Quality Assumptions (continued ILS funding):

- **PD:**
 - **Public Defender office attorney upgrades** (Distribution #2): continued funding of upgrades of part-time Assistant Public Defender positions from 15 hrs./wk. to 30 hrs./wk.); increased salary for Public Defender.
 - **Assistant Public Defender position** (Upstate Caseload): continue funding of Assistant Public Defender position dedicated to Family Court and parole matters.

- **Administrative Secretary position (Upstate Caseload):** continued funding of Administrative Secretary position.

Discussions:

PD:

- **Upgrade part-time Assistant Public Defender positions to full-time.**
 - **Professionalize Public Defender office.**
 - **ILS Distributions #3, #4 & #5:** Washington County has indicated that it intends to propose using ILS distributions to upgrade three part-time Assistant Public Defender positions to full-time (previously had talked about possibility of using HH Quality funding to upgrade these positions).
 - **Office Space.** To accommodate new full-time Assistant Public Defenders, Washington County is renovating County office space for larger PD office. Washington County has indicated that it will seek to use ILS distribution funding to partially cover costs of renovation.
- **Attorney Retention.**
 - **Increase salaries of Public Defender and Assistant Public Defenders to retain staff.**
 - Salary structure of Public Defender and Assistant Public Defenders comparable to salary structure of other County Departments, with exception of District Attorney, whose salary is supported by State funding (in addition to County funding).
- **Training.**
 - **Specialized trainings.** Specialized trainings such as DWI; sex offender; domestic violence; use of investigators; drug offenses); out-of-state trainings
 - **In-house trainings.** Currently no in-house trainings.
- **Access and use of Investigative/Expert services**
 - **Support services.** Very little spend on investigative services; virtually none spent on expert services.
- **Access to social worker/mitigation expert services**
 - Social workers/mitigation experts not currently used.

ACP

- **Establish Assigned Counsel Office**
 - **Director position.** Upgrade salary of executive secretary to run day-to-day operations of assigned counsel office
 - Currently, the Public Defender makes assigned counsel assignments.
 - **Funding source:** Washington has indicated that it will seek to use ILS distributions to cover costs of upgrading the salary of the ACA.
 - **Administrative Assistant position.** Add a part-time Administrative Assistant position to assist in running the day-to-day operations of the ACP.
- **Develop supervisory/mentoring/resource structure for ACP panel attorneys.**
 - **Contract with experienced attorney to provide supervision; mentoring; attorney evaluation**
 - Locate appropriate candidate that can work with panel attorneys
 - Currently, there is very little supervision, if any, of panel attorneys.

- Access to Resources
 - Trainings; investigative services; experts; etc.

Estimated Quality Improvement Costs

Item	Description	Costs
ACP Priorities	<p>Full-time ACP Administrator position. To professionalize the assigned counsel program will upgrade salary of executive secretary (currently in Public Defender's office) and create full-time ACA position to assume day-to-day operations of assigned counsel office</p> <p>Consulting Attorney. Contract with experienced attorney to provide supervision; mentoring; act as resource for assigned counsel panel attorneys.</p> <p>Part-time Administrative Assistant position. To provide clerical support services for newly established Assigned Counsel Program.</p>	<p>Full-time ACP Administrator. County intends to use source of funding other than Quality funding to upgrade Executive Secretary position to full-time and create ACP Administrator position.</p> <p>Consulting Attorney (\$17,000). Per discussion with County, will seek an experienced, well-regarded attorney to serve as consulting attorney. County initially proposed \$15,000 annual contract; amount increased to \$17,000 to address greater need for such a position.</p> <p>Part-time Administrative Assistant position (\$27,500). Per discussion with County, would use approximately \$27,500 for this 20 hr./wk. part-time position (w/benefits).</p> <p>Total: ACP \$44,500</p>
Public Defender Office Priorities	<p>Attorney Retention: Salary Increases. To address low salaries of Public Defender and Assistant Public Defenders, discussed various proposals for increasing these salaries.</p> <p>Part-time Administrative Assistant position. To provide additional administrative support for the newly expanded Public Defender office.</p> <p>Training Resources. To provide additional training resources, including specialized trainings for staff attorneys.</p>	<p>Attorney Retention: Salary Increases (\$14,560). Per discussion with County, to address low county-wide structural salary rates, County will propose calculating attorney salary rates based on years of experience, rather than years of service with County. This would result in small salary increases for attorney staff.</p> <p>Part-time Administrative Assistant position (\$27,500). Per discussions with County, \$27,500 would be used to add this part-time position.</p> <p>Training Resources (\$6,064). Per discussions with County, consensus on need for additional training resources. County also proposed using this funding</p>

	<p>*Alternative Use of Public Defender Funding. In the event the retention salary increases are not approved by the County Legislature, redirect funds to hiring a full-time Administrative Assistant for the Public Defender Office.</p>	<p>towards the part-time Administrative Assistant position, but need for training resources significant.</p> <p>*Alternative Use of PD funding. \$48,124 would be available for a full-time Administrative Assistant position, which would not fully cover the cost of this full-time position; plus there would not be funds available for training resources, which is a high priority for ILS.</p> <p>Total: Public Defender Office \$48,124</p> <p>Overall plan total: \$92,624</p>
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Tracking

Attorney Caseload/Workload

- NYSDA has added attorney workload fields to PDCMS in PD office and ACP.

EXHIBIT B

Template Interview Letter



Andrew M. Cuomo
Governor

STATE OF NEW YORK
OFFICE OF INDIGENT LEGAL SERVICES

STATE CAPITOL, ROOM 128
ALBANY, NEW YORK 12224
Tel: (518) 486-2028 Fax: (518) 474-5050
E-Mail: info@ils.ny.gov
<http://www.ils.ny.gov>

William J. Leahy
Director

Joseph F. Wierschem
Counsel

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

Dear _____:

We are writing to inform you of our plans to implement Section V of the Hurrell-Harring settlement which addresses Initiatives to Improve the Quality of Indigent Defense. We would like to begin this process with an in-person meeting that will give us a chance to receive input from you about the topics covered by this part of the settlement.

As you are aware, the Quality Improvement section of the settlement addresses five specific categories. During our meeting we would like to discuss each of these categories in detail. To facilitate that discussion, we have set out those five categories, along with the types of information we would like to initially consider, in bullet points. The settlement requires the development of a plan:

(1) to ensure that attorneys receive effective supervision and training in criminal defense law and procedure and professional practice standards;

- Does your program utilize a formal supervisory structure? If so, how are attorneys supervised within that structure?
- If your program does not utilize a formal supervisory structure, how, if at all, are attorneys supervised?
- How much time do staff attorneys typically spend consulting with supervisors?
- What is the ratio of supervisors to staff attorneys? Do supervisors carry a full or reduced caseload? If reduced, what percentage of time is spent on their own cases, and what percentage of time is spent on supervising attorneys? Do supervisors supervise support staff? If so, what percentage of time is spent supervising support staff?
- Does your office/assigned counsel program offer in-house trainings? If so, could you list the trainings and CLE programs that were offered last year?
- Does your office/assigned counsel program have a budget to send lawyers to CLE programs and other trainings? If so, how much money was spent last year? Could you provide a list of all the trainings that the program sent lawyers to, and how many lawyers participated?
- How much time do attorneys typically spend engaged in legal research? What legal research resources are available to attorneys in your program?

Matthew Alpern
Director of Quality
Enhancement,
Criminal Trials

Peter W. Avery
Manager of
Information Services

Angela Burton
Director of Quality
Enhancement, Parent
Representation

Andrew Davies
Director of Research

Tammeka Freeman
Executive Assistant

Risa Gerson
Director of Quality
Enhancement,
Appellate and Post-
Conviction
Representation

Karen Jackuback
Grants Manager

Joanne Macri
Director of Regional
Initiatives

"The right... to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours."

Gideon v. Wainwright. 372 U.S. 335, 344 (1963)

•How do your attorneys make an assessment of the impact of the collateral consequences of case outcomes? Does your program provide any specialized training pertaining to collateral consequences?

•How do your attorneys make an assessment of the impact of the forensic issues in particular cases? Does your program provide any specialized training pertaining to forensic issues?

•How do your attorneys make an assessment of the impact of the immigration consequences of case outcomes? Does your program provide any specialized training pertaining to immigration consequences?

(2) to ensure that attorneys have access to and appropriately utilize investigators, interpreters, and expert witnesses on behalf of their clients;

• If your attorneys need social workers, mitigation specialists, or other ancillary services, how can they access them?

•Please describe the steps attorneys take to engage in sentencing advocacy.

•For investigation services, do you have investigators on staff, or do you contract with independent investigators?

•How much was spent on investigative services last year?

•How much was spent on experts last year? What types of experts were consulted?

•Do you keep track of which cases an expert or investigator was utilized? Additionally, do you track specific investigative activities (e.g. visiting crime scenes, interviews of witnesses) whether performed by an investigator, attorney or another member of the defense team?

(3) that attorneys communicate effectively with their clients;

•Is client communication tracked, documented and/or reviewed? If so, how? (e.g. do you record every client communication, whether in person or by other means?) Do you record the length of those communications? And the substance?

•How often do attorneys visit the local jail to consult with their clients? Does your program keep track of these consultations? If so, how?

•Is there a dedicated phone line on which telephone calls from incarcerated clients are received? And, are inmates at the local jail able to call your office for free?

•For assigned counsel plans: are there policies in place regarding client communication and reimbursement? If so, what are those policies?

•Do you measure client satisfaction systematically through such means as a regular survey; if so, how?

(4) that attorneys have the qualifications and experience necessary to handle the criminal cases assigned to them;

•For institutional defense offices, what are your criteria for hiring?

•For institutional defense offices, how does your office decide what level of cases to assign to individual attorneys? What are your criteria for promotion?

•For assigned counsel plans, is there an application required to participate? If so, please provide the application. If no application, how are candidates evaluated for acceptance into the program?

•For assigned counsel plans, how is attorney performance evaluated? Are panel members periodically re-certified, required to attend training, or otherwise required to maintain and attest to their skills?

•How do you deal with complaints from clients that attorneys did not provide competent representation? How do you deal with complaints from judges, or others, who note poor performance from attorneys?

(5) in the case of assigned counsel attorneys, are attorneys assigned to cases in accordance with County Law Article 18-B and in a manner that accounts for the attorney's level of experience and caseload/workload.

•Are there different panels for homicides, serious felonies, misdemeanors, appeals, and parole revocation? What are the qualifications required to join the panel or panels? If your program does not have multiple panels, how does your program decide what level of cases to assign to individual attorneys?

•What is the procedure by which attorneys are assigned to cases?

We will be contacting you shortly to schedule the meeting. We are looking forward to working with you on this section of the Hurrell-Harring settlement so that your program can reach its maximum potential and ensure fulfillment of the ideals expressed by the United States Supreme Court when it decided Gideon v. Wainwright over fifty years ago. In the meantime, if you have any questions or concerns, please feel free to contact us.

Sincerely,

Matthew Alpern
Director of Quality Enhancement
For Trial Representation

Risa Gerson
Director of Quality Enhancement for
Appellate Representation

EXHIBIT C

County Distribution Funding

Onondaga County

<p>Distribution #1</p> <p>\$140,757</p>	<p>Contract: (1) Add Staff Attorney position (Hiscock Legal Aid Society) to provide additional representation in Family Court (\$42,272 w/fringe); (2) provide 3% salary increase for 14 Family Court, Appeals and Parole attorneys (Hiscock Legal Aid Society) (\$28,336); (3) implement Volunteer Initiative Program (CNY Services) to coordinate volunteer services for court diversion in all Town, Village and City Courts (\$66,757); (4) provide funds for CLE and other training (\$1,804); (5) upgrade computers and printers (\$675); and (6) purchase office supplies (filing cabinets) (\$912).</p> <ul style="list-style-type: none"> • Status: Contract paid out in full.
<p>Distribution #2</p> <p>\$960,582 \$320,194/yr.</p>	<p>Contract: For Assigned Counsel Program (ACP), (1) continue funding for the Volunteer Initiative Program (CNY Services) to coordinate volunteer services for court diversion in all Town, Village and City Courts (\$96,000/\$96,000/\$96,000); (2) provide representation for non-custodial defendants at arraignment in Syracuse City Court (City Court arraignment program currently provides representation for in-custody defendants only) (\$60,000/\$60,000/\$60,000). For Hiscock Legal Aid Society (HLAS), (3) continue funding for additional Family court staff attorney (\$41,909/\$44,004/\$46,205); (4) continue and expand cost-of-living salary adjustments in mandated representation programs (\$38,649/\$43,000/\$50,000); (5) add an additional Family Court support staff position (\$30,625/\$32,156/\$33,765). Also, (6) provide funding for miscellaneous items (training, computer, phone, rent, insurance) (\$7,710/\$5,700/\$0) and (7) provide funding for benefits/fringe for funded positions and salary adjustments (\$36,134/\$39,334/\$34,224).</p> <ul style="list-style-type: none"> • Budget Revision: To accommodate the delayed start of the contract, revisions were made to the budget to decrease the budget lines (and benefits) for staffing positions (\$32,865), while increasing salary adjustments (\$26,795). Decreases were also made to budget lines for training (\$325), computers (\$33), notary fees (\$60) and insurance (\$38); while the budget line for rent (Hiscock Society) was increased by \$6,526. • Status: Onondaga County has submitted claims in the total amount of \$529,718; with unclaimed funds remaining in the amount of \$430,864.
<p>Distribution #3</p> <p>\$960,582 \$320,194/yr.</p>	<p>Contract: For Hiscock Legal Aid Society (LAS): (1) provide funding to maintain 2.8 staff attorney positions (FTE) for Family Court representation (total: \$159,157/\$157,884/\$163,241 w/fringe). For 18-B assigned counsel program, provide funding for (2) expanding and improving ACPepper Computer Program/Database, including computer consultant (\$25,000/\$16,000/\$9,800); (3) computer hardware (\$2,500/\$7,200/\$12,000) and ACH service and ISP upgrade (\$850/\$3,900/\$4,000); (4) CLE training for assigned counsel panel (\$15,000/\$15,000/\$15,000); (5) investigative, interpreter and expert services (\$20,250/\$21,250/\$22,300); (6) representation to cover increasing number of problem solving courts (\$75,000/\$75,000/\$75,000); (7) hair follicle testing in Family Court; (\$3,000/\$3,000/\$3,000); (8) custody evaluations in Integrated Domestic Violence Court cases (\$15,000/\$15,000/\$15,000); and (9) purchasing transcripts (\$3,500/\$3,750/\$4,000). *Annual budgets (\$319,257/\$317,984/\$323,341).</p> <ul style="list-style-type: none"> • Status: Onondaga County has submitted claims in the total amount of \$225,529; with unclaimed funds remaining in the amount of \$737,053.

<p>Distribution #4</p> <p>\$960,582 \$320,194/yr.</p>	<p>Proposal: For Assigned Counsel Program, Inc. (ACP), would (1) extend 18-B representation to persons charged with VTL 1157 (“Pedestrians soliciting rides, or business”), a traffic infraction (\$3,000/\$3,000/\$3,000); (2) provide funding for case management services position for the newly created Adolescent Diversion court to more accurately assess offender’s needs and for referral and follow-up services (\$64,549/\$64,549/\$64,549); (3) contract for a Veteran’s Advocate to assist veterans arrested for offenses committed as a result of disabilities (PTSD, TBI) through the criminal court process (e.g., DV and IDV courts), including coordinating services (\$64,548/\$64,548/\$64,548); (4) provide funding for mitigation experts in sentencing advocacy, particularly for youthful offenders (e.g., CCA or private mitigation experts) (\$20,000/\$20,000/\$20,000); (5) upgrade from part-time to full-time the ACP employee hired as part of the Counsel at First Appearance competitive grant to manage all data and scheduling tasks (\$8,000/\$8,000/\$8,000 – fringe only). For Hiscock Legal Aid Society (HAS), would (6) maintain 1.5 staff attorney positions for Family Court representation (\$116,949/(\$116,949/(\$116,949 w/fringe); and (7) maintain one program coordinator position for Family Court (\$43,147/\$43,147/\$43,147 w/fringe).</p> <ul style="list-style-type: none"> • Status: Contract sent to County for signature November 17, 2014.
<p>Distribution #5</p> <p>\$1,921,164 \$640,388/yr.</p>	<p>Proposal not yet submitted.</p>
<p>Counsel at First Appearance RFP</p> <p>\$588,000*</p>	<p>Award: Would primarily provide representation in the 14 largest justice courts, before 33 judges (assign one or two arraignment attorneys to court depending on number of arraignments in particular court; provide either one felony and one misdemeanor attorney or one felony attorney).</p> <ul style="list-style-type: none"> - 20 Felony attorneys per week, \$90 (1.2 hrs.) for 50 weeks (\$90,000/\$90,000/\$90,000); - 17 Felony (misdemeanor coverage) attorneys per week, \$72 (1.2 hrs.) for 50 weeks (\$61,200/\$61,200/\$61,200); - Assigned Counsel Program (\$10,500/\$10,500/\$10,500); - NSA, Inc. subcontractor for contract computer services (50 hours 1st year; 16 hours years 2 & 3) (\$6,000/\$2,000/\$2,000); - ACP contractor (for tracking of time spent in jail and bail posted; to obtain data from Justice Center) (\$30,966/\$30,967/\$30,967). <p>*Annual budgets (\$198,666/\$194,667/\$194,667)</p> <ul style="list-style-type: none"> • Status: OSC approved contract sent to Onondaga County on June 3, 2014. To date, Onondaga County has not submitted any claims.
<p>Upstate Caseload Reduction Grant</p> <p>\$299,528*</p>	<p>Award/Negotiated Budget: Would provide funding to (1) add staff attorney position in the Appeals Program of the Hiscock Legal Aid Society (to reduce large backlog of cases) (\$24,004/\$59,818/\$63,651 w/fringe); (2) upgrade senior attorney to midlevel supervisory position in the Appeals Program (to supervise Appeals Program increased staffing levels) (\$14,487/\$15,357/\$16,276); (3) enhance use of expert services In Hiscock LAS’s Family Court Program (\$28,000/\$28,000/\$28,000); (4) enhance access to training and conferences for Hiscock LAS (\$2,500/\$2,500/\$2,500); and (5) cover miscellaneous expenses for new staff attorney (e.g., phone, computer, etc.) (\$2,073/\$4,197/\$4,666). *Annual budgets: \$74,564/\$109,871/\$115,094</p> <ul style="list-style-type: none"> • Status: Onondaga County has submitted claims in the total amount of \$14,847; with unclaimed funding remaining in the amount of \$284,682.

Ontario County

<p>Distribution #1</p> <p>\$39,844</p>	<p>Contract: (1) Retain mitigation specialist to facilitate mental health and drug/alcohol treatment referrals and work with incarcerated high school students (\$35,844); (2) provide low-cost CLE training to members of Assigned Counsel panel and Public Defender office (\$2,000); (3) upgrade computer equipment; (4) upgrade technical equipment (e.g., audio-visual, recording devices and cameras); and (5) provide Spanish language training (\$500) (items #3 and #4 total \$1,500) .</p> <ul style="list-style-type: none"> • Status: Contract paid out in full
<p>Distribution #2</p> <p>\$271,911 \$90,637/yr.</p>	<p>Contract: Establish Public Defender satellite office in Geneva City (improve client access to attorney in highest volume criminal court) (\$17,600/\$17,600/\$17,600); (2) provide funding for training and CLE (offer free CLE courses in defense-specific issues, host 7th Judicial Chief Defender meetings, provide language instruction, fund summer internships, provide grant writing training and provide trial technique trainings) (\$17,453/\$17,453/\$17,453); (3) provide funding for technology upgrade (iPad, NYSDA CMS “app”) to enhance access outside visiting hours to clients in jail, improve court efficiency, perform on the spot conflict checks, possibility of sharing information with other defense offices using CMS (\$5,000/\$5,000/\$5,000); (4) enhance provision of representation at arraignment by obtaining cell phone (off-hour arrangements) and mileage reimbursement (weekend arraignments) (\$2,000/\$2,000/\$2,000); (5) provide funding for experts in “new scientific areas” (eyewitness testimony, voluntariness of confessions and other “cutting edge” fields (\$10,000/\$10,000/\$10,000); and (6) provide funding for Defense-Based Advocate (formerly known as treatment and mitigation specialists) and addiction, mental illness/custody evaluations and referrals (e.g., Finger Lakes Counseling and Referral Agency perform drug and alcohol evaluations on in-custody parolees charged with violating parole, and, in conjunction with Office of County Mental Health, refer clients to mental health agencies) (available to Public Defender office and Assigned Counsel Program) (\$38,583/\$38,583/\$38,583).</p> <ul style="list-style-type: none"> • Budget revision: Transfer funds for satellite office rent (\$38,235) to new line items for cell phone stipends for attorneys (\$5,000); office upgrades and modifications (\$29,235); and miscellaneous (\$4,000). Public Defender staff moved from satellite office to county space (county space required modifications) (budget revision: February, 2015). • Status: Ontario County has submitted claims in the total amount of \$162,503; with unclaimed funds remaining in the amount of \$109,408.
<p>Distribution #3</p> <p>\$271,911 \$90,637/yr.</p>	<p>Proposal: Would expand Public Defender’s office to include Family Court representation (limited number of cases) by (1) adding an Assistant Public Defender position to handle local court and Family Court cases (would share family court representation with existing Assistant Public Defender) (\$75,737/\$75,737/\$75,737 w/fringe); and (2) providing funding for expert services and transcription services for Family Court matters the (\$75,737/\$75,737/\$75,737 w/fringe). In addition, the proposal would provide funding for (3) training of the two Assistant Public Defenders added with Counsel at First Appearance grant funding and attorney hired for the Family Court position requested in this proposal (\$4,000/??); (4) NYSDA memberships (\$900/??); and (5) adding workspace, computers, printers, office supplies and phones for these three new Assistant Public Defender hires (\$5,000/\$5,000/\$5,000).</p>

	<ul style="list-style-type: none"> • Status: Ontario County has submitted claims in the total amount of \$45,249; with unclaimed funds remaining in the amount of \$226,662.
Distribution #4 \$271,911 \$90,637/yr.	<p style="text-align: center;">Proposal yet to be submitted</p> <ul style="list-style-type: none"> • Status: Proposal may include request for adding experienced criminal defense attorney to Conflict Defender office (per Hurrell-Harring implementation discussions).
Distribution #5 \$543,822 \$181,274/yr.	<p style="text-align: center;">Proposal yet to be submitted</p> <ul style="list-style-type: none"> • Status: Proposal may include request for adding experienced defense criminal attorney to Conflict Defender office (per Hurrell-Harring implementation discussions).
Counsel at First Appearance RFP \$750,000 \$250,000/yr.	<p>Contract: Would (1) add 2 full-time Assistant Public Defender positions (\$199,650/\$205,800/\$211,800 with fringe and salary “step”); (2) add a part-time Office Specialist 1 position (data input; case-related work for 2 new attorneys; assigned to Public Defender’s satellite office in Geneva) (\$34,950/\$36,400/\$30,400 with fringe and COLA); (3) purchase additional supplies for new hires (computer equipment, work stations, printer, telephones, furniture) (\$9,300/\$1,800/\$1,800); and (4) provide monetary supplements (overtime & mileage) to Assistant Public Defenders (\$6,000/\$6,000/\$6,000). By doing so, would (a) provide representation at “non-DA night” calendars; (b) provide “on-call” schedule so that attorneys are available for off-hour arraignments; and (c) ask attorneys to arrive earlier for current PD pilot program. Coverage: entire county</p> <ul style="list-style-type: none"> • Status: Ontario County has submitted claims in the total amount of \$326,399; with unclaimed funds remaining in the amount of \$423,601.
Upstate Caseload Reduction Grant *\$299,529	<p>Award: Would provide funding to (1) add full-time Assistant Public Defender position to (a) initially handle only off-hour and weekend arraignments and (b) after six months, add Family Court representation (\$70,000/\$74,000/\$74,000 w/fringe) (County to pay balance of salary and fringe); (2) purchase furniture, office supplies and computer for new attorney position (\$2,529/\$1,000/\$1,000); (3) obtain CLE training for new attorney (\$500/\$500/\$500); (3) enhance contract with Finger Lakes Addictions Counseling and Referral Agency (FLACRA) for (a) job/vocational and housing services (\$4,000/\$4,000/\$4,000) and (b) Social Worker to provide treatment services/programs (\$20,000/\$20,000/\$20,000); (5) develop public service videos re: risks of prescription medicines, drugs and sexual offenses (\$2,000/\$0/\$0); and (6) purchase bus passes/tokens for clients to attend court and/or appointments (\$500/\$500/\$500).</p> <p>*Annual budgets: \$99,529/\$100,000/\$100,000</p> <ul style="list-style-type: none"> • Status: Ontario County has submitted claims in the total amount of \$93,271; with unclaimed funds remaining in the amount of \$206,258.

Schuyler County

Distribution #1 \$8,173	Contract: (1) Provide additional investigative and expert services for both criminal and family court matters (\$6,500); and (2) provide funds for CLE training of staff attorneys in Public Defender's Office (\$1,673). <ul style="list-style-type: none"> • Revised Budget: Transfer funds (\$202) from training (CLE) budget line to investigative/expert line (budget revision: March, 2013). • Status: Contract paid out in full.
Distribution #2 \$55,776 \$18,592/yr.	Contract: (1) Provide continued and enhanced investigative and expert services (continue relationship with private investigator funded under Distribution #1) (\$10,000/\$10,000/\$10,000); (2) provide funding for CLE and NYSDA training (Public Defender office and conflicts attorney) (\$2,000/\$2,000/\$2,000); (3) provide funding for miscellaneous trial equipment (display equipment, photos, court apparel) (\$500/\$500/\$500); and (4) provide partial funding to convert part-time Assistant Public Defender position to full-time (\$6,092/\$6,092/\$6,092). <ul style="list-style-type: none"> • Revised Budget: Adjust cost for expert/investigative services from \$30/hr. to a range of \$30-\$80 to account for services obtained from outside immediate geographic area (budget revision: May, 2013). • Status: To date, Schuyler County has submitted claims in the total amount of \$18,980, with remaining funding in the amount of \$36,796.
Distribution #3 \$55,776 \$18,592/yr.	Contract: Would provide funding to (1) increase access to investigative services by adding a part-time investigator position in the Public Defender's office (currently contract for investigative services on case-by-case basis) (\$15,000/\$15,000/\$15,000) and (2) enhance training of attorneys, both in Public Defender office and Conflicts attorney, including CLEs, conference training and related costs (\$3,592/\$3,592/\$3,592). <ul style="list-style-type: none"> • Status: To date, Schuyler County has submitted claims in the total amount of \$2,528; with remaining unclaimed funds in the amount of \$53,248.
Distribution #4 \$55,776 \$18,592/yr.	Contract: Would provide funding to (1) contract with Arc of Schuyler to transport clients without access to public transportation to/from court and office conferences (\$15,000/\$15,000/\$15,000); (2) upgrade computer and related equipment in Public Defender's office (\$2,000/\$2,000/\$2,000); and (3) provide additional mileage reimbursement funding for counsel appearing at first appearances (\$1,592/\$1,592/\$1,592). <ul style="list-style-type: none"> • Status: Contract sent to County for signature on August 26, 2014; per discussions with County, proposal to be reviewed and revised in light of HH settlement.
Distribution #5 \$111,582 \$37,184/yr.	<p style="text-align: center;">Proposal yet to be submitted.</p> <ul style="list-style-type: none"> • Status: Per discussions with County, proposal to be reviewed and revised in light of HH settlement.
Counsel at First Appearance RFP	Award: (1) Provide funding to upgrade part-time assistant public defender (currently 30/hrs. week at \$40,800 plus \$11,602 fringe) to full-time (\$60,000 plus \$16,425 fringe) (\$24,023/\$27,080/\$30,259 with fringe and 4% raise); and (2) provide additional funding for

<p>*\$93,849</p>	<p>current legal secretary position (to address increase in workload; prepare files, maintain data collection, phone coverage) (\$4,000/\$4,160/\$4,326). Coverage: regularly staff "County Court" for arraignments; "float" to whatever local/justice courts (11) have arraignments throughout the day (if attorney able to do so). *Annual budgets (\$28,023/\$31,240/\$34,585)</p> <ul style="list-style-type: none"> • Status: To date, Schuyler County has submitted claims in the total amount of \$32,772, leaving unclaimed funds remaining in the amount of \$61,078.
<p>Upstate Caseload Reduction Grant</p> <p>*\$207,665</p>	<p>Award: Would provide funding to (1) add a part-time Assistant Public Defender position to cover local court appearances and arraignments (4:30 pm to 9:00 pm) and handle some appeals (\$59,902/\$62,298/\$64,790 w/fringe); (2) pay for mileage reimbursement for new position (\$3,500/\$3,500/\$3,500); and (3) pay for office equipment for new position (\$3,392/\$3,392/\$3,392). *Annual budgets: \$66,794/\$69,190/\$71,681</p> <ul style="list-style-type: none"> • Status: To date, Schuyler County has submitted claims in the total amount of \$28,973; leaving unclaimed funds remaining in the amount of \$178,691.

Suffolk County

Distribution #1 \$308,637	<p>Contract: (1) Add two Legal Aid Society staff attorney positions and one investigator position to handle cases in Family Court parts dedicated to custody and visitation matters (\$188,233 w/fringe); (2) partially fund a new case management system (i.e., installation, database licenses, data conversion, customization, training and annual support fees) (\$3,510); (3) add staff attorney position (\$59,127 w/fringe); and (4) add investigator position (\$57,767 w/fringe).</p> <ul style="list-style-type: none"> • Status: Contract paid out in full.
Distribution #2 \$2,106,258 \$702,086/yr.	<p>Contract: Contract: (1) Continue funding of (a) two (2) Legal Aid staff attorneys (\$119,270/\$122,848/\$126,533 plus fringe). (b) one Senior Attorney (65%) (\$48,664/\$50,124/\$51,358 plus fringe), and (c) one Investigator (\$48,410/\$49,862/\$51,358 plus fringe) in Family Court dedicated to handling custody and visitation matter (\$264,131/\$267,231/\$271,813) (total: \$216,344/\$222,834/\$229,519 plus fringe) (total fringe: \$73,557/\$75,764/\$78,036); (2) provide funding for (a) equipment (\$13,899/\$5,202/\$0), (b) training (\$2,200/\$2,200/\$0) and (c) travel (\$2,000/\$2,000/\$445) for continued positions (see #1); (3) add (a) four (4) new Spanish speaking Legal Aid attorneys (to improve quality of services to Spanish speaking clients) (\$220,000/\$226,600/\$233,400 plus fringe); (b) one Spanish speaking secretary (40%) (\$15,600/\$16,068/\$16,550 plus fringe); and (c) one Spanish speaking Client Advocate (\$40,000/\$41,200/\$42,436 plus fringe) (total: \$275,600/\$283,868/\$292,386 plus fringe) (total fringe: \$93,704/\$96,515/\$99,411); and (4) provide funding for (a) furniture and office equipment (\$15,000/\$4,000/\$0); (b) training (\$3,000/\$3,000/\$1,000) and (c) travel (\$6,782/\$6,703/\$1,289) for new Spanish speaking positions.</p> <ul style="list-style-type: none"> • Status: To date, Suffolk County has submitted claims in the amount of \$1,255,177; with \$851,000 of unclaimed funds remaining.
Distribution #3 \$2,106,258 \$702,086/yr.	<p>Contract: For Legal Aid Society (LAS): (1) create a Social Worker Bureau in the Legal Aid Society (LAS) by (a) adding four Social Workers (M.S.W. certification) to aid attorneys with client interviews, monitoring compliance with client treatment programs and assist clients with referrals for public benefits and employment (\$160,000/\$164,800/\$169,744 plus fringe); (b) add one full-time social worker/investigator (\$40,000/\$41,200/\$42,430 plus fringe) (total fringe for (a) & (b) (\$68,000/\$70,040/\$72,141) (total personnel: \$268,000/\$276,040/\$284,321) ; (c) provide funding for furniture and office equipment (\$10,000/\$2,000/\$0); (d) provide funding for training (\$3,000/\$3,000/\$3,000) ; and (e) provide funding for employee travel (\$10,000/\$9,960/\$3,679); (2) create a "Padilla Compliance Team" by (a) adding a senior staff attorney with experience in criminal defense/immigration (\$120,600/\$124,218/\$127,945 w/fringe); (b) provide funding for furniture and office equipment (\$2,500/\$401/\$0); (c) provide funding for training (\$2,700/\$1,500/\$0); and (d) provide funding for employee travel (\$2,200/\$1,881/\$55); (3) expand investigator services (LAS) by (a) adding one full-time investigator to assist LAS attorneys in District Court and Family Court Divisions in Central Islip and Riverhead (\$53,600/\$55,208/\$56,864 w/fringe); (b) provide funding for furniture and office equipment (\$4,000/\$2,392/\$736); (c) provide funding for training (\$1,000/\$1,000/\$1,000) and (d) provide funding for employee travel (\$2,400/\$2,400/\$2,400); (4) add one full-time "Program Coordinator" to assist in administering grants, including compiling data, data input, case management and preparing reports (\$53,600/\$55,208/\$56,864 w/fringe); and (5) provide funding for other expenses, including (a) office alterations to accommodate additional personnel (\$8,000/\$2,000/\$1,000); (b) office furniture and equipment (\$2,000/\$3,000/\$2,000); (c) administration fees (\$12,000/\$12,360/\$12,731); and (d) other grant related expenses (\$2,486/\$5,518/\$5,491). For 18-B assigned counsel program: (6) add one full-time investigator to assist 18-B attorneys in the arraignment part in District Court (\$50,000/\$50,000/\$50,000); (7) provide</p>

	<p>funding to offer mandatory CLE training/seminars for 18-B counsel in criminal and Family Court (two (2) four hour CLE seminars to Criminal Court Panel – basic and advanced courses; two (2) four hour CLE seminars for Family Court and Supreme Court Panels – basic and advanced courses) (\$88,000/\$90,640/\$93,359); and (8) other expenses (\$6,000/\$3,360/\$641).</p> <ul style="list-style-type: none"> • Budget Revision: Funds from the mandatory CLE training/seminar training line (\$45,999) were transferred to the other expenses budget line to more accurately account for expenditures related to training, including covering expenditures for future trainings (budget revision: January, 2015). • Status: To date, Suffolk County has submitted claims in the amount of \$232,197, with \$1,874,061 of unclaimed funds remaining.
<p>Distribution #4 \$2,106,258 \$702,086/yr.</p>	<p>Contract: For Assigned Counsel Defender Plan, would provide funding for (1) an enhanced web-based electronic voucher processing system (\$65,492/\$63,940/\$62,340) including furniture (\$17,595/\$17,180/\$16,748) and training (\$14,663/\$14,313/\$13,957) (“Electronic Voucher System”) (total: \$97,750/\$95,432/\$93,045); (2) Technician Assistant position to enter voucher data into the Electronic Voucher System (\$51,500/\$53,045/\$54,636); and (3) salary parity adjustment for Assigned Counsel Defender Plan (ACDP) staff (\$25,750/\$26,523/\$27,318). For Legal Aid Society, would provide funding for (4) parity adjustment in salaries (\$268,400/\$268,400/\$268,400 w/fringe); and (5) parity in healthcare insurance benefits (\$258,686/\$258,686/\$258,686).</p> <ul style="list-style-type: none"> • Budget Revision: Correction – original budget lines for Technician Assistant and salary parity transposed (budget revision: January, 2015) • Status: To date, Suffolk County has submitted claims in the amount of \$267,588; with \$1,838.670 of unclaimed funds remaining.
<p>Distribution #5 \$4,212,513 \$1,404,171/yr.</p>	<p>Contract: For the Legal Aid Society, would provide funding to (1) for Family Court, (a) continue two (2) staff attorney positions to cover high volume Family court referee parts (Distribution #2) (\$130,329/\$134,239/\$138,266 plus fringe); (b) continue one Senior Attorney position in high volume Family Court referee part dedicated to handling custody and visitation matters and orders of protection (Distribution #2) (65%) (\$53,177/\$54,772/\$56,415 plus fringe); (c) continue one Investigator position and add one Investigator position to assist with Family Court representation (Distribution #2 position) (\$102,899/\$105,986/\$109,166 plus fringe); and (d) add one full-time staff attorney position for staffing parity (new judicial part added to Family Court in 2015) (\$55,000/\$56,650/\$58,350 plus fringe); (2) continue Spanish speaking staff positions (Distribution #2), including (a) two full-time Spanish fluent staff attorney positions to provide direct representation in District Court cases and two full-time Spanish fluent staff attorney positions to provide direct representation in Family Court (\$240,402/\$247,614/\$255,042 plus fringe); (b) one Spanish fluent social worker to facilitate treatment alternatives and links to services (\$17,047/\$17,558/\$18,085 plus fringe); and (c) one full-time Spanish fluent client advocate to assist attorneys with client communication, information gathering, and eligibility screening (\$43,709/\$45,020/\$46,371 plus fringe); (3) enhance administrative allocation to administer ILS grants, including supervision, monitoring, tracking of budgets, personnel and compliance, and reporting (\$50,000/\$50,000/\$33,115) (total salaries for #1-#3: \$692,563/\$711,839/\$714,810) (total fringe for #1-#3 (@34%): \$208,685/\$214,946/\$221,394); (4) purchase office furniture and equipment (\$4,500/\$500/\$500); (5) reimburse for travel/mileage (\$5,500/\$5,000/\$2,000); (6) upgrading technology to assist with crime scene investigation (e.g., digital cameras, portable vehicle GPS and color printers) (\$1,500/\$1,000/\$1,000); (7) enhance training and CLE opportunities for staff attorneys, e.g., intensive trial preparation training courses, sex offender and DWIs (\$30,000/\$3,000/\$0); (8) enhance access to legal research/reference and language access materials (\$15,503/\$16,689/\$5,892); and (9) purchase miscellaneous supplies, etc. (\$24,918/\$24,418/\$22,918). For the</p>

	<p>Assigned Counsel Defender Plan, would provide funding to (8) add full-time attorney position assigned to cover arraignments in D-11 Arraignment Part (Counsel at First Appearance) (\$84,000/\$85,428/\$86,880); (9) add two full-time 18-B attorneys for first-appearing defendants who have desk appearance tickets and appearing in Street Appearance Part (\$156,000/\$158,652/\$161,349); (10) enhance funding of investigator position in D-11 Arraignment Part (Counsel at First Appearance) and add an investigator in the Street Appearance Part (\$100,000/\$101,700/\$103,429); (11) enhance funding for an administrative allocation to administer Street Appearance Program (\$75,000/\$75,000/\$75,000); and (12) purchase office equipment and supplies and upgrade technology (\$6,000/\$6,000/\$6,000).</p> <ul style="list-style-type: none"> • Status: OSC approved contract sent to County on 9.8.15. To date, Suffolk County has not submitted any claims for reimbursement.
<p>Counsel at First Appearance RFP</p> <p>\$747,000 \$249,000/yr.</p>	<p>Award: (1) Add 2 full-time Legal Aid Society staff attorneys (“Arraignment Team”) (one of the two attorneys bilingual) to physically staff 2 high volume town courts (Southhold and East Hampton; M-F) in eastern Suffolk County (\$147,400/ \$151,822/\$156,377 w/fringe); (2) provide funding for furniture and equipment (\$5,000/\$1,678/\$0); (3) provide funding for travel (\$10,600/\$10,000/\$7,623); (4) provide funding for legal education and training (\$2,000/\$1,500/\$1,000); and (5) increase Assigned Counsel Defender Plan representation (“Arraignment Attorney”) (bilingual) at Suffolk County District Court arraignment parts to physically cover arraignments whenever court is in session (7 days/wk.; one attorney present M-F and on Sat and Sun) (\$84,000/\$84,000/\$84,000).</p> <ul style="list-style-type: none"> • Status: To date, Suffolk County has submitted claims in the amount of \$76,171 with \$670,829 of unclaimed funds.
<p>Upstate Caseload Reduction Grant</p> <p>\$299,526 \$99,842/yr.</p>	<p>Award: Would provide funding to (1) add part-time Quality Control Supervisor position for Legal Aid Society (\$47,000/\$49,000/\$50,000); (2) purchase furniture and office equipment for new LAS position (\$2,000/\$500/\$0); (3) provide training and supplies for new LAS position (\$1,000/\$500/\$0); (4) add Qualitative/Quantitative Assistant (“Q.A.”) position for Assigned Counsel Defender Plan (\$45,000/\$47,850/\$47,850); (5) purchase computer and related equipment for new ACDP position (\$1,467/\$1,467/\$1,467); and (6) obtain case management training and program maintenance (\$3,375/\$525/\$525).</p> <ul style="list-style-type: none"> • Status: OSC approved contract sent to Suffolk County September 23, 2014. To date, no claims have been submitted

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10.6.15

Washington County

Distribution #1 \$12,968	Contract: Provide funding for (1) CLE training of members of Assigned Counsel plan (\$1,369); (2) investigative and expert services in felony cases (\$5,826.15); and (3) upgrade in technology (\$5,772). [budget revision June 14, 2013] <ul style="list-style-type: none"> • Budget Revision: Transfer funds from investigative/expert witness budget line (\$4,642) and attorney training line (\$1,131) to technology upgrade line (total: \$5,772) (revised budget: June, 2013). • Status: Contract paid out in full (\$548 remaining).
Distribution #2 \$88,503 \$29,501/yr.	Contract: (1) Upgrade current part-time Assistant Public Defender positions (15/hrs/wk.) to 30/hrs./wk. and increase salary of Public Defender position (\$26,168/\$26,168/\$26,168); and (2) upgrade office equipment and technology (\$3,333/\$3,333/\$3,333). <ul style="list-style-type: none"> • Status: To date, Washington County has submitted claims in total amount of \$85,518; with \$2,986 of unclaimed funds remaining.
Distribution #3 \$88,503 \$29,501/yr.	Proposal: Retain current number of experienced Assistant Public Defenders at competitive rate of pay (\$26,168/\$26,168/\$26,168). <ul style="list-style-type: none"> • Status: Proposal submitted August 9, 2013. Per discussions with County, proposal to be reviewed and revised in light of HH settlement
Distribution #4 \$88,503 \$29,501/yr.	<p style="text-align: center;">Proposal yet to be submitted.</p> <ul style="list-style-type: none"> • Status: Per discussions with County, proposal to be reviewed and revised in light of HH settlement.
Distribution #5 \$177,006 \$59,002/yr.	<p style="text-align: center;">Proposal yet to be submitted.</p> <ul style="list-style-type: none"> • Status: Per discussions with County, proposal to be reviewed and revised in light of HH settlement.
Counsel at First Appearance RFP	<p style="text-align: center;">Washington County did not submit a proposal.</p>
Upstate Caseload Reduction Grant *\$289,873	Contract: Would (1) add Assistant Public Defender position dedicated to handling Family Court and a parole matters (\$47,231/\$47,231/\$47,231) (no fringe); (2) create an administrative secretary position to provide additional secretary support (\$43,848/\$44,478/\$45,108 w/fringe); and (3) purchase the NYSDA CMS (\$9,955/\$2,396/\$2,396). *Annual Budgets: (\$101,034/\$94,105/\$94,735)

	<ul style="list-style-type: none">• Status: To date, Washington County has submitted claims in total amount of \$68,604; with \$221,268 of unclaimed funds remaining.
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