

INDIGENT LEGAL SERVICES BOARD

AGENDA

April 10, 2015

Association of the Bar of the City of New York

- I. Opening Remarks by the Chief Judge**
- II. Approval of Minutes from November 7, 2014 Board Meeting (Attachment A)**
- III. FY 2015-2016 Approved Budget: Review and Discussion (Attachment B)**
- IV. Status of and Planning for Regional Assistance Immigration Centers:
Presented by Joanne Macri (Attachment C)**
- V. Status of Hurrell-Harring Settlement Implementation (Attachment D)**
- VI. Brief Report on Standards, Distributions and RFPs**
- VII. Schedule of Remaining 2015 Board Meetings**
 - Friday, June 19
 - Friday, September 25
 - Friday, November 6
- VIII. Concluding Remarks**

Minutes for ILS Board Meeting

November 7, 2014

11:00 A.M.

Association of the Bar of the City of New York

Board Members Present: Chief Judge Lippman, Mike Breslin (via telephone), Sheila DiTullio, Vince Doyle, John Dunne, Joe Mareane (via telephone), Lenny Noisette and Sue Sovie

ILS Office Attendee(s): Bill Leahy, Joseph Wierschem and Risa Gerson

I. Opening Remarks by the Chief Judge

The Chief Judge welcomed and thanked all for attending. He also commented on the *Hurrell-Harring* settlement. The Chief noted that the settlement makes a strong statement regarding the right to counsel and provides strong recognition of both the Office of Indigent Legal Services and the Board. In addition, the Chief noted that the settlement is a critical piece of the Office and Board's vision. However, it does not address the unevenness of criminal defense representation. While the Chief stated he was thrilled, he noted that there is much more discussion to be had and "a long road still to be taken." The Chief commended both the plaintiffs and the State.

John Dunne noted that with the settlement comes an enormous responsibility for the Office. He stated that a coalition was needed to achieve proper funding for the Office to carry out the terms of the settlement. The Chief Judge concurred with this notion.

Lenny Noisette was pleased but also expressed concerns about the Office receiving sufficient resources.

Mike Breslin asked what the consensus was for the easiest and most effective way to get to a better place. He added that collaborations were needed. The Chief Judge concurred that broad coalitions were needed.

Bill Leahy shared the Office's proposed increased budget request and said that NYSAC will be supporting them in full.

Vince Doyle remarked that the advocacy efforts must focus on the operations budget for the Office because, in his opinion, they couldn't fulfill their obligations as they currently exist.

Bill said there are two issues that must be dealt with simultaneously: staffing and spreading the relief to the other counties. He noted that there was a new head of Public

Protection and that they had a good meeting.

Sheila DiTullio said it was each board member's duty to push for adequate funding because the spirit of the settlement could not be implemented without it.

II. Approval of Minutes from the September 26, 2014 Board Meeting

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

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

III. Third Annual Report of the ILSB

Bill noted that the report (previously shared with the Board) recounts all of the activities of the Office during the period April 1, 2013 - March 31, 2014.

John Dunne noted that the report expressed the message that adequate funding is necessary to achieve the goals of the Office, including improving the quality of representation in New York State.

Vince Doyle pointed out the quote attributed to Robert Lonski, head of the Erie County Bar Association's Assigned Counsel Plan that contrary to what people think, representation at the first court appearance *does matter*, especially to those "standing there with cuffs on."

IV. Additional FY 2015-2016 Budget Request

A memo was distributed to the Board outlining the additional budget request needed to reflect the implementation of *Hurrell-Harring* settlement.

Vince Doyle moved to approve the additional request; his motion was seconded by Sue Sovie and unanimously approved by the board members in attendance.

V. Proposed New York State Office of Indigent Legal Services Appellate Standards and Best Practices

The Chief Judge commended Risa Gerson and her group for their work in

creating the appellate standards that were disseminated to the board members.

Bill noted that the working group assembled by Risa included 18 appellate experts from around the state. He noted that the final product contained “client-centered” demanding standards and best practices and that it will take time to achieve widespread compliance.

Risa said the working group had both solo practitioners as well as department heads. She also noted that the ABA standards provided the foundation for their work product.

Vince Doyle noted that the standards had application to institutional offices as well as assigned counsel groups. He made several recommendations for edits which they agreed to implement and/or consider except one. Vince expressed concern regarding the mandated client visits, especially when the client is hundreds of miles away.

Risa responded by noting that if the standards didn't say “must” practitioners would see this as an option. She noted that the commentary accounts for “impossibility or impracticality.”

Bill agreed with Risa that mandated client visits had to be a hard and fast rule to change the culture.

Sue Sovie noted that the solo-practitioner section requires that briefs be reviewed by another attorney. In addition to questioning practicality, she asked whether there would be a list of “go-to people” for this purpose.

John Dunne commented that the standards created were an extraordinary piece of work.

Vince Doyle moved to approve the standards; his motion was seconded by Sue Sovie and unanimously approved by the board members in attendance.

VI. Status Reports

- Bill was pleased to announce that an Assistants Grants Manager, Jennifer Dougherty, was hired.
- The *Padilla* Request for Proposals deadline was extended to December 18, 2014.
- The ILS Fact Sheet prepared by Joe Wierschem was distributed. It included a summary of the “Level Funding for Counties” in the form of five

non-competitive distributions in amounts sufficient to restore every county and New York City to the level of funding received in 2010. In addition, it outlined the Competitive Grants authorized by the Board in furtherance of: counsel at first appearance, upstate quality improvement and caseload reduction, immigration regional resource centers, assigned counsel infrastructure program, wrongful conviction prevention center and upstate parental representation office. And, finally, it summarized the status of quality-enhancement non-competitive distributions #1 through #5.

VII. Proposed Schedule for 2015 Board Meetings

The Board approved the following schedule for 2015 meetings:

- Friday, April 10
- Friday, June 19
- Friday, September 25
- Friday, November 6

VIII. Concluding Remarks

The Chief Judge thanked everyone for attending and left the meeting in the hands of board member John Dunne.

John Dunne moved for the meeting to go into Executive Session; his motion was seconded by Sheila DiTullio and unanimously approved by the remaining Board members.

At the conclusion of the Executive Session, no action was taken. John Dunne moved to adjourn the meeting and his motion was seconded by Vince Doyle.

The meeting was adjourned.

FY 2015-16 ILS Final Budget

	FY 2014-15	Budget Request	Executive	Assembly	Senate	Final
State Operations	\$1.9 million	\$6.45 million	\$2.9 million*	\$3.2 million*	\$2.9 million*	\$3.0 million*
Aid to Localities	\$81 million	\$112 million	\$84 million**	\$87 million**	\$84 million**	\$84 million**
All Funds	\$82.9 million	\$118.45 million	\$86.9 million	\$90.2 million	\$86.9 million	\$87 million

State Operations:

- ***Hurrell-Harring Settlement Implementation**
 - \$1 million is dedicated to implementing the *Hurrell-Harring* settlement, with \$500,000 available for costs associated with tracking systems to accurately track and report caseloads/workloads of attorneys and \$500,000 available for Office operations (\$315,000 for hiring staff and \$185,000 for non-personal service items).

Aid to Localities:

- ****Hurrell-Harring Settlement Implementation**
 - \$3 million is dedicated to implementing the *Hurrell-Harring* settlement, with \$1 million to pay county costs for “interim steps” to implement the ILS plan for providing counsel at arraignment and \$2 million to accomplish the objective of improving the quality of indigent defense.

New York State Office of Indigent Legal Services

Funding Announcement

(Third Revision 12/24/14) Regional Immigration Assistance Centers

Revisions appear on pages 1, 8, and 9.

NYS Office of Indigent Legal Services Request for Proposals

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

Timelines for This Request for Proposals

RFP Release Date	Tuesday, September 23, 2014
Questions Due By	Friday, December 5, 2014 (Q&A period closed)
Questions Posted By	Tuesday, December 9, 2014
Proposal Due Date (Revised 12/24/14)	Tuesday, December 30, 2014, 5:00 p.m. EDT FRIDAY, JANUARY 16, 2015, 5:00 p.m. Eastern Standard Time
Award Announcement	January 2015
Tentative Contract Start Date	January 2015

Intent of this Request for Proposals

The New York State Office of Indigent Legal Services (Office) is announcing the availability of funds and soliciting proposals from counties to support the development of a network of Regional Immigration Assistance Centers (“Centers” or “Center”).

The intent of this Request for Proposals (RFP) is to support regional initiatives aimed at improving the quality of indigent legal services. Ensuring the right to effective representation of counsel is essential to establishing an efficient and effective justice system. This RFP provides funding to support the development of a network of Regional Immigration Assistance Centers. Each Center will be responsible for ensuring that providers of indigent legal services within each designated region have access to the training and legal support necessary to provide competent advice to a noncitizen client as to potential immigration consequences of a criminal conviction in compliance with legal obligations established by the Supreme Court in *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010).¹ Furthermore, this initiative provides training and legal support needed by counsel representing a parent or other adult in a mandated family court matter to competently advise such clients on immigration issues that may impact their parental rights.

Each Center is expected to serve the providers within each county in its designated region and to collaborate and consult with this Office and other Centers across the state on implementing the constitutional mandate introduced in *Padilla v. Kentucky*.² Collaboration among counties within a region is strongly encouraged. *Proposals should present a regional model capable of providing immigration training and legal support to serve indigent legal service providers (i.e., "providers" consist of systems of public defenders, legal aid attorneys, conflict defenders and 18-B assigned counsel who provide mandated representation under County Law Article 18-B) in each county of a designated region.*

Background

Removal of noncitizens from the United States due to criminal convictions has significantly risen in recent years due to changes in U.S. immigration law and a substantial increase in immigration enforcement.³ Under current immigration laws, a noncitizen may be deported for a wide array of crimes, including most drug offenses, "aggravated felonies," and domestic violence crimes.⁴ Even convictions for minor offenses and violations can have disastrous and irrevocable consequences for a noncitizen client despite dispositions that may appear innocuous or even favorable in terms of the penalty imposed. Indeed, deportation and removal of a noncitizen client from the United States may be "practically inevitable" if convicted of a particular crime.⁵

Consequently, in March 2010, the Supreme Court dramatically changed the landscape of providing criminal defense representation to noncitizen clients when it concluded in *Padilla* that the "particularly severe 'penalty'" of deportation was so "intimately related to the criminal process" as to require defense counsel to advise noncitizen clients of the potential immigration consequences that may result from a guilty plea.⁶ In so holding, the Court recognized that "deportation is an integral part – indeed sometimes the most important part – of the penalty that may be imposed on noncitizen defendants who plead guilty to specific crimes."⁷ Because

¹ *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010).

² *Id.*

³ See Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, 110 Stat. 3009 (1996).

⁴ See 8 USC §§ 1101(a)(43); 1227(a)(2).

⁵ *Padilla v. Kentucky*, 130 S.Ct. 1473, 1480 (2010)

⁶ *Padilla v. Kentucky*, 130 S.Ct. at 1482.

⁷ *Id.* at 1480.

deportation is so closely related to the criminal process and carries such high stakes for noncitizen defendants, “the importance of accurate legal advice for noncitizens accused of crimes has never been more important” to providing effective representation.⁸

This Office recognizes that the vast majority of indigent legal service providers in New York face significant challenges in providing mandated quality representation to noncitizen clients. Similar challenges are encountered when representing noncitizens in family court proceedings whose immigration status may directly impact such life-altering decisions as custody, visitation, adoption, and termination of parental rights. This reality places unique ethical obligations and professional demands on indigent legal service providers who must now understand the impact of U.S. immigration laws in order to ensure that they are providing the “effective assistance of competent counsel” to which every client is entitled.⁹

The regional Immigration Assistance Centers supported by this grant will help to ensure that each county has the ability to deliver effective mandated representation that is in constitutional compliance with *Padilla*.

i. The Problem

New York is one of the four states where more than half of the country’s immigrant population resides. Noncitizens make up an estimated 22 percent (i.e., 4.3 million) of the State’s overall population. New York is also home to the second highest percentage of lawful permanent residents, (i.e., green card holders) in the country.¹⁰ This foreign born population is spread throughout the State and includes recently resettled refugees who, once granted humanitarian protection within the United States, populate a number of rural Upstate New York communities. These recently resettled refugees, along with longtime permanent residents, may be at risk of deportation following a negative encounter with the criminal justice system.

This Office recognizes that most indigent legal service providers lack the immigration expertise, resources, specialized training, access to language services, and legal support necessary to adequately serve the needs of noncitizen clients – a fact earlier recognized by the Commission on the Future of Indigent Defense Services (the “Kaye Commission”).¹¹ Challenges facing indigent legal service providers also stem from the myriad of complex and ever-changing immigration laws and enforcement policies that can impact the direction and outcome of a noncitizen client’s criminal or family court proceeding. Efforts by the U.S. Department of Homeland Security (DHS) to identify noncitizens during the early stage of an arrest may influence defense strategies and outcomes at each stage of a criminal proceeding – from the opportunity to be released on bail, to the ability to accept certain plea agreements and/or sentencing options.¹² Therefore, effective mandated representation of a client may depend upon counsel’s ability to identify a client’s immigration status and to understand how that status may impact each stage of the client’s court proceeding.

⁸ *Id.* at 1478 (quoting *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10 (1948)).

⁹ See *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970).

¹⁰ American Community Survey Reports: *The Foreign Born Population in the United States: 2010*; U.S. Census Bureau (2012) available at <http://www.census.gov/prod/2012pubs/acs-19.pdf>.

¹¹ *Final Report of the Commission on the Future of Indigent Defense Services* (2006) at 24-25.

¹² Of the 409,849 individuals removed from the United States in 2011-12, 55 % (i.e., 225,390) were apprehended following an arrest, often involving relatively minor offenses. See DHS ICE, *Secure Communities Monthly Statistics* (2013) available at http://www.ice.gov/doclib/foia/sc-stats/nationwide_interop_stats-fy2013-to-date.pdf.

A county's inability to meet the minimum constitutional requirements of providing effective assistance of counsel harms not only the noncitizen client, but also that individual's family member(s). Noncitizens are frequently separated from their family members because they are denied release on bail or detained by immigration authorities during or subsequent to a criminal or family court proceeding. The impact of immigration enforcement consequences often falls hardest on the children of noncitizens.¹³ Separating a child from a parent may not only be a devastating experience in a child's development, but could also result in an increased number of child placements within the foster care system at a cost of approximately \$55,000 per year, per child.¹⁴ Ensuring early and effective assignment of counsel for a noncitizen client in a criminal or family court proceeding could help to protect against any unnecessary separation of family members.

The complexity of immigration challenges that face most noncitizen clients dramatically expands the need for the defender community and the courts to address the complicated interplay of immigration status, culture, language, and the need to provide effective mandated representation. This RFP is intended to assist indigent legal service providers in shouldering that burden.

ii. The Solution – Developing Regional Immigration Assistance Centers

Currently, over 140 organizations are functioning as indigent legal service providers throughout New York's 62 counties. Considering the geographic size of the state and the diversity of the public defense system in New York State, this RFP will allow for a variety of methods to implement immigration service plans that include legal support, a curriculum of immigration training, and assistance in the development of attorney protocol/procedures. The goal is to ensure an approach to providing quality mandated representation to noncitizen clients by every provider in each county located within the regions identified below.

Project Description – What is this RFP Seeking to Achieve? With this RFP, the Office is seeking proposals for the development of regional Centers to provide immigration legal assistance and trainings to improve the overall quality of mandated representation afforded to noncitizen clients. In addition, this RFP is intended to support efforts to develop in-house expertise, best practices, and effective attorney protocol (i.e., screening and intake procedures, etc.) that will ensure *Padilla*-compliant representation. County governments are encouraged to consult with other county governments and indigent legal services providers within their region and to submit proposals that incorporate prevailing professional norms and best practices for representing noncitizen clients in both criminal and family court proceedings.

The aim of this RFP is to make sure that each indigent legal service provider has an immigration service plan that provides a systematic approach to representing noncitizen clients.

¹³ Almost one-fourth of children and youth in the United States are either immigrants or children of immigrants. In New York State, almost one in every three children of immigrant families live with one or more undocumented parent. Eight out of 10 of these children have noncitizen parents. See Capps, R., Passel, J.S., *Describing Immigrant Communities*, The Urban Institute (2004).

¹⁴ "Overall costs of foster care (\$1,376,000,000) divided by the total number of children in foster care (24,541) = 55,060 per year." Kinship Care in New York: Keeping Families Together New York State," Kinship Coalition March 2011 available at http://www.nvsnavigator.org/documents/AARP_KitcareKeepingFamilies10.pdf.

An immigration service plan “must provide, at minimum, for the timely delivery of accurate advice regarding the immigration consequences of contemplated dispositions in ongoing criminal cases.”¹⁵ To do this appropriately, institutional defender offices and assigned counsel programs should develop immigration service plans that consist of a series of protocols (i.e., procedures) that will work best in their unique legal environments.¹⁶

Each Center will be expected to assist providers within their region on developing an immigration service plan that encompasses an advisal component, an information gathering component, the potential for development of staff expertise, and a language access component. Therefore, successful proposals will include technical legal assistance and advice to the provider community, as well as trainings and guidance on the development of immigration service plans, and protocols/procedures designed to ensure quality representation within each of the regions specified below.

iii. The Role of the Regional Immigration Assistance Center

Each Center will facilitate periodic needs assessments of indigent legal service providers within its region to assess their capability to provide competent legal advice regarding the immigration consequences of a criminal conviction or family court disposition. A critical feature of this grant is that services provided by Centers be available to every indigent legal service provider within their region. Each Center will also be available to assist providers in the development of legal strategies to be used in criminal and family court proceedings, as well as post-conviction and appellate matters that serve to reduce or alleviate the threat of removal of a noncitizen client from the United States.

Funds from this grant may be used to enhance existing immigration programs that provide legal assistance and support to the indigent legal service providers within the applicant's designated region, including programs currently funded by this Office.

Centers will be expected to work closely with indigent legal service providers, bar associations, and nonprofit organizations to develop and coordinate regional trainings and develop resource materials that address the intersections among criminal, family and immigration law. These Centers will also be expected to consult with the Director of Regional Initiatives of this Office when hiring professional staff and collaborate with this Office and other Centers throughout the State in the analysis of regional trends, collection of data and identification of promising practices and strategies that should be considered for possible replication throughout the State.

Applicants for this grant should demonstrate an organizational capacity and ability to implement the following activities:

- **Provide Legal Assistance and Support:** Proposals that demonstrate how Centers will ensure that legal assistance and support regarding the immigration consequences of a criminal conviction and/or family court disposition will be made available to every indigent legal service provider located within the applicant's designated region are encouraged. Ability to provide such services may require, for example, support for daily

¹⁵ Peter L. Markowitz, *Protocol for the Development of a Public Defender Immigration Service Plan*, 6, (2009), available at <http://immigrantdefenseproject.org/?s=protocol>.

¹⁶ *Id.* at 2.

operation of the Center, including the supervision and training of legal and administrative staff, a suitable office space equipped to receive requests for legal assistance and a database to record, track and monitor required data.

- *Provide Continuing Legal Education and other Trainings*. Proposals should also provide for the capacity to design a program and Continuing Legal Education trainings intended to educate indigent legal service providers and other legal professionals and advocates within the region on such topics that ensure *Padilla* compliance and best practices in representing noncitizens in criminal and family court proceedings. Centers should plan to provide a minimum of 2 regional trainings annually.
- *Development of Immigration Service Plans, Protocol and Procedures*: Proposals that demonstrate the capacity to assess the needs of counties and their providers within the designated region and to assist those providers in need of developing immigration service plans, protocol and procedures designed to ensure *Padilla* compliance and the implementation of relevant standards and best practices are encouraged.
- *Encourage Collaboration*: Proposals that encourage collaboration among providers, other legal service providers, community-based organizations, law schools, bar associations and other entities to enhance provider compliance with *Padilla* are encouraged.
- *Compliance with ILS standards*: Proposals should include ways for an indigent legal service provider to achieve greater compliance with ILS standards.

Eligibility – Designated Regions

No county, or counties wholly encompassed by a city, may submit more than one proposal.

Through this funding initiative, the Office plans to award up to six (6) grants to counties that will establish an Immigration Assistance Center in their respective region. The awards will be distributed on a competitive basis in the regions listed below. Centers developed in each region are required to assist counsel providing mandated representation within the counties geographically located within the designated region. Proposals should demonstrate how Centers will ensure that all indigent legal service providers within the region will be provided substantially equal access to services. Awards will be made to the applicant with the highest score for that geographic region. The geographic regions are set forth:

Region 1: Western New York Region: Allegany, Cattaraugus, Cayuga, Chautauqua, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Seneca, Steuben, Wayne, Wyoming and Yates.

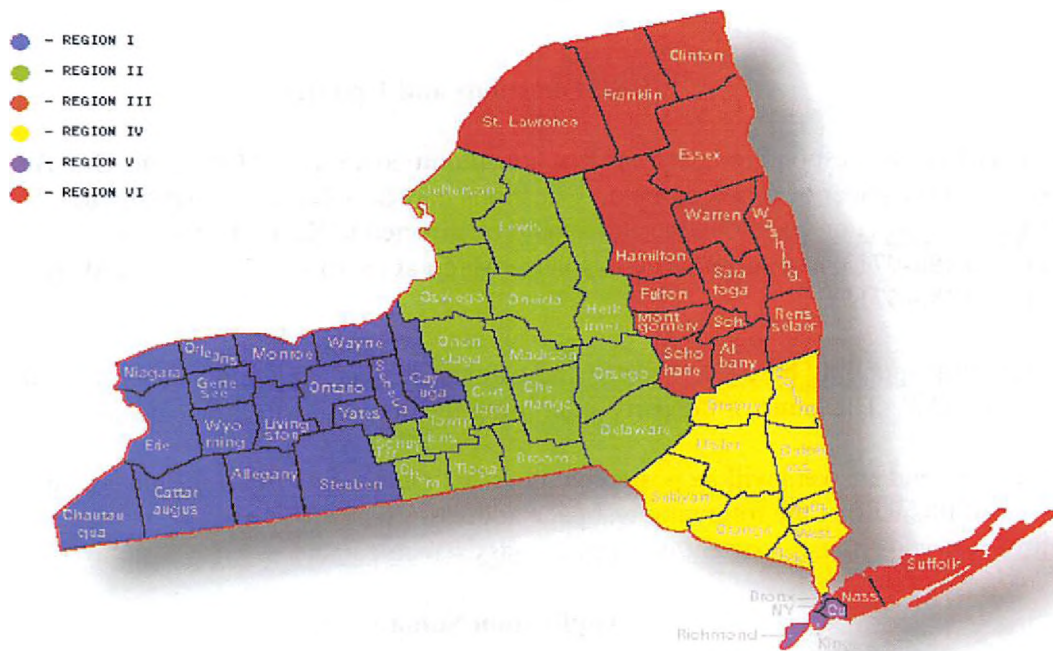
Region 2: Central New York Region: Broome, Chemung, Chenango, Cortland, Delaware, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, Otsego, Schuyler, Tioga and Tompkins.

Region 3: Northern New York Region: Albany, Clinton, Essex, Franklin, Fulton, Hamilton, Montgomery, Rensselaer, Saint Lawrence, Saratoga, Schenectady, Schoharie, Warren and Washington.

Region 4: Hudson Valley Region: Columbia, Dutchess, Greene, Orange, Putnam, Rockland, Sullivan, Ulster and Westchester.

Region 5: New York City: Bronx, Kings, New York, Queens and Richmond.

Region 6: Long Island: Nassau and Suffolk.



Funding and Contract Period

Through this RFP, contracts totaling approximately \$2.7 million annually, for each of three years, will be awarded, with awards of not more than \$450,000 available for each region in support of up to six Regional Immigration Assistance Centers. The total available funds for award are approximately \$8.1 million (i.e., approximately \$2.7 million per year for each of three years).

Counties may submit proposals either at or less than the maximum amount. Grants will be issued for a period of three years.

Any adjustments to the resulting agreements will require approval of the Office of the State Comptroller.

Who Is Eligible To Apply for This Request for Proposals

Only New York State counties not wholly encompassed within a city and the city of New York are eligible to apply for funds. Multiple counties within a designed region may collaborate in the submission of a proposal, as described below. Proposals should be submitted by an authorized county or city official from the applicant county.

Instructions for Completing This Request for Proposals

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

RFP Questions and Updates

This Office will respond to questions that are submitted until the “Questions Due By” date shown on the cover of this document. Questions may be submitted in writing to OA@ils.ny.gov, or via telephone and should be directed to Karen Jackuback at (518) 486-9713, and secondarily to Joanne Macri at (518) 408-2728 or Joe Wierschem at (518) 486-5715.

When corresponding by e-mail, clearly indicate the subject as: *Regional Immigration Assistance Centers RFP*. The name of the party submitting the question will not be posted.

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

Application Submission

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

All submissions must contain the complete application. All applications must be received by ~~Tuesday, December 30, 2014~~ **Friday, January 16, 2015** by 5:00 p.m. Eastern ~~Daylight~~ **Standard** Time.

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

Applications must be delivered to:

By mail:

Karen Jackuback, Grants Manager
Office of Indigent Legal Services
Alfred E. Smith Bldg., 29th Floor
80 South Swan St.
Albany, NY 12210

Hand delivery:

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

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

Electronic applications:

Electronic applications will be accepted.

Electronically submitted proposal applications must be submitted to the Office of Indigent Legal Services at rfp@ils.ny.gov. All required documents or attachments must be included in the electronic submission. The electronic submission will be considered the submission of the applicant.

After you submit your application at rfp@ils.ny.gov, you will receive an e-mail confirming receipt of the application. If you do not receive an e-mail confirming receipt, you should contact Karen Jackuback at (518) 486-9713.

Applications must be received by ~~Tuesday, December 30, 2014~~ **Friday, January 16, 2015 by 5:00 p.m. Eastern Standard Time**. Late applications will not be considered.

EVALUATING THE APPLICATION

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

1. Project Summary (not more than two (2) pages in length)
2. Proposal Narrative (not more than fifteen (15) pages in length)
3. Budget and Justification (See Attachment A of this RFP)

Only complete applications will be reviewed and evaluated.

Proposal Application

I. PROJECT SUMMARY (not scored)

Please provide:

- All applications for grant funding must include a summary that concisely describes the proposed project (i.e., goal(s), objectives, overall approach (including significant partnerships), anticipated outcomes).
- To ensure uniformity, please limit the length to no more than two pages.
- Identification of the county or counties requesting to host a Regional Immigration Assistance Center. If more than one county intends to collaborate on hosting a Regional Immigration Assistance Center, please identify the lead county responsible for oversight of the administration of the grant and its reporting requirements;
- Contact person, telephone, fax and email for the lead county responsible for oversight of the administration of the grant and its reporting requirements;
- Fiscal intermediary name and address (identify the department and/or individual responsible for fiscal reporting for this project);
- Amount of funding requested.

II. PROPOSAL NARRATIVE

A maximum of 200 points is available for an RFP application. Points will be applied as follows:

Technical Evaluation: 140 points (70% of maximum points available):

- Section A (Plan of Action): 120 points
- Section B (Data Collection, Performance Measurement, and Evaluation): 10 points
- Section C (Applicant Capability and Personnel): 10 points

Cost Evaluation: 60 points (30% of maximum points available):

- Section D (Budget and Cost): 60 points

A. Plan of Action (Total of 120 points for Section A)

Answer all questions in the order in which they are presented. Applicants will be evaluated on the information they provide. *Please do not submit any information that was not specifically requested.*

Organizational Experience and Infrastructure (22 points)

1. Describe the need to provide immigration support to indigent legal service providers within the designated region and what immigration defense resources, if any, are currently available within the applicant's designated region. (4 points)

2. Describe how the Center will structure its professional and/or non-professional staffing to implement its plan, including new staffing to be hired and any partnerships and/or other collaborations necessary to support the efforts of the Center. Describe the roles and responsibilities of each county in the operation of the Center. (15 points)
3. Describe how the Center will identify obstacles to implementation of its plan and necessary adjustments. (3 points)

Plan Implementation (24 points)

4. Describe where daily operations of the Center will be undertaken and how these operations will be supported and supervised. (12 points)
5. Describe the personnel needed to fulfill the activities and services defined within the *Role of the Regional Immigration Assistance Center* outlined in section iii of pages 5-6 of this grant. Describe the process that will be followed to recruit, hire and supervise legal and administrative staff capable of providing the activities and services, including consulting with the Director of Regional Initiatives of this Office. (12 points)

Outreach to Providers (8 points)

6. Describe your plan for conducting ongoing outreach to counties and indigent legal service providers within your region to inform them of the availability of services offered by the Center, including providing immigration assistance on individual cases and development of immigration service plans designed to ensure quality representation, including measures of outreach efforts and their effectiveness. (8 points)

Data Collection & Conflict Case Referrals (6 points)

7. Describe your plan for developing and maintaining a database suitable for identifying and referring conflict cases to other Centers, the process you will follow for making such referrals, and for tracking and monitoring required data as described in *Data Collection, Performance Measurement, and Evaluation* on pages 12-14 of this RFP. (6 points)

Periodic Needs Assessments (4 points)

8. Describe your plan for periodically conducting needs assessments of providers in your region, which may include, but not be limited to the need for increased access to immigration expertise and services, specialized immigration trainings, access to language and cultural support services, and the legal support necessary to address immigration issues that may arise in specialty court proceedings (i.e., such as in drug, mental health, domestic violence and human trafficking courts). (4 points)

Availability of Center Services (15 points)

9. Describe how you will ensure that Center staff is available to provide legal assistance, in a timely manner, to all individuals providing mandated indigent legal services within your region. (15 points)

Specialized Trainings (22 points)

10. Describe your plan for developing and coordinating specialized trainings in your respective region that address such topics as the immigration consequences of a criminal conviction and/or family court disposition and best practices in representing noncitizens in criminal and family court proceedings. (15 points)
11. Describe any existing and proposed collaboration that you expect to utilize in providing Continuing Legal Education training to the indigent legal service provider community. (7 points)

Collaboration (11 points)

12. Describe how you propose to collaborate with this Office and other Centers throughout the state in the analysis of regional trends, collection of data and development of best practices and attorney protocols for effective *Padilla* compliant representation. (3 points)
13. Describe any other stakeholders and/or nonprofit organizations, bar associations, law school clinics, and law school *pro bono* programs or volunteer law students whose assistance you may seek to enhance the delivery of mandated representation that is in constitutional compliance with *Padilla*. (6 points)
14. Describe any national or statewide organizations with which you will seek to develop relationships to improve the quality of immigration representation within your region and, if so, the support or assistance expected from these organizations. (2 points)

Plan Objectives (8 points)

15. Describe how the program will improve the quality of representation that clients receive and achieve greater compliance with the Office of Indigent Legal Services standards. (8 points)

B. Data Collection, Performance Measurement, and Evaluation (Total of 10 points for Section B)

This section will discuss how you will measure the impact of your project. Information as to the type of data to be collected and reported to this Office is provided below.

16. Describe how the relevant data described below in *Data Collection* sections 1, 2 and 3 will be collected and recorded in ways that are valid, accurate and reliable. Explain who will be responsible for gathering and recording the requested data.

Data Collection

To ensure and demonstrate compliance with *Padilla*, indigent legal service providers are strongly encouraged to develop and maintain consistent and accurate record keeping of the immigration status of each noncitizen client. Providers are also encouraged to maintain a record of the advice offered to a noncitizen client as to the potential immigration consequences that may result from a particular criminal conviction.

Accordingly, each Center is expected to track the progress of providers of indigent legal services within their region toward the goal of obtaining and recording reliable immigration status from each client and delivering the legal advice necessary to ensure effective assistance of counsel.

Centers will be expected to provide both quantitative and qualitative data to this Office demonstrating efforts made to ensure *Padilla* compliance throughout the designated region. In so doing, each Center is to annually report to this Office the following data:

- A. A list of those indigent legal services providers within the region, noting the following information for each provider:
 1. The availability and use of a computerized case management system that is currently being used to track the following data:
 - i. client immigration status; and
 - ii. the immigration advice offered to noncitizen clients.
 2. The current status of data collection capabilities by the provider.
 3. Where available data in cases recording immigration status is reliably recorded, the number and percentage of noncitizen clients served by each provider in the prior year.

Each Center will be expected to show that they are actively responding to solicitations for legal assistance from indigent legal service providers and others seeking advice on behalf of noncitizen clients. Additionally, each Center will be required to demonstrate that it is actively conducting and/or coordinating trainings throughout the designated region to help educate attorneys on the immigration consequences resulting from a criminal conviction and/or family court disposition.

To achieve this, each Center is expected to report annually to this Office on the following information:

- B. The number of requests for legal assistance received. A request for legal assistance, which includes but is not limited to a request for legal advice, is defined as all communication, in whatever form and from whatever party, in relation to a single case or matter. Cases in criminal, family, appellate or other courts should be counted separately. Report the following statistics:
 1. The number of requests for legal assistance broken down by county;

2. For each county:
 - i. the number of requests for legal assistance broken by affiliation of the attorney concerned, (e.g., county public defender, conflict defender, legal aid attorney or assigned counsel attorney);
 - ii. the number of requests for legal assistance broken down by whether they involved a criminal, family, appellate court or other matter; and
 - iii. the number of advisory opinion letters, or other form of written communication, that was generated in response to the request for legal assistance.

C. A list of training events conducted within the designated region, noting,

1. The office and affiliation of the attorneys registered for each training event, (e.g., county public defender, conflict defender, legal aid attorney or assigned counsel attorney; criminal or family court practitioner);
2. The role played by the Center in developing, planning or coordinating the training event, if any; and
3. The total number of training programs conducted and the total number of attorneys in attendance at training.

Finally, each Center should make concerted efforts to assist indigent legal service providers within the designated region in developing protocol/procedures that will ensure early intervention and quality representation afforded to noncitizen clients. Centers are, therefore, encouraged to report to ILS both on any examples of successfully implemented protocols and/or procedures developed to address the specific needs of noncitizen clients, and also on the obstacles they encounter in the course of implementing these reforms. Reports should include information on the Center's efforts to assist providers with developing protocol and immigration service plans within their designated region.

C. Applicant Capability and Personnel (Total of 10 points for Section C)

17. Identify the staffing and other resources necessary to support the successful implementation of this project. (10 points)

D. Budget and Cost (See also Attachment A -- Budget Form)
(Total of 60 points for Section D)

Successful applications will include budget plans that are consistent with the proposal action plan, administrative costs, justification for each requested budget line, cost benefit, and highest potential for successful outcomes in assisting providers within the designated region. For question 18, complete the attached Budget Form (Attachment A) and return with the proposal, being sure to address the following:

18. Provide a detailed, annualized three-year budget containing reasonable and necessary costs. The budget for the proposed project must be consistent with the terms of the RFP.

Complete the Attachment A Budget Form and return with the proposal.

Review and Selection Process

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

- The first level entails a Pass/Fail review, conducted by Office staff, of the submitted proposals to ensure that the application is responsive to the conditions set forth in the RFP. The Office will reject any applications that do not clearly and specifically address the purposes of this funding opportunity and/or fail to meet any of the following criteria:
 1. The RFP was submitted within the designated time frames;
 2. The RFP was submitted consistent with the format requested by the Office;
 3. The applicant is an eligible entity as specified within the RFP;
 4. The proposal included a budget submission.
- The second level consists of a scored comprehensive proposal review that involves a thorough review of the submitted proposal specifically related to the project work plan, performance measurement and evaluation, organizational capability, overall strength of plan, the availability of immigration defense resources in the region, and the budget. A maximum of 200 points is available for an RFP application. The proposal review and rating will be conducted, as follows, using the criteria stated in this RFP:

TECHNICAL EVALUATION: 140 points (70% of maximum points available)

A total of 140 points are available for the technical evaluation. A technical evaluation is a review to verify that the technical requirements contained in the RFP are met. A technical evaluation team will evaluate the proposals using the criteria listed in sections A, B and C of the RFP (pp. 10-14).

COST EVALUATION 60 points (30% of maximum points available)

A total of 60 points are available for the cost evaluation. A cost evaluation is performed to assess the proposed costs. The cost evaluation will be conducted separately by a cost review team using the budget form (Attachment A) as submitted by the applicant.

The Office will typically use staff and others with expertise in the RFP topic area to comprise the evaluation teams. The evaluators will assign a score up to a maximum of 200 points to each application. The Office reserves the right to conduct follow-up discussions with applicants to clarify information in the submitted proposal. Such a plan will be subject to review and approval by the Office of the State Comptroller.

An award will be made to the highest ranking proposal in each designated region.

In the event that two or more applicants within the same region receive identical overall scores for their proposals, cost will be the determining factor for final award. In the event two or more proposals have identical overall scores, including identical cost scores, the Office reserves the right to award the grant to the applicant that has achieved the highest score in the Plan of Action category of this RFP.

Awards will be made to no more than one county in each designated region.

Awarding of Grants

Contract Development Process

It is anticipated that applications will be reviewed and that successful applicants will be notified of funding decisions on or about ~~December 2014~~ **January 2015**.

The proposal review team will recommend to the Office the highest ranked proposal(s) that fully meet the terms of the RFP. The contract process and final contracts are subject to the approval of the State Attorney General and the Office of State Comptroller (OSC). Upon such approvals, the grant process will begin, and all terms of the contract become public information.

As part of the grant award process, grantees and the Office will establish a mutually agreed upon final budget and work plan, which become the contract deliverables. For multiple year contracts, these deliverables will be negotiated annually.

Grantees will also be required to report on successes achieved, obstacles encountered during implementation, and efforts to overcome these obstacles, in annual progress reports, according to individual program goals and objectives.

The Office reserves the right to:

- Reject any applications that do not meet the intent of this RFP;
- Negotiate with applicants identified as the best value apparent awardee in their respective region after the evaluation regarding work plans, budget line levels, and other issues raised within the RFP review to achieve maximum impact from the grant award and serve the best interests of New York State; and
- If unable to negotiate the contract with the selected applicants within 60 days, the Office may begin contract negotiations with the next highest scoring qualified applicant(s).

Payment

Each county will be reimbursed for expenses incurred pursuant to grant related activities including salary, benefits, travel, and related expenses. No payments will be made until the contract is fully executed and approved by the State Attorney General and the State Comptroller.

Funding Requirements

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

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

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

Matching Funds Requirement

There is no matching funds requirement for this program.

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**ATTACHMENT A
BUDGET FORM
REGIONAL IMMIGRATION ASSISTANCE CENTERS**

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

Include all anticipated costs in the Budget Detail below.

Proceed to Budget Detail section, next 3 pages.

ATTACHMENT A

BUDGET FORM

REGIONAL IMMIGRATION ASSISTANCE CENTERS

Budget Detail Section:

1. Personal Services

List each position by title and name of employee, if available. Show the annual salary rate and the percentage of time to be devoted to the project. Compensation paid for employees engaged in grant activities must be consistent with that paid for similar work within the applicant organization.

Fringe benefits should be based on actual known costs or an established formula. Fringe benefits are for the personnel listed below and only for the percentage of time devoted to the project.

Position	FTE	Year 1	Year 2	Year 3	Total
(Example)	100%				
0. Title: Project Coordinator					
Annual Salary		\$45,000	\$45,000	\$45,000	\$135,000
Annual Fringe		\$12,600	\$12,600	\$12,600	\$37,800
1. Title:					
Annual Salary					
Annual Fringe					
2. Title:					
Annual Salary					
Annual Fringe					
3. Title:					
Annual Salary					
Annual Fringe					
4. Title:					
Annual Sal					
Annual Fringe					
Total					

2. Contractual/Consultant Services

Service	Year 1	Year 2	Year 3	Total
				Total:

3. Non-Personal Service

Item	Year 1	Year 2	Year 3	Total
Training (in-house staff and regional CLE)				
Travel (Travel costs for employees and consultants must adhere to the established New York State travel rates. See Office of the State Comptroller Travel Manual http://www.osc.state.nv.us/agencies/travel/manual.pdf)				
Supplies				
Space/Rent				
Website Development				
Printed Resources				
Other (specify):				
				Total:

4. Equipment

Please note: Rented or leased equipment costs should be listed in the "Contractual" category.

Item	Year 1	Year 2	Year 3	Total
				Total:

5. Other Costs

Item	Year 1	Year 2	Year 3	Total
				Total:

Cost Categories		Total 3-Year Project Cost by Category
1.	Personal Services	
2.	Contractual/Consultant Services	
3.	Non-Personal Services	
4.	Equipment	
5.	Other Costs	
Total 3-Year Project Cost		

An authorized officer of the lead county (see page 10) must sign the budget form.

Lead County: _____

Lead County Authorized Officer (please print): _____

Signature: _____ Date: _____

Wierschem, Joseph (ILS)

From: Leahy, Bill (ILS)
Sent: Monday, April 06, 2015 11:08 AM
To: Carmen Ciparick (ciparickc@gtlaw.com); Mareane, Joe (TOMPKINS Co); John Dunne (jdunne@woh.com); jlippman@courts.state.ny.us; Lenny Noisette; Mike Breslin; sditulli@courts.state.ny.us; Sue Sovie (susansovie@sovielawfirm.com); Toni Cimino (tcimino@courts.state.ny.us); ved@connors-vilardo.com
Cc: ils.dl.all.users
Subject: Preview of Friday's Meeting

Toni Cimino will send you the agenda and materials for our April 10 meeting by tomorrow; but I wanted to give you a preview of the three main agenda items, each of which is intended to be less a report than a conversation:

- 1) We will review the highs and lows of the recently completed budget process; assess the impact of the change in Assembly leadership; discuss our unsuccessful effort to gain Senate support for increased state funding; and share thoughts as to how we can strengthen our advocacy with respect to the Executive, the Assembly and the Senate going forward;
- 2) Joanne Macri will present a status report on our RFP for the creation of six Regional Immigration Assistance Centers, to provide statewide training, advice and support for every lawyer who represents clients in mandated representation cases in criminal or family court;
- 3) We will provide an update on all aspects of our *Hurrell-Harring* implementation planning and implementation; and suggest a role that Board members can play in our public hearings on Eligibility Standards that will be applicable to the entire state outside of NYC.

I look forward to seeing you and speaking with you on Friday.

Bill

William J. Leahy
Director
Office of Indigent Legal Services
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29th Floor
Albany, NY 12210
518-486-5747 (office)
617-997-9091 (mobile)
bill.leahy@ils.ny.gov
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

----- X
KIMBERLY HURRELL-HARRING, et al., on
Behalf of Themselves and All Others Similarly
Situated,

Plaintiffs,

-against-

THE STATE OF NEW YORK, et al.,

Defendants.
----- X

Index No. 8866-07
(Connolly, J.)

STIPULATION AND ORDER OF SETTLEMENT

WHEREAS, Plaintiffs, on behalf of the Plaintiff Class, as defined by the Appellate Division, Third Department (“Plaintiffs”), commenced and are pursuing a class action lawsuit entitled *Hurrell-Harring, et al. v. State of New York, et al.*, Index No. 8866-07, in New York Supreme Court, Albany County, seeking declaratory and prospective injunctive relief for, among other things, the alleged deprivation by the State of New York and the Governor of the State of New York (the “State Defendants”) of Plaintiffs’ right to counsel in the counties of Onondaga, Ontario, Schuyler, Suffolk, and Washington (together the “Five Counties” and each a “County”) guaranteed to Plaintiffs by the Sixth and Fourteenth Amendments to the United States Constitution, Article I, § 6 of the New York State Constitution, and various statutory provisions; and

WHEREAS, the parties have been engaged in litigation since November 2007 and the New York Court of Appeals has determined that Plaintiffs may proceed with their claims for actual and constructive denial of counsel, *Hurrell-Harring v. State of New York*, 15 NY3d 8 (2010); and

WHEREAS, the Appellate Division, Third Department determined that Plaintiffs could pursue

the litigation as a class action in accordance with Article 9 of the New York State Civil Procedure Law and Rules ("CPLR"), *Hurrell-Harring v. State of New York*, 81 AD3d 69 (3d Dept. 2011); and

WHEREAS, in 2010, the State established the Office of Indigent Legal Services ("ILS") and the Indigent Legal Services Board ("ILSB") (Executive Law Section 832 and Section 833, respectively) to, among other things, improve the quality of the delivery of legal services throughout the State for indigent criminal defendants; and

WHEREAS, the parties have conducted extensive fact and expert discovery, and have engaged in motion practice before the Court, and the Court has set the matter down for trial; and

WHEREAS, the parties have negotiated in good faith and have agreed to settle this Action on the terms and conditions set forth herein; and

WHEREAS, the parties agree that the terms of this settlement are in the public interest and the interests of the Plaintiff Class and that this settlement upon the order of the Court is the most appropriate means of resolving this action; and

WHEREAS, the parties understand that, prior to such Court order, the Court shall conduct a fairness hearing in accordance with CPLR Article 9 to determine whether the settlement contained herein should be approved as in the best interests of the Plaintiff Class; and

WHEREAS, ILS and the ILSB have the legal authority to monitor and study indigent legal services in the state, to recommend measures to improve those services, to award grant monies to counties to support their indigent representation capability, and to establish criteria for the distribution of such funds; and

WHEREAS, the parties agree that ILS is best suited to implementing, on behalf of the State, certain obligations arising under this Agreement; and

WHEREAS, the ILSB has reviewed those obligations contemplated under this Agreement for implementation by ILS and has directed ILS to implement such obligations in accordance with
DOC ID - 22028239.1

the terms of this Agreement, and this direction is reflected in the *Authorization of the Indigent Legal Services Board and the New York State Office of Indigent Legal Services Concerning Settlement of the Hurrell-Harring Lawsuit*, appended hereto as Exhibit A and incorporated by reference herein; and

WHEREAS, ILS is legally required to execute this direction from the ILSB; and

WHEREAS, the Plaintiff Class entered into a settlement agreement with Ontario County dated June 20, 2014, and the Court approved the settlement and dismissed the Plaintiff Class's claims against Ontario County on September 2, 2014; and

WHEREAS, the Plaintiff Class entered into a settlement agreement with Schuyler County on September 29, 2014, which is currently scheduled for a fairness hearing on November 3, 2014; and

WHEREAS, Plaintiffs and the State intend that the terms and measures set forth in this Settlement Agreement will ensure counsel at arraignment for indigent defendants in the Five Counties, provide caseload relief for attorneys providing Mandated Representation in the Five Counties, improve the quality of Mandated Representation in the Five Counties, and lead to improved eligibility determinations;

NOW, THEREFORE, IT IS HEREBY STIPULATED, AGREED, AND ORDERED as follows:

I. PARTIES TO THIS AGREEMENT

The parties to this Settlement Agreement are the parties named in the Second Amended Complaint in the Action, which are the Plaintiff Class, the State of New York, Governor Andrew Cuomo, Onondaga County, Ontario County, Schuyler County, Suffolk County, and Washington County. If a County fails to execute the Agreement, it shall not be considered a party to this Agreement.

II. DEFINITIONS

As used in this Agreement:

Action means *Hurrell-Harring v. State of New York*, Case No. 8866-07 (Supreme Court, Albany County), filed on November 8, 2007.

Agreement and Settlement Agreement mean this Stipulation and Order of Settlement dated as of October 21, 2014 between and among Plaintiffs, the State Defendants, and the Five Counties.

Arraignment means the first appearance by a person charged with a crime before a judge or magistrate, with the exception of an appearance where no prosecutor appears and no action occurs other than the adjournment of the criminal process and the unconditional release of the person charged (in which event Arraignment shall mean the person's next appearance before a judge or magistrate).

Effective Date means the date of entry of the order of Supreme Court, Albany County approving this Settlement Agreement.

Executive means the Office of the Governor.

Five Counties means Ontario, Onondaga, Schuyler, Suffolk, and Washington Counties, each of which was named as a defendant in the Second Amended Complaint filed on August 26, 2008 in *Hurrell-Harring v. State of New York*. Each of the Five Counties may also be referred to as a County in this Agreement.

Mandated Representation means constitutionally mandated publicly funded representation in criminal cases for people who are unable to afford counsel.

Plaintiffs or Plaintiff Class means the class of individuals certified by the Appellate Division on January 6, 2011 in *Hurrell-Harring v. State of New York*.

III. COUNSEL AT ARRAIGNMENT

(A) (1) The State of New York (the "State") shall ensure, within 20 months of the Effective Date and continuing thereafter, that each criminal defendant within the Five Counties who is eligible for publicly funded legal representation ("Indigent Defendant") is represented by counsel in person at his or her Arraignment. A timely Arraignment with counsel shall not be delayed pending a determination of a defendant's eligibility.

(2) Within 6 months of the Effective Date, the New York State Office of Indigent Legal Services ("ILS"), in consultation with the Executive, the Five Counties, and any other persons or entities it deems appropriate, shall develop a written plan to implement the obligations specified above in paragraph III(A)(1), which plan shall include interim steps for achieving compliance with those obligations. That plan shall be provided to the parties, who shall have 30 days to submit comments. Within 30 days of the end of such comment period (which will be no later than 8 months after the Effective Date), ILS shall finalize its plan and provide it to the parties. Starting within 6 months of finalization of the plan, the State shall undertake good faith efforts to begin implementing the plan, subject to legislative appropriations.

(3) The parties acknowledge that the State may seek to satisfy the obligations set forth in paragraph III(A)(1) by ensuring the existence and maintenance within each of the Five Counties of an effective system for providing each Indigent Defendant with representation by counsel in person at his or her Arraignment. Nothing in this provision alters the State's obligations set forth in paragraph III(A)(1).

(4) Incidental or sporadic failures of counsel to appear at Arraignments within a County shall not constitute a breach of the State's obligations under paragraph III(A)(1).

- (B) The Executive shall coordinate and work in good faith with the Office of Court Administration (“OCA”) to ensure, on an ongoing basis, that each judge and magistrate within the Five Counties, including newly appointed judges and magistrates, is aware of the responsibility to provide counsel to Indigent Defendants at Arraignments, and, subject to constitutional and statutory limits regarding prompt arraignments, to consider adjustments to court calendars and Arraignment schedules to facilitate the presence of counsel at Arraignments. If, notwithstanding the Executive’s satisfaction of the terms of this paragraph III(B), lack of cooperation from OCA prevents the provision of counsel at some Arraignments, the State shall not be deemed in breach of the settlement for such absence of counsel at those Arraignments.
- (C) In accordance with paragraph IX(B), the State shall use \$1 million in state fiscal year 2015/2016 for the purposes of paying any costs associated with the interim steps described in paragraph III(A)(2). The State shall use these funds in the first instance to pay the Five Counties for the costs, if any, incurred by them in connection with the interim steps described in paragraph III(A)(2), and thereafter any remaining amounts shall be used to pay costs incurred by ILS.
- (D) ILS, in consultation with the Executive, OCA, the Five Counties, and any other individual or entity it deems appropriate, shall, on an ongoing basis, monitor the progress toward achieving the purposes set forth in paragraph III(A)(1) above. Such monitoring shall include regular, periodic reports regarding: (1) the sufficiency of any funding committed to those purposes; (2) the effectiveness of any system implemented in accordance with paragraph III(A)(3) in ensuring that all Indigent Defendants are represented by counsel at Arraignment; and (3) any remaining barriers to ensuring the representation of all Indigent Defendants at Arraignment. Such reports shall be made available to counsel for the Plaintiff Class and the public.

- (E) In no event shall the Five Counties be obligated to undertake any steps to implement the State's obligations under Section III until funds have been appropriated by the State for paragraph III(A)(1) or paragraph III(A)(2). Nothing in this paragraph shall alter the Five Counties' obligations under Section VII.

IV. CASELOAD RELIEF

- (A) Within 6 months of the Effective Date, ILS shall ensure that the caseload/workload of each attorney providing Mandated Representation in the Five Counties can be accurately tracked and reported on at least a quarterly basis, including private practice caseloads/workloads. In accordance with paragraph IX(B), the State shall provide \$500,000 in state fiscal year 2015/2016 to ILS for the purposes of paying any costs associated with the obligations contained in this paragraph IV(A), and ILS shall use those funds for such purposes. To the extent practicable, and subject to the specific funding commitments in this Agreement, the tracking system developed by ILS should be readily deployable across the state.
- (B) (1) Within 9 months of the Effective Date, ILS, in consultation with the Executive, OCA, the Five Counties, and any other persons or entities ILS deems appropriate, shall determine:
- (i) the appropriate numerical caseload/workload standards for each provider of mandated representation, whether public defender, legal aid society, assigned counsel program, or conflict defender, in each County, for representation in both trial- and appellate-level cases; (ii) the means by which those standards will be implemented, monitored, and enforced on an ongoing basis; and (iii) to the extent necessary to comply with the caseload/workload standards, the number of additional attorneys (including supervisory attorneys), investigators, or other non-attorney staff, or the amount of other in-kind resources necessary for each provider

of Mandated Representation in the Five Counties.

(2) In reaching these determinations, ILS shall take into account, among other things, the types of cases attorneys handle, including the extent to which attorneys handle non-criminal cases; the private practice caseloads/workloads of attorneys; the qualifications and experiences of the attorneys; the distance between courts and attorney offices; the time needed to interview clients and witnesses, taking into account travel time and location of confidential interview facilities; whether attorneys work on a part-time basis; whether attorneys exercise supervisory responsibilities; whether attorneys are supervised; and whether attorneys have access to adequate staff investigators, other non-attorney staff, and in-kind resources.

(3) In no event shall numerical caseload/workload standards established under paragraph IV(B)(1) or paragraph IV(E) be deemed appropriate if they permit caseloads in excess of those permitted under standards established for criminal cases by the National Advisory Commission on Criminal Justice Standards and Goals (Task Force on Courts, 1973) Standard 13.12.

(C) Starting within 6 months of ILS having made the caseload/workload determinations specified above in paragraph IV(B), the State shall take tangible steps to enable providers of Mandated Representation to start adding any staff and resources determined to be necessary to come into compliance with the standards.

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

- (2) The parties acknowledge that the State may delegate to ILS the primary responsibility for overseeing the implementation, monitoring, and enforcement of the caseload/workload standards required hereunder, provided, however, that nothing in this provision alters the State's obligations set forth in this Section IV.
- (3) The parties acknowledge that the State may seek to satisfy the obligation in paragraph IV(D)(1) by ensuring the existence and maintenance within each of the Five Counties of an effective system for implementing and enforcing any caseload/workload standards adopted under this Section IV. Nothing in this provision alters the State's obligations set forth in this Section IV.
- (E) Beginning approximately 18 months after the Implementation Date, and no less frequently than annually thereafter, ILS shall review the appropriateness of any such standards in light of any change in relevant circumstances in each of the Five Counties. Immediately following any such review, ILS shall recommend to the Executive whether and to what extent the established caseload/workload standards should be amended on the basis of changed circumstances. Any proposed change to a caseload/workload standard implemented hereunder by ILS shall be submitted by ILS for approval by the Executive, provided, however, that such approval shall not be unreasonably withheld. Nothing in this provision shall limit the authority of ILS or the ILSB pursuant to Executive Law Article 30, Sections 832 and 833.
- (F) Incidental or sporadic noncompliance with the caseload/workload standards by individual attorneys providing Mandated Representation shall not constitute a breach of the State's obligations under this Section IV.

V. INITIATIVES TO IMPROVE THE QUALITY OF INDIGENT DEFENSE

- (A) No later than 6 months following the Effective Date, ILS, in consultation with the Five Counties, the providers of Mandated Representation in the Five Counties, and any other individual or entity ILS deems appropriate, shall establish written plans to ensure that attorneys providing Mandated Representation in criminal cases in each of the Five Counties: (1) receive effective supervision and training in criminal defense law and procedure and professional practice standards; (2) have access to and appropriately utilize investigators, interpreters, and expert witnesses on behalf of clients; (3) communicate effectively with their clients (including by conducting in-person interviews of their clients promptly after being assigned) and have access to confidential meeting spaces; (4) have the qualifications and experience necessary to handle the criminal cases assigned to them; and (5) in the case of assigned counsel attorneys, are 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. At a minimum, such plans shall provide for specific, targeted progress toward each of the objectives listed in this paragraph V(A), within defined timeframes, and shall also provide for such monitoring and enforcement procedures as are deemed necessary by ILS.
- (B) ILS shall thereafter implement the plans developed in accordance with paragraph V(A). To address costs associated with implementing these plans, ILS shall provide funding within each County through its existing program for quality improvement distributions, provided, however, that ILS shall take all necessary and appropriate steps to ensure that any distributions intended for use in accomplishing the objectives listed in paragraph V(A) are used exclusively for that purpose.
- (C) In accordance with paragraphs IX(B) and IX(E), respectively, the State shall provide to ILS \$2 million in each of state fiscal year 2015/2016 and state fiscal year 2016/2017 for the purposes of accomplishing the objectives set forth in

paragraph V(A), and ILS shall use such funds for those purposes. No portion of such funds shall be attributable to ILS's operating budget but shall instead be distributed by ILS to the Five Counties.

- (D) The Five Counties may, but shall not be obligated to, pay all or a portion of the funds identified in paragraph V(C) to ILS to provide services designed to effectuate the objectives set forth in paragraph V(A), provided such services are rendered in state fiscal years 2015/2016 and 2016/2017 and pursuant to a written agreement between ILS and the relevant County.

VI. ELIGIBILITY STANDARDS FOR REPRESENTATION

- (A) ILS shall, no later than 6 months following the Effective Date, issue criteria and procedures to guide courts in counties outside of New York City in determining whether a person is eligible for Mandated Representation. ILS may consult with OCA to develop and distribute such criteria and procedures. ILS shall be responsible for ensuring the distribution of such criteria and procedures to, at a minimum, every court in counties outside of New York City that makes determinations of eligibility (and may request OCA's assistance in doing so) and every provider of mandated representation in the Five Counties. The Five Counties shall undertake best efforts to implement such criteria and procedures as developed by ILS. Nothing in this paragraph otherwise obligates the Five Counties to develop such criteria and procedures.
- (B) At a minimum, the criteria and procedures shall provide that: (1) eligibility determinations shall be made pursuant to written criteria; (2) confidentiality shall be maintained for all information submitted for purposes of assessing eligibility; (3) ability to post bond shall not be considering sufficient, standing alone, to deny eligibility; (4) eligibility determinations shall take into account the actual cost of retaining a private attorney in the relevant jurisdiction for the category of crime charged; (5) income needed to meet the reasonable living expenses of the

applicant and any dependent minors within his or her immediate family, or dependent parent or spouse, should not be considered available for purposes of determining eligibility; and (6) ownership of an automobile should not be considered sufficient, standing alone, to deny eligibility where the automobile is necessary for the applicant to maintain his or her employment. In addition, ILS shall set forth additional criteria or procedures as needed to address: (7) whether screening for eligibility should be performed by the primary provider of Mandated Representation in the county; (8) whether persons who receive public benefits, cannot post bond, reside in correctional or mental health facilities, or have incomes below a fixed multiple of federal poverty guidelines should be deemed presumed eligible and be represented by public defense counsel until that representation is waived or a determination is made that they are able to afford private counsel; (9) whether (a) non-liquid assets and (b) income and assets of family members should be considered available for purposes of determining eligibility; (10) whether debts and other financial obligations should be considered in determining eligibility; (11) whether ownership of a home and ownership of an automobile, other than an automobile necessary for the applicant to maintain his or her employment, should be considered sufficient, standing alone, to deny eligibility; and (12) whether there should be a process for appealing any denial of eligibility and notice of that process should be provided to any person denied counsel.

- (C) ILS shall issue an annual report regarding the criteria and procedures used to determine whether a person is eligible to receive Mandated Representation in each of the Five Counties. Such report shall, at a minimum, analyze: (1) the criteria used to determine whether a person is eligible; (2) who makes such determinations; (3) what procedures are used to come to such determinations; (4) whether and to what extent decisions are reconsidered and/or appealed; and (5) whether and to what extent those criteria and procedures comply with the criteria and procedures referenced in paragraph VI(A). The first such report shall

be issued no later than 12 months following the establishment of the criteria and procedures discussed in paragraph VI(A).

VII. COUNTY COOPERATION

The Five Counties shall use best efforts to cooperate with the State and ILS to the extent necessary to facilitate the implementation of the terms of this Agreement. This obligation is in no way subject to or conditioned upon any obligations undertaken by Ontario and Schuyler Counties by virtue of their separate agreements to settle this Action. Such cooperation shall include, without limitation: (1) the timely provision of information requested by the State or ILS; (2) compliance with the terms of the plans implemented pursuant to paragraphs III(A)(2), IV(B)(1), and V(A); (3) assisting in the distribution of the eligibility standards referenced in part VI(A); (4) assisting in the monitoring, tracking, and reporting responsibilities set forth in parts III(D), IV(A), and VI(C); (5) ensuring that the providers of Mandated Representation and individual attorneys providing Mandated Representation in the Five Counties provide any necessary information, compliance, and assistance; (6) undertaking best efforts to ensure the passage of any legislation and/or legislative appropriations contemplated by this Agreement; and (7) any other measures necessary to ensure the implementation of the terms of this Agreement. County failure to cooperate does not relieve the State of any of its obligations under this Settlement Agreement.

VIII. MONITORING AND REPORTING

In order to permit Plaintiffs to assess compliance with all provisions of this Agreement, the State shall:

- (A) Promptly provide to Plaintiffs copies of the following documents upon their finalization and subsequent to any amendment thereto:
 - (1) The plan(s) concerning counsel at arraignment referenced in paragraph III(A)(2);

- (2) The reports concerning counsel at arraignment referenced in paragraph III(D);
 - (3) The determinations regarding caseload/workload referenced in paragraph IV(B)(1) and any changes proposed or made pursuant to paragraph IV(E);
 - (4) The plan(s) for quality improvement referenced in paragraph V(A);
 - (5) The eligibility criteria referenced in paragraph VI(A);
 - (6) The reports regarding eligibility determinations referenced in paragraph VI(C);
 - (7) The relevant portions of each Executive Budget submitted during the term of this Agreement.
- (B) Provide written reports to Plaintiffs concerning the State's efforts to carry out its obligations under this Agreement and the results thereof, including, without limitation:
- (8) Ensuring counsel at arraignment pursuant to paragraph III(A)(1);
 - (9) Coordinating with OCA pursuant to paragraph III(B);
 - (10) Implementing the tracking system referenced in paragraph IV(A);
 - (11) Implementing the caseload/workload standards referenced in paragraph IV(B) or paragraph IV(E) and ensuring that those caseload/workload standards are adhered to;
 - (12) Implementing the plans referenced in paragraph V(A).

Within 90 days of the Effective Date, the State and Plaintiffs shall meet and confer in good faith to identify the content and frequency of the specific reports

identified above that will be provided to Plaintiffs pursuant to this Section VIII.

IX. BEST EFFORTS AND APPROPRIATIONS

- (A) The parties shall use their best efforts to obtain the enactment of all legislative measures necessary and appropriate to implement the terms of the Settlement Agreement.
- (B) The Executive shall include in an Executive budget appropriation bill submitted to the Legislature for state fiscal year 2015/2016 sufficient appropriation authority to fund \$3.5 million for purposes of implementing paragraphs III(C), IV(A), and V(C) of this Agreement.
- (C) In order to prevent the obligation to provide counsel at Arraignment as set forth in Section III from imposing any additional financial burden on any County, the Executive shall include in an Executive budget appropriation bill submitted to the Legislature for the state fiscal year 2016/2017, and for each state fiscal year thereafter, sufficient appropriation authority for such funds that it, in consultation with ILS, OCA, the Five Counties, and any other individual or entity the Executive deems appropriate, determines, in its sole discretion, are necessary to accomplish the purposes set forth in Section III.
- (D) In order to prevent the caseload/workload standards implemented under Section IV from imposing an additional financial burden on any County, the Executive shall include in an Executive budget appropriation bill submitted to the Legislature for the state fiscal year 2016/2017, and for each state fiscal year thereafter, sufficient appropriation authority for such funds that it, in consultation with ILS, OCA, the Five Counties, and any other individual or entity it deems appropriate, determines, in its sole discretion, are necessary to accomplish the purposes set forth in Section IV. In the absence of such funds, the Five Counties shall not be required to implement the caseload/workload standards referenced in

Section IV; provided, however, that nothing in this provision alters the State's obligation to ensure that caseload/workload standards are implemented and adhered to.

- (E) The Executive shall include in an Executive budget appropriation bill submitted to the Legislature for the state fiscal year 2016/2017 sufficient appropriation authority to fund \$2 million to ILS for the purposes of implementing paragraph V(C).
- (F) The Executive shall use best efforts to seek and secure the funding described in paragraphs IX(B), IX(C), IX(D), and IX(E), as well as any other funding or resources necessary, as determined in the sole discretion of the Executive, to implement the terms of this Agreement including, without limitation, funding and resources sufficient for ILS to carry out its responsibilities under the Agreement. Consistent with the State Constitution and the State Finance Law, this Agreement is subject to legislative appropriation of such funding. The State shall perform its obligations under this Agreement in each fiscal year for the term of the Agreement to the extent of the enacted appropriation therefor.
- (G) Except as provided in paragraph XIII(A), nothing herein shall be construed to obligate the Five Counties to provide funding to implement any of the obligations under this Agreement.

X. LEGISLATIVE PROCESS AND OUTCOMES

- (A) Upon the Effective Date, this Action shall be conditionally discontinued only as to the parties that execute this Agreement, pending the enactment of the budget for the state fiscal year 2015/2016 and, if required, the completion of the meet-and-confer process described in paragraph X(B) below.

(1) No later than 21 days after the enactment of the 2015/2016 budget, the State shall provide Plaintiffs with written notice stating whether or not the

State believes that it can fully implement its obligations under this Agreement in light of the amount of funding appropriated by the Legislature.

(2) If the written notice provided under X(A)(1) sets forth the State's determination that the State can fully implement all of its obligations under this Agreement, then this Action shall be discontinued with prejudice only as to the parties that execute this Agreement. Such discontinuance shall not preclude Plaintiffs from commencing any new action pursuant to paragraph X(C)(2) below.

- (B) If at any time the State believes it cannot fully implement one or more of its obligations under this Agreement in light of the Legislature's action, the State shall notify Plaintiffs in writing of that fact and the parties shall meet and confer to determine whether they can mutually resolve the issue(s). If the parties are unable to resolve the matter within 45 days of the written notice provided by the State, the State within 10 days shall notify Plaintiffs in writing which obligation(s) the State is unable to fully implement. If the State notifies Plaintiffs that it cannot fully implement one or more of its obligations in Section III, Plaintiffs may pursue, as specified in paragraph X(C)(1) or X(C)(2), as appropriate, judicial remedies on their claims for actual denial of counsel. If the State notifies Plaintiffs that it cannot fully implement one or more of its obligations in Section IV or V of this Agreement, Plaintiffs may pursue, as specified in paragraph X(C)(1) or X(C)(2), as appropriate, judicial remedies on their claims for constructive denial of counsel. The State shall remain obligated to comply with the relevant affected provision(s) of the Agreement to the extent it has funding to do so and shall remain obligated to implement all provisions not affected by legislative action unless the State notifies Plaintiffs within 90 days of enactment of the 2015/2016 budget that it can implement no provision of Sections III, IV, and V of the Agreement, in which case the entire Agreement

shall be deemed null and void, and the relevant parties shall be restored to the same positions in the litigation that they had immediately prior to October 21, 2014.

(C) (1) State Fiscal Year 2015/2016. If the State, pursuant to paragraph X(B), notifies Plaintiffs within 90 days of enactment of the 2015/2016 budget that it cannot fully implement one or more of its obligations under the Agreement, Plaintiffs may pursue judicial remedies as allowed under paragraph X(B) by restoring this Action to the trial calendar by serving written notice upon the Court and the relevant parties that have signed the Agreement within 30 days after receiving such notice from the State, in which case the relevant parties shall be restored to the same positions in the litigation that they had immediately prior to October 21, 2014, with respect to the restored claim(s).

(2) State Fiscal Year 2016/2017 to the Expiration of this Agreement. In accordance with any notice pursuant to paragraph X(B) with respect to the 2016/2017 state fiscal year or any later state fiscal year through the expiration of this Agreement, Plaintiffs may pursue judicial remedies as allowed under paragraph X(B) only by filing a new action for declaratory and prospective injunctive relief. Nothing in the Stipulation of Discontinuance filed in this Action is intended to bar or shall have the effect of barring, by virtue of the doctrine of res judicata or other principles of preclusion, any new action as allowed under paragraph X(B) or any claims within such action. Neither the State nor any other defendant shall assert or argue that any such action or claim asserted therein is barred by virtue of the prior discontinuance of this Action.

(3) Nothing in this paragraph shall be construed to alter the parties' rights under paragraph XIII(S).

XI. DISPUTE RESOLUTION

- (A) If Plaintiffs believe that the State is not in compliance with a provision of this Settlement Agreement, Plaintiffs shall give notice to all parties in writing, and shall state with specificity the alleged non-compliance. Upon receipt of such notice by the State, Plaintiffs and the State will promptly engage in good-faith negotiations concerning the alleged non-compliance and appropriate measures to cure any non-compliance. Any party may request the participation of ILS in such negotiations. If Plaintiffs and the State have not reached an agreement on the existence of the alleged non-compliance and curative measures within forty-five (45) days after receipt of such notice of alleged non-compliance, Plaintiffs may seek all appropriate judicial relief with respect to such alleged non-compliance, upon ten (10) days' prior notice in accordance with the Escalation Notice terms set forth in paragraph XI(B). The State and Plaintiffs may extend these time periods by written agreement. Nothing said by either party or counsel for either party during those meetings may be used by the other party in any subsequent litigation, including, without limitation, litigation in connection with this Agreement, for any purpose whatsoever.
- (B) Plaintiffs shall provide notice ("Escalation Notice") to the individuals identified in paragraph XIII(G)(2) at least ten (10) business days before seeking judicial relief as described in paragraph XI(A), which notice shall inform such individuals that Plaintiffs intend to seek judicial relief and shall attach the notice provided under paragraph XI(A).
- (C) Notwithstanding the dispute resolution procedures set forth above, if exigent circumstances arise, Plaintiffs shall be able to seek expedited judicial relief against the State based upon an alleged breach of this Agreement, upon five (5) business days' prior notice to the individuals identified in paragraphs XIII(G)(1) and XIII(G)(2).

- (D) Plaintiffs shall not seek to enforce any provision of this Agreement against any County. No provision of this Agreement shall form the basis of any cause of action by Plaintiffs against any County. In no event shall County action or inaction relieve the State of any of its obligations under this Agreement.
- (E) If the State believes that a County is not meeting its obligations under this Agreement, it may seek relief following the same procedures as set out above in paragraphs XI(A), XI(B), and XI(C).
- (F) Venue over any disputes concerning enforcement of this Agreement (1) between Plaintiffs and the State, (2) involving all the parties to this Agreement, or (3) between the State and more than one County shall be in a court of competent jurisdiction in Albany County. Venue over any disputes concerning enforcement of this Agreement between the State and a single County shall be in a court of competent jurisdiction in that County.

XII. ATTORNEYS' FEES AND COSTS

- (A) The State agrees to make a payment to Plaintiffs' counsel, the New York Civil Liberties Union Foundation and Schulte Roth & Zabel LLP, in the aggregate amount of \$5.5 million, as follows:
 - (1) The sum of \$2.5 million (Two Million Five Hundred Thousand Dollars) for which an I.R.S. Form 1099 shall be issued to the New York Civil Liberties Foundation, and the sum of \$3.0 million (Three Million Dollars) for which an I.R.S. Form 1099 shall be issued to Schulte Roth & Zabel LLP in full and complete satisfaction of any claims against the State and the Five Counties for attorneys' fees, costs, and expenditures incurred by Plaintiffs for any and all counsel who have at any time represented Plaintiffs in the Action through the Effective Date.

- (2) The payment of \$2.5 million referred to in this paragraph shall be made payable and delivered to "New York Civil Liberties Union Foundation," 125 Broad Street, 19th Floor, New York, New York 10004. The payment of \$3.0 million referred to in this paragraph shall be made payable and delivered to "Schulte Roth & Zabel LLP," 919 Third Avenue, New York, New York 10022.
- (B) Any taxes on payments and/or interest or penalties on taxes on the payments referred to in paragraph XII(A) of this Agreement shall be the sole responsibility of the New York Civil Liberties Union Foundation and Schulte Roth & Zabel LLP, respectively, and Plaintiffs' attorneys shall have no claim, right, or cause of action against the State of New York or any of its agencies, departments, or subdivisions on account of such taxes, interests, or penalties.
- (C) Payment of the amounts recited in paragraph XII(A) above will be made (1) after the filing of a stipulation of discontinuance as set forth in paragraph XIV(A), upon complete discontinuance of this Action, or paragraph XIV(B), in the case of a partial restoration of this Action, and (2) subject to the approval of all appropriate New York State officials in accordance with Section 17 of the New York State Public Officers Law. Plaintiffs' counsel agree to execute and deliver promptly to counsel for the State all payment vouchers and other documents necessary to process such payments, including, without limitation, a statement of the total attorney hours expended on this matter and the value thereof and all expenditures. Counsel for the State shall deliver promptly to the Comptroller such documents and any other papers required by the Comptroller with respect to such payments. Pursuant to CPLR 5003a(c), payment shall be made within ninety (90) days of the Comptroller's determination that all papers required to effectuate the settlement have been received by him. In the event that payment in full is not made within said ninety-day period, interest shall accrue on the outstanding balance at the rate set forth in CPLR 5004, beginning on the ninety-first day after

the Comptroller's determination.

- (D) Upon receipt of and in consideration of the payment of the sums set forth in paragraph XII(A), Plaintiffs shall (1) in the case of a complete discontinuance of this Action pursuant to paragraph XIV(A), waive, release, and forever discharge the State Defendants, including the State of New York, and the Five Counties and each of their respective current and former employees in their individual capacities, and their heirs, executors, administrators, and assigns from any and all claims for attorneys' fees, costs, and expenditures incurred in connection with this Action through the Effective Date; or (2) in the case of a partial discontinuance of this Action pursuant to paragraph XIV(B), waive, release, and forever discharge the State Defendants, including the State of New York, and the Five Counties and each of their respective current and former employees in their individual capacities, and their heirs, executors, administrators, and assigns from any and all claims for attorneys' fees, costs, and expenditures incurred in connection with this Action through the Effective Date, it being specifically understood that, upon such restoration, Plaintiffs shall also be free to seek reimbursement for their attorneys' fees, costs, and expenditures incurred after the Effective Date.
- (E) Plaintiffs' counsel agree to maintain their billing records and documents evidencing payment of expenses relating to this Action for the term of this Agreement.
- (F) In the event that this Agreement becomes null and void pursuant to paragraph X(B) or Section XVI, then (1) the State shall be under no obligation to make the payments referred to in paragraph XII(A); and (2) Plaintiffs shall be free to seek reimbursement of their full attorneys' fees, costs, and expenditures incurred in connection with this Action (including those incurred both before and after the date of this Agreement).

XIII. GENERAL PROVISIONS

- (A) Supplementation of Funds. State funds received by a County pursuant to this settlement shall be used to supplement and not supplant any local funds that such County currently spends for the provision of counsel and expert, investigative, and other services pursuant to County Law Article 18-B. All such state funds received by a County shall be used to improve the quality of Mandated Representation services provided pursuant to County Law Article 18-B.

- (B) Modification. This Agreement may not be modified without the written consent of the parties and the approval of the Court. However, the parties agree that non-material modifications of this Settlement Agreement can be made, with the written consent of the parties, without approval of the Court. For purposes of this paragraph, written consent from a County shall be deemed to exist with respect to a modification of any provision of this Agreement other than Section VII if such County (1) has been notified in writing that Plaintiffs and the State have agreed upon such modification; and (2) does not, within ten (10) business days of receipt of such notice, object in writing to such modification.

- (C) Expiration of Agreement. This Agreement shall expire 7.5 years after the Effective Date.

- (D) Entire Agreement. This Agreement contains all the terms and conditions agreed upon by the parties with regard to the settlement contemplated herein, and supersedes all prior agreements, representations, statements, negotiations, and undertakings (whether oral or written) with regard to settlement, provided, however, that nothing herein shall be deemed to abrogate or modify the separate settlement agreements entered into between Plaintiffs and Ontario County, dated June 20, 2014, and between Plaintiffs and Schuyler County, dated September 29, 2014.

- (E) Interpretation. The parties acknowledge that each party has participated in the drafting and preparation of this Agreement; consequently, any ambiguity shall not be construed for or against any party.

- (F) Time Periods. If any of the dates or periods of time described in this Agreement fall or end on a public holiday or on a weekend, the date or period of time shall be extended to the next business day. A "day" shall mean a calendar day unless otherwise specifically noted.

- (G) Notice.

(1) All notices required under or contemplated by this Agreement shall be sent by U.S. mail and electronic mail as follows (or to such other address as the recipient named below shall specify by notice in writing hereunder):

If to the State Defendants:

Adrienne Kerwin Assistant Attorney General The Capitol Albany, New York 12224 Adrienne.Kerwin@ag.ny.gov	Seth H. Agata Acting Counsel to the Governor New York State Capitol Building Albany, New York 12224 Seth.Agata@exec.ny.gov
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If to Plaintiffs:

Corey Stoughton New York Civil Liberties Union Foundation 125 Broad Street New York, New York 10004 cstoughton@nyclu.org	Kristie M. Blase Schulte Roth & Zabel LLP 919 Third Avenue New York, New York 10022 kristie.blase@srz.com
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EXECUTION COPY

If to Onondaga County:

Gordon Cuffy
Onondaga County Attorney
Department of Law
John H. Mulroy Civic Center
421 Montgomery Street, 10th Floor
Syracuse, New York 13202
GordonCuffy@ongov.net

If to Ontario County:

Michael Reinhardt
Ontario County Courthouse
27 North Main Street
Canandaigua, New York 14424
Michael.Reinhardt@co.ontario.ny.us

If to Schuyler County:

Geoffrey Rossi
Schuyler County Attorney
105 9th Street
Unit 5
Watkins Glen, New York 14891
grossi@schuyler.co.ny

If to Suffolk County:

Dennis Brown
Suffolk County Attorney
H. Lee Dennison Building
100 Veterans Memorial Highway
P.O. Box 6100, 6th Floor
Hauppauge, New York 11788
dennis.brown@suffolkcountyny.gov

If to Washington County:

William A. Scott
Fitzgerald Morris Baker Firth P.C.
16 Pearl Street
Glens Falls, New York 12801
WAS@fmbf-law.com

If to ILS:

Joseph Wierschem
Counsel
Office of Indigent Legal Services
Alfred E. Smith Building, 29th Floor
80 South Swan Street
Albany, New York 12224
Joseph.Wierschem@ils.ny.gov

(2) Any Escalation Notice shall be sent as follows:

If to the State Defendants:

Meg Levine Deputy Attorney General Division of State Counsel Office of the Attorney General The Capitol Albany, New York 12224 Meg.Levine@ag.ny.gov	Seth H. Agata Acting Counsel to the Governor New York State Capitol Building Albany, New York 12224 Seth.Agata@exec.ny.gov
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(3) Each party shall provide notice to the other parties of any change in the individuals or addresses listed above within thirty (30) days of such change, and the new information so provided will replace the notice listed herein for such party.

(H) No Admission. Nothing in this Agreement shall be construed as an admission of law or fact or acknowledgement of liability, wrongdoing, or violation of law by the State or any Ratifying County regarding any of the allegations contained in the Second Amended Complaint in this Action, or as an admission or

acknowledgment by the State or any other defendant concerning whether Plaintiffs are the prevailing party in the Action by virtue of this settlement.

- (I) Precedential Value. This Agreement and any Order entered thereon shall have no precedential value or effect whatsoever, and shall not be admissible, in any other action or proceeding as evidence or for any other purpose, except in an action or proceeding to enforce this Agreement.
- (J) No Waiver for Failure to Enforce. Failure by any party to enforce this entire Agreement or any provision thereof with respect to any deadline or other provision herein shall not be construed as a waiver of its right to enforce deadlines or provisions of this Agreement.
- (K) Unforeseen Delay. If an unforeseen circumstance occurs that causes the State or ILS to fail to timely fulfill any requirement of this Agreement, the State shall notify the Plaintiff in writing within twenty (20) days after the State becomes aware of the unforeseen circumstance and its impact on the State's ability to perform and the measures taken to prevent or minimize the failure. The State shall take all reasonable measures to avoid or minimize any such failure. Nothing in this paragraph shall alter any of the State's obligations under this Agreement or Plaintiffs' remedies for a breach of this Agreement.
- (L) No Third-Party Beneficiaries. No person or entity other than the parties hereto (a "third party") is intended to be a third-party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action, and accordingly, no such third party may assert any claim or right as a beneficiary or protected class under this Agreement. This Agreement is not intended to impair or expand the rights of any third party to seek relief against the State, any County, or their officials, employees, or agents for their conduct; accordingly, this Agreement does not alter legal standards governing any such claims, including those under New York law.

- (M) Ineffectiveness Claims Unimpaired. Nothing in this Agreement is intended to, or shall be construed to, impair, curtail, or operate as a waiver of the rights of any current or former member of the Plaintiff Class with respect to such member's individual criminal case, including, without limitation, any claim based on ineffective assistance of counsel.
- (N) Confidential Information Relating to Plaintiff Class Members. The parties acknowledge that privileged and confidential information of Plaintiff Class members, including documents and deposition testimony designated as confidential, information protected by the attorney-client privilege and/or work product doctrine, and documents revealing individuals' social security numbers, private telephone numbers, financial information, and other private and sensitive personal information, was disclosed and obtained during the pendency of this Action. None of the State Defendants or the Five Counties shall use or disclose to any person such documents or information except as required by law. If any of the State Defendants or the Five Counties receives a subpoena, investigative demand, formal or informal request, or other judicial, administrative, or legal process (a "Subpoena") requesting such confidential information, that party shall (1) give notice and provide a copy of the request to Plaintiffs as soon as practicable after receipt and in any case prior to any disclosure; (2) reasonably cooperate in any effort by Plaintiffs to move to quash, move for protective order, narrow the scope of, or otherwise obtain relief with respect to the Subpoena; and (3) refrain from disclosing any privileged or confidential information before Plaintiffs' efforts to obtain relief have been exhausted.
- (O) Binding Effect on Successors. The terms and conditions of this Agreement, and the commitments and obligations of the parties, shall inure to the benefit of, and be binding upon, the successors and assigns of each party.

- (P) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflicts of law provisions thereof.
- (Q) Signatories. The undersigned representative of each party to this Agreement certifies that each is authorized to enter into the terms and conditions of this Agreement and to execute and bind legally such party to this document.
- (R) Counterparts. This Stipulation may be executed in counterparts, and each counterpart, when executed, shall have the full efficacy of a signed original. Photocopies and PDFs of such signed counterparts may be used in lieu of the originals for any purpose.
- (S) Covenant Not to Sue. Plaintiffs agree not to sue the State Defendants during the duration of this Agreement on any cause of action based upon any statutory or constitutional claim set forth in the Second Amended Complaint, except that Plaintiffs retain their rights to (1) restore this Action pursuant to paragraph X(C)(1); (2) commence a new action pursuant to paragraph X(C)(2); and (3) enforce the terms of this Agreement.
- (T) Authority of ILS. The parties acknowledge that the New York Office of Indigent Legal Services and the Board of Indigent Legal Services have the authority to monitor and study indigent legal services in the state, award grant money to counties to support their indigent representation capability, and establish criteria for the distribution of such funds.
- (U) ILS as Signatory to this Agreement. ILS is a signatory to this Agreement for the limited purpose of acknowledging and accepting its responsibilities under this Agreement.

XIV. DISCONTINUANCE WITH PREJUDICE

- (A) Without delay after the State provides the notice specified by paragraph X(A)(2), a Stipulation and Order of Discontinuance substantially in the form attached hereto as Exhibit B, shall be executed by counsel for Plaintiffs, the State Defendants, and the relevant Ratifying Counties, and filed with the Court. Nothing in the Stipulation and Order of Discontinuance so filed is intended to bar or shall have the effect of barring, including by virtue of the doctrine of res judicata or other principles of preclusion, a new action, as permitted by paragraph X(C)(2), or any claims within that action. Nor shall anything in the Stipulation and Order of Discontinuance prevent any party from enforcing this Agreement.
- (B) In the event that the Action is partially restored pursuant to paragraph X(C)(1), without delay after Plaintiffs provide notice as required by paragraph X(C)(1), the relevant parties shall confer and draft a stipulation of discontinuance that discontinues with prejudice all claims that are not restored pursuant to paragraph X(C)(1). Such stipulation shall be executed by counsel for Plaintiffs, the State Defendants, and the relevant Ratifying Counties, as appropriate, and filed with the Court. Nothing in such stipulation is intended to bar or shall have the effect of barring, including by virtue of the doctrine of res judicata or other principles of preclusion, a new action, as permitted by paragraph X(C)(2), or any claims within that action. Nor shall anything in such stipulation prevent any party from enforcing this Agreement.

XV. COUNTY APPROVAL

This Agreement shall not be binding on any County unless and until the required legislative approval in that County has been obtained and the Agreement has been signed on behalf of the County (in which case, a County may be referred to as a "Ratifying County"). In the event that any County's legislature does not approve this Agreement (a "Non-Ratifying County") and, as a result, one or more of the Counties does not become a party to this Agreement, the Agreement

shall nonetheless remain in effect and binding upon all the parties that have signed it, each of which shall perform all obligations hereunder owed to the other parties that have signed the Agreement. In the event a Non-Ratifying County fails to become a party to this Agreement, (1) this Action shall not be discontinued as against any Non-Ratifying County and Plaintiffs shall be free to pursue any claims they may have against such Non-Ratifying County and seek any and all relief to which Plaintiffs may be entitled, except insofar as such claims have been or may be dismissed pursuant to Plaintiffs' separate settlement agreements with Ontario County and Schuyler County; (2) any stipulation of discontinuance filed hereunder (including the Stipulation and Order of Discontinuance attached as Exhibit B) shall be modified to exclude any Non-Ratifying County and make clear that Plaintiffs' claims against such Non-Ratifying County are not discontinued; (3) each Non-Ratifying County shall be considered a third party pursuant to paragraph XIII(L) for purposes of this Agreement; and (4) the releases in paragraph XII(D) shall be ineffective as to such Non-Ratifying County. For the avoidance of doubt, as between Plaintiffs and the State: (a) the benefits of this Agreement, including, without limitation, the releases referred to in Section XII and the covenant not to sue referred to in paragraph XIII(S), shall accrue to the State and Plaintiffs, and (b) the State's and ILS's obligations relating to Sections III, IV, V, and VI shall remain in effect as to all Five Counties independent of County ratification of this Agreement.


XVI. COURT REVIEW AND APPROVAL


This Settlement Agreement is subject to approval by the Court pursuant to CPLR 908. In the event that the Court does not approve the Settlement Agreement, then the parties shall meet and confer for a period of 30 days to determine whether to enter into a modified agreement prior to the resumption of litigation. If the parties have not entered into a modified agreement within such 30-day period, then this Agreement shall become null and void, and the relevant parties shall request the case be restored to the trial calendar and shall be restored to the same positions in the litigation that they had immediately prior to October 21, 2014.

EXECUTION COPY

Attorneys for Plaintiffs

Attorneys for Plaintiffs

By: 
COREY STOUGHTON
CHRISTOPHER DUNN
MARIKO HIROSE
BRIN HARRIST
PHILIP DESGRANGES
DANA WOLFE

By: 
GARY STEIN
DANIEL GREENBERG
KRISTIE BLASE
MATTHEW SCHMIDT
DANIEL COHEN
AMANDA JAWAD
NOAH GILLESPIE
PETER SHADZIK

NEW YORK CIVIL LIBERTIES UNION
FOUNDATION

Dated: 10/21/2014

Dated: 10/21/2014

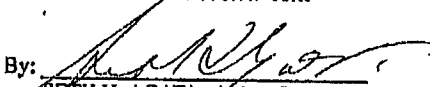
*Attorneys for Defendant New York State and
Governor Andrew M. Cuomo*

For Defendant Governor Andrew M. Cuomo

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

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

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

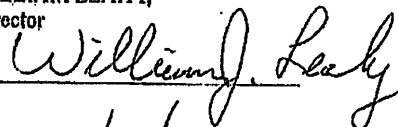
By: 
SETH H. AGATA, *Acting Counsel to
the Governor*

Dated: 10/21/2014

Dated: 10/21/2014

New York State Office of Indigent Legal Services

WILLIAM LEAHY,
Director



Dated: 10/21/2014

EXECUTION COPY

Attorneys for Defendant Onondaga County

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Dated: _____

For Defendant Washington County

JAMES T. LINDSAY,
Chairman of the Board of Supervisors

Dated: _____

Attorneys for Schuyler County

GEOFFREY ROSSI, County Attorney

Dated: _____

Attorneys for Defendant Suffolk County

DENNIS M. BROWN, County Attorney

Dated: _____

Attorneys for Ontario County

JOHN PARK, County Attorney

By: _____

MICHAEL REINHARDT

Dated: _____

So Ordered.

Dated: _____

HON. GERALD W. CONNOLLY

STIPULATION AND ORDER OF SETTLEMENT
EXHIBIT A

**AUTHORIZATION OF THE INDIGENT LEGAL SERVICES BOARD
AND THE NEW YORK STATE OFFICE OF INDIGENT LEGAL
SERVICES CONCERNING SETTLEMENT OF THE
HURRELL-HARRING V. STATE OF NEW YORK LAWSUIT**

Pursuant to New York State Executive Law §832, the Office of Indigent Legal Services (“ILS”) has the authority to act in pursuit of its statutory responsibility to make efforts to improve the quality of mandated legal representation in the state of New York. See §832 (1) and (3) (a) through (k). ILS has the further responsibility under §832 (3) (l) “to make recommendations for consideration by the indigent legal services board.” (“the Board”). The Board has the authority “to accept, reject or modify recommendations made by the office[.]” §833 (7) (c); and once it has done so, the Office has a duty under §832 (3) (m) to execute its decisions. The Board and ILS have reviewed the agreement settling the action of Hurrell-Harring, et al. v. State of New York, et al., Index No. 8866-07 (“the Agreement”), and the State’s obligations contained therein that are expressly intended for implementation by ILS. The Board and ILS acknowledge that those obligations constitute measures that, once implemented, will improve the quality of indigent legal services. Consequently, the Board accepts the recommendation of ILS that ILS implement the obligations under the Agreement and hereby authorizes and directs ILS to implement those obligations in accordance with the terms of the Agreement. The Board represents and warrants that it is authorized to take this action. Moreover, ILS represents and warrants that it has reviewed the obligations contained in the Agreement, and agrees to implement the obligations identified in the Agreement. The Board hereby authorizes ILS to sign the Agreement.

Dated: October 21, 2014

INDIGENT LEGAL SERVICES BOARD

By: 

JOHN DUNNE, Board Member

Dated: October 21, 2014

OFFICE OF INDIGENT LEGAL SERVICES

By: 

WILLIAM LEAHY, Director