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

INDIGENT LEGAL SERVICES BOARD

November 3, 2017

Agenda

I. Approval of minutes of September 22, 2017 meeting

II. Approval of Sixth Annual Report of the Board (attached)

III. Status report on FY 2018-19 budget request (Joe Wierschem)

IV. Report on activities of the Statewide Implementation Unit (Joanne Macri)

V. NYS Office of Children and Family Services Administrative Directive Family Visiting Policy for Children in Foster Care (October 5, 2017) (attached with Angela's message)

VI. Other Significant Office Activities:

- 2017 Update to our 2015 Plans to Implement the Counsel at Arraignment and Quality Improvement Objectives of the *Hurrell-Harring* Settlement (October 30, attached)
- ILS Comment on Proposed Increases in Compensation Rates for Court-Appointed Experts (October 11, attached)
- Distribution of OCA press release re: Off-Hour Arraignment Parts (October 3, attached with Bill's message)
- Magistrates Association Meeting (October 16)
- Jonathan Gradess Retirement Event (September 28)
- NY Association of Pretrial Service Agencies (October 29)
- Right to Counsel National Consortium (DOJ, November 2, Newsletter attached)
- (scheduled) NAPD Workload Institute (November 17-18)
- (scheduled) NLADA Annual Conference (December 8-10)

VII. Procedure for Scheduling 2018 Board Meetings

VIII. Executive Session

Minutes for the Indigent Legal Services Board Meeting
September 22, 2017
11:00 A.M.
New York City Bar Association

Board Members Present: Chief Judge Janet DiFiore, John Dunne, Carmen B. Ciparick, Judge Sheila DiTullio, Joe Mareane, Leonard Noisette, Vince Doyle (by phone), Michael Breslin (by phone)

ILS Office Attendees: Bill Leahy, Joseph Wierschem

Invited Guest: Suzette Melendez (by phone)

Minutes completed by: Mindy Jeng

I. Approval of Minutes from June 9, 2017

A motion to approve the minutes was made and seconded. The board voted to approve the minutes of its meeting on June 9, 2017.

The Chief Judge noted that Mike Breslin was unable to join in person due to medical issues. She expressed that the board wished him well.

II. Allocation of FY 2017-2018 Aid to Localities Appropriation

Bill Leahy stated that the ILS Office seeks board approval of the allocation of the Aid to Localities appropriation every year. He proposed the following allocations of the $104.81 million in the current fiscal year Aid to Localities appropriation:

- The statutory distribution of $40,000,000 to New York City;
- Quality Enhancement Distributions of $30,210,924, under Executive Law §§ 832 (3) (f) and 833 (7) (c);
- Competitive grants in the amount of $10,789, 075, for Counsel at First Appearance, Upstate Quality Enhancement and Caseload Reduction, and Assigned Counsel Infrastructure;
- *Hurrell-Harring* Settlement Implementation in the amount of $23,810,000

Bill stated that the Assigned Counsel Infrastructure grant had been deferred at an earlier meeting so that the money could be dedicated to assisting additional counties in providing Counsel at First Appearance. He indicated that there is now room in the budget to establish and enhance assigned counsel programs. Bill anticipates dramatic change as the assigned counsel programs are the weakest link in many county programs. He believes there will be gradual improvement in the assigned counsel program over the next five years. The Office will be looking for leaders to

guide the improvements. Bill said he was happy that board member Vince Doyle is a leader in this area and passionate about the topic.

A motion to approve the allocation of Aid to Localities appropriation was made and seconded, and the board voted its unanimous approval.

III. Budget Request for FY 2018-2019

Bill Leahy stated that the budget request for fiscal year 2018-2019 is for a total of $166.8 million, with $158.8 million for aid to localities and $8 million in state operations. The state operations request includes four new positions at the ILS Office: an administrative officer to work with Joe Wierschem, two grant administrators, and one parental representation policy analyst. It also includes $2 million to fund the first two Regional Support Centers to assist local providers of mandated representation. The Office plans to create support centers in every Judicial District upstate, one on Long Island, and one in New York City. These regional centers will facilitate collaboration among providers and help to increase efficiency and improve quality of service. Bill stated that the regional centers will help providers to use their funds as intelligently as possible and provide quality representation without being wasteful of State spending. The first regional centers will be in the Eighth Judicial District in Erie County and in the Fourth Judicial District. They will help ensure that the State's investment in mandated representation is a sound one.

Bill said that the Aid to Localities budget proposal for the current grant distribution programs and current *Hurrell-Harring* funding remain unchanged from last year. The proposal includes $50 million for the statewide expansion of the *Hurrell-Harring* reforms. The preliminary estimate of the cost for full state implementation is approximately $250 million, which will be phased in over five years. The Office will have a more specific cost estimate by December 1, when the Office will file its plans in accordance with the legislation enacted in this year's budget.

Bill added that there is also an additional $3 million in the budget proposal for a model upstate parental representation office. Ten counties applied for model parental representation funding, and ILS awarded the grant to Monroe County. There are excellent parental representation offices in New York City, which should be replicated upstate. The budget request also includes an additional $1 million for *Hurrell-Harring* quality improvement programs.

After discussion, a motion to approve the budget request and endorse the $50 million request for the statewide expansion of *Hurrell-Harring* reforms was made, seconded, and unanimously approved.

IV. Summary of Recent Office Activities

Parental Representation

The first upstate model parental representation office will be established in Monroe County. Angela Burton and Lucy McCarthy (NYSDA) have conducted trainings on parental representation.

The third Families Matter conference will take place in 2018. Chief Administrative Judge Marks held a conference call with many important Family Court judges, Jan Fink from OCA, Angela Burton, and Bill Leahy on August 2. They had an important dialogue with the judges and agreed that parental representation is a neglected area.

Angela Burton is preparing a report to the State Bar Committee on Family and the Law, and the Office hopes her proposal will be adopted by the State Bar. A lot of different groups and stakeholders are pushing for reform in this area, as Angela described at the June 9 meeting.

Assigned Counsel Program Standards
Bill will deliver a draft of the proposed Assigned Counsel Program standards to Vince Doyle very soon.

Other Activities
Bill reported that he submitted a law review article for the Indiana Law Review. He will distribute it to the board members. It includes the history of indigent defense in New York and a citation to John Dunne's comment on the Sixth Amendment right to counsel in the July 2, 2017 edition of the *New York Times* Magazine.

Bill spoke yesterday at the Texas Indigent Defense conference in Austin about the *Hurrell-Harring* settlement and statewide expansion. He addressed coalition building and how to convert litigation success into political reform.

Bill noted that the National Association of Public Defense will conduct a workload institute in November. Bill will discuss New York's caseload standards and the Office's work to implement them. In December, ILS will present at the National Legal Aid & Defender Association. New York is poised to accomplish statewide reform with a locally controlled system. There are implications for other states, since many have strong county systems. Bill stated that ILS' director of research, Andy Davies, has earned a national reputation for high quality public defense research. He has been collaborating with SUNY Albany in the study of Counsel at Arraignment in six upstate counties.

Statewide Quality Improvement
Joe Wierschem gave a report on ILS' progress on improving quality in upstate counties. The Office sent out surveys to public defenders and assigned counsel administrators in every locality. Once the results of the surveys were collected, they set up county-provider meetings for each county. So far, they have completed 43 county-provider meetings. Joanne Macri conducts these meetings. The attendees include providers, conflict providers, and county officials. The meetings inform the Office about each county's needs and priorities, and provide the basis for the plans that the Office will prepare.

Counsel at Arraignment
Joe stated that they also collect survey data about each court in each county, including information about potential off-hour arraignment parts. There are four counties where the

Administrative Board has approved plans for off-hour arraignments, and two of the counties are *Hurrell-Harring* counties.

Caseload Standards
ILS is using survey data collected from the counties to determine what providers will need to implement the ILS caseload standards. One of their challenges is developing a uniform definition of "what is a case?" What is defined as a case varies dramatically from provider to provider.

Another important source of data for ILS is site visits to eleven counties in the state. ILS will also use the wealth of information from the *Hurrell-Harring* counties. All this information will help the office determine what it will cost for all providers to comply with the standards.

Progress on Implementing Hurrell-Harring *in the Five Counties*
In Washington County, there was no representation at arraignment prior to September 2015. With the settlement funding, from October 2016 to June 2017, thousands of cases were arraigned, and almost all defendants had counsel at arraignment

There has been a massive increase in hiring in Suffolk County. The Legal Aid Society has been partnering with the Suffolk County Bar Association. The providers now have funding for experts, which has been extremely helpful in cases where defendants have mental health issues. Defendants have been sent to treatment programs that they otherwise would not have access to. Some of the service providers also help to find housing for defendants.

In Onondaga County, a courts and legal affairs reporter from the Syracuse Post-Standard observed a criminal case where the defendant was charged with second-degree murder. The defendant was acquitted. The defense had many resources including a second chair, investigative services, and a forensic pathologist. When the forensic pathologist was unable to attend court at the last minute, the *Hurrell-Harring* funding enabled the defense to secure another pathologist for the trial, which was critical for the acquittal.

V. Next Board Meeting - November 3, 2017

The next meeting of the ILS Board will be on November 3, 2017.

VI. Executive Session

The public portion of the meeting concluded. A motion was made to move into Executive Session, and the motion was seconded.

(Suzette Melendez signed off)

During the Executive Session, no action was taken. A motion was made to adjourn the meeting, and the motion was seconded. The meeting was adjourned at 1:18 PM.

The Sixth Annual Report of the Indigent Legal Services Board

Covering Fiscal Year 2016-2017

"In the coming months, my administration will introduce a plan to bring these groundbreaking [*Hurrell-Harring* Settlement] reforms to the rest of the state." (Governor Andrew M. Cuomo, Veto Message # 306, December 31, 2016)

"To ensure fair and equal representation for all accused individuals, the FY 2018 budget includes resources to develop the framework through which the state will fund one hundred percent of the costs necessary to extend the reforms provided for in the *Hurrell-Harring* settlement to all 62 counties in New York." (Division of the Budget, "Governor Cuomo and Legislative Leaders Announce Agreement on FY 2018 State Budget", April 7, 2017)

"We have a responsibility to protect the constitutional rights of New Yorkers and a moral obligation to relieve public defenders of heavy workloads that compromise the quality of representation they deliver." (Assembly Speaker Carl E. Heastie, "SFY 2017-18 Budget Includes Six Year Plan to Improve Public Defense Services Statewide", April 8, 2017)

Last year's Annual Report provided abundant information about the first year of implementation of the historic advances in public defense in the five counties covered by the *Hurrell-Harring* Settlement Agreement. Those counties – Onondaga, Ontario, Schuyler, Suffolk and Washington – saw dramatic improvement in the quality of representation provided to persons accused of a crime who could not afford to exercise their constitutional right to counsel by hiring an attorney; and those improvements continued and accelerated during this second year of implementation, thanks to the outstanding work of the ILS *Hurrell-Harring* Implementation Unit under the leadership of Chief Implementation Attorney Patricia Warth. The major milestones in HH implementation this year are as follows:

Hurrell-Harring Implementation Milestones
April 2016 through March 2017

April 1, 2016:	In its 2016-2017 fiscal budget, the State makes $10.4 million available to the *Hurrell-Harring* counties for caseload relief. This is an interim amount to ensure that the counties can start caseload relief initiatives while ILS develops caseload standards in accordance with the Settlement.
April 4, 2016:	Pursuant to the *Hurrell-Harring* Settlement, ILS issued and disseminated the *Criteria and Procedures for Determining Assigned Counsel Eligibility (Eligibility Standards)*.

April 27, 2016: ILS conducted a convening at the New York State Bar Association in Albany, NY for all mandated providers to provide an overview of the *Eligibility Standards*, discuss statewide implementation, and respond to questions.

July 2016: Working closely with the five counties, the *Hurrell-Harring* Team finalized the development of plans for thoughtfully spending the $10.4 million that the State made available in caseload relief funding. These plans provide for the hiring of attorney and non-attorney staff, the creation of strong provider infrastructures for training and quality control oversight, and access to the supports needed for quality representation, including access to experienced and credentialed experts.

May-October 2016: The *Hurrell-Harring* Team conducted trainings for providers in all the *Hurrell-Harring* counties on implementation of the *Eligibility Standards*. Additionally, in coordination with the Office of Court Administration's Office of Justice Court Supports (OJCS), ILS also conducted trainings for the judges and magistrates in the *Hurrell-Harring* counties.

October 3, 2016: The *Hurrell-Harring* counties met the Settlement deadline for implementation of the ILS *Eligibility Standards*.

November 10, 2016: ILS submitted reports to the *Hurrell-Harring* parties updating them on the progress of implementing the 2015 Quality Improvement Plan and the 2015 Counsel at Arraignment Plan. The 2016 Quality Improvement update report can be found here: https://www.ils.ny.gov/files/Hurrell-Harring/Quality%20Improvement/Hurrell-Harring%20Updated%20Quality%20Improvement%20Plan%20111016.pdf. The 2016 Counsel at Arraignment update report can be found here: https://www.ils.ny.gov/files/Hurrell-Harring/Counsel%20At%20Arraignment/Hurrell-Harring%20Updated%20Counsel%20At%20Arraignment%20Plan%20111016.pdf.

November 11, 2016: The five *Hurrell-Harring* counties met the Settlement's deadline for having programs in place to provide counsel at all arraignments in the counties. For all the providers, full arraignment coverage requires the implementation of multiple programs to cover arraignments that occur during regular court sessions as well as off-hour arraignments (i.e., those that occur any time of day or night outside of regular court sessions). In Onondaga County, for example, this means implementation of four arraignment programs: i) one for Syracuse City Court arraignments; ii) one for Syracuse Traffic Court arraignments; iii) arraignments programs for all regular court sessions in the County's 28 town and village courts; and iv) an on-call program for off-hour arraignments throughout the County.

November-December, 2016: On November 18, the RAND Corporation delivered its draft caseload study report, pursuant to its contract with ILS. The RAND draft report detailed its comprehensive study of public defense providers' caseloads in the five *Hurrell-Harring* counties, and furnished its findings and recommendations to ILS. During late November and early December, ILS consulted with government officials and public defense providers in the five counties, and with the *Hurrell-Harring* parties. These consultations were essential to developing appropriate caseload standards under the Settlement Agreement.

December 8, 2016: ILS met the Settlement deadline to submit a report setting appropriate caseload standards for providers. As the report notes: "Implementation of these standards in [the *Hurrell-Harring*] counties marks an historic accomplishment: the achievement of fully funded caseload relief that is unprecedented in its provision of time and resources for public defenders and assigned counsel to represent their clients in accordance with established professional standards and ethical rules." The report was released on May 8, 2017, and can be found here: https://www.ils.ny.gov/files/Hurrell-Harring/Caseload%20Reduction/Caseload%20Standards%20Report%20Final%20120816.pdf.

January 2017: ILS issued a research report entitled: *The Impact of Eligibility Standards in Five Upstate New York Counties*, describing what we had learned about the impact of the Eligibility Standards on provider caseloads in the five *Hurrell-Harring* counties. This report can be found here: https://www.ils.ny.gov/files/Hurrell-Harring/Eligibility/Research/The%20Impact%20of%20Eligibility%20Standards%20in%20Five%20Upstate%20New%20York%20Counties%20-%20ILS%20report%20January%202017.pdf. On March 27, 2017, ILS supplemented this report with a Suffolk County Addendum, which can be found here: https://www.ils.ny.gov/files/Hurrell-Harring/Eligibility/Research/The%20Impact%20of%20Eligibility%20Standards%20-%20Suffolk%20County%20Addendum%20-%20March%202017.pdf.

February 1, 2017: Having worked extensively with the providers to develop Settlement-related data collection and maintenance practices, ILS received the first Quarterly Reports from providers with data concerning implementation of the ILS Eligibility Standards, provision of Counsel at Arraignment, and information about attorney practices in areas that are markers of quality (e.g., use of non-attorney supports, client communication, motion practice). A dedicated email address was created to facilitate the routine transmittal of standardized data reports by all providers.

March 2017: The *Hurrell-Harring* team began a series of structured interviews with attorneys to better understand their day-to-day work and to learn more about their perspectives on the barriers to delivering high quality representation. Team members also engaged in regular court observations, this time with an emphasis on County Court. The structured interviews and court observations informed our continued implementation efforts in all counties, and provided context for the issues raised and the progress highlighted in the 2017 Update Report.

April 4, 2017: As required by the Settlement, ILS issued a report detailing implementation of the Eligibility Standards in the five *Hurrell-Harring* counties. This report can be found here: https://www.ils.ny.gov/files/Hurrell-Harring/Eligibility/Research/Implementation%20of%20Eligibility%20Criteria%20and%20Procedures%20in%20the%20Hurrell-Harring%20Counties%20040417.pdf.

April 9, 2017: The state budget for FY 2017-2018 includes an appropriation of $19,010,000 for full funding in the five lawsuit counties of the caseload standards established by ILS on December 8, 2016; and also provides $2.8 million for counsel at arraignment and $2 million for quality improvement initiatives pursuant to the *Hurrell-Harring* settlement agreement.

Meetings and Actions of the Board

April 22, 2016: At the outset of this meeting, the Board and the Director paused to honor the many contributions made by original Board member Sue Sovie, whose active involvement was instrumental in the Board's 2015 approval of the ILS *Standards for Parental Representation in State Intervention Matters*. As reported in last year's Fifth Annual Report, Sue died of an illness on February 8, 2016. At this meeting, the Board also:

- Voted to reallocate funds previously designated for other purposes, in order to increase the annual amount that would be available to support successful proposals in response to our second RFP for Counsel at First Appearance (CAFA). As a result of the Board's action, the available funding for fulfilling this vital legal right would increase from $4 million to $5.74 million annually;
- Authorized the Director to submit a plan to the Director of the Budget to expend up to $800,000 for the continuation of CAFA in four of the five *Hurrell-Harring* counties;
- Received and reviewed a document submitted by Director Leahy entitled *Indicia of Progress in the 57 Counties Outside of New York City*. This report documented significant staffing increases in upstate institutional provider programs from 2012 to

2014. Attorney staffing in these offices rose by 12.5 %, and support staff by 17.8%. The average weighted caseload per attorney dropped from 719 in 2012, to 616 in 2014. This number, while far exceeding the maximum national standard of 400 weighted cases and the September, 2014 ILS standard of 367, nevertheless constituted a 14.3% reduction during this period;

- Welcomed a presentation by Director of Regional Initiatives Joanne Macri on the establishment of our first in the nation statewide network of Regional Immigration Assistance Centers.

June 17, 2016: At this meeting, the Board and the Director expressed their deep appreciation to Toni Cimino, Esq., who served with great distinction as liaison between the Board and the Office since their establishment in 2010 and 2011 respectively; and they congratulated her on her appointment by the Mayor to a judgeship on the New York City Civil Court. At this meeting, the Board also:

- Heard from Director Leahy and ILS counsel Joe Wierschem about the status of the Justice Equality Act legislation filed by Assemblymember Patricia Fahy of Albany and Sen. John DeFrancisco of Syracuse, which was nearing final approval by the Senate and the Assembly in the closing moments of the legislative session. (This bill was to receive final approval in both legislative branches that evening, as reported in the New York Law Journal article *Indigent Defense Proponents Hail 'Historic Moment' in NY* (June 21, 2016);
- Reviewed a Request for Proposals issued by Onondaga County on June 10, 2016 seeking a first-rate vendor to provide high quality indigent defense services in the county; and heard a report from Amanda Oren, Quality Enhancement Attorney on the HH implementation team, concerning that RFP and the establishment of a mentor program in the county's Assigned Counsel Program;
- Received an update by Director of Research Andy Davies and HH Caseload Standards Attorney Nora Christenson concerning progress on the HH Caseload Standards Study, to be conducted by the RAND Corporation, whose report will be due in November, 2016;
- Reviewed the agenda and heard a report describing the meeting of the six Regional Immigration Assistance Centers that took place in Albany on June 2, 2016.

September 23, 2016: At this meeting, the Board:

- Voted to allocate the $96.2 million FY 2016-17 Aid to Localities appropriation as recommended in Director Leahy's memorandum. Included within this amount was the **$40,000,000** statutory distribution to New York City under State Finance Law § 98-b (3) (b); an allocation of **$30,210,924** for Quality Enhancement distributions in New York City and the 57 counties that lie outside the city; an increased amount of **$5,740,278** for Counsel at First Appearance grants; **$4,000,000** for Quality

Enhancement and Upstate Caseload Reduction grants; and **$870,139** for the development of a Model Upstate Parental Representation Office. The Board also voted to allocate $15.2 million for Hurrell-Harring implementation: **$10,400,000** for caseload relief, **$2,800,000** for counsel at first appearance, and **$2 million** for quality improvement initiatives;

- Approved the Office's FY 2017-18 budget request in the amount of $136,600,000, which consisted of $130.2 million in Aid to Localities funding, and $6.4 million in State Operations. The latter request included funding for a network of Regional Support Centers, for a Statewide Appellate Resource Center, and for additional funding for implementation of the *Hurrell-Harring* settlement;

- Heard a report by Angela Burton, ILS Director of Quality Enhancement for Parental Representation, who presented the Board with copies of the draft RFP for the Upstate Model Parental Representation Office, emphasizing the need for early representation and for a comprehensive or holistic, client centered philosophy of representation. She also informed Board members about the second annual statewide training conference that was scheduled for October in conjunction with the Child Welfare Court Improvement Project and NYSDA, and she thanked Chief Judge DiFiore for agreeing to give a videotaped welcome to the conference participants.

December 9, 2016: At this meeting, the Board:

- Reviewed the Off-Hours Arraignment Parts bill (Chapter 492) and the Streamlined Procedure for Poor Person Status on Appeal bill (Chapter 459), which had been signed into law by the Governor on November 28; and the amendment of County Law § 722-f (2) (Chapter 337) to require the counties and New York City to file their annual financial reports with ILS rather than the State Comptroller, which had been signed into law on September 29;
- Reviewed the 2016 updates on implementing the Counsel at Arraignment Obligations and the Quality Improvement Objectives of the *Hurrell-Harring* Settlement Agreement, which ILS had submitted to the parties on November 10, 2016;
- Received a report by the Director concerning the Office's December 8, 2016 determination of appropriate caseload standards for providers of public defense in the five counties, which had been timely delivered to the parties;
- Received a report on the December 1, 2016 RIAC meeting at the ILS Office at which the Director of the Governor's Office for New Americans appeared.
- Agreed that, given the necessarily intense focus on implementing all aspects of the *Hurrell-Harring* Settlement Agreement in timely fashion, publication of the Board's Fifth Annual Report would be deferred until March, 2017.

ILS Research Accomplishments

November 2016: Publication of fourth annual 'Cost Estimate' report

Using older caseload standards, the *Cost Estimate* report showed that unmet funding needs for public defenders declined approximately 12% between 2012 and 2015.

Full report: https://www.ils.ny.gov/files/Hurrell-Harring/Caseload%20Reduction/Estimate%20of%20the%20Cost%20of%20Compliance%20with%20Maximum%20National%20Caseload%20Limits%20in%20Upstate%20New%20York%20-%202015%20Update.pdf

December 2016: Completion of the RAND caseload study & resulting caseload funding request

ILS contracted with the RAND corporation to assist in the development of caseload standards pursuant to the Office's obligations under the *Hurrell-Harring* settlement. That study, which involved intensive data collection from the five lawsuit counties, sought to establish what additional time and resources attorneys needed to represent their clients effectively. Concluding in late 2016, the study formed the basis for ILS' subsequent publication of caseload standards. Those standards themselves became the basis for our request, honored in both the executive and enacted budget, for over $19,000,000 in assistance to those counties to guarantee the time needed for each case and client.

"Over 140 practicing public defenders and assigned private attorneys participated in one or more components of the study. For the first time in the history of New York State outside of New York City, these lawyers had an opportunity to measure the time they currently expend on criminal cases; to comment upon the sufficiency of that time; and to consider what time it should take to provide high quality representation for their clients in assigned criminal cases at the trial and appellate levels. The RAND study left no doubt that the 1973 NAC standards are outdated and excessive. Moreover, the study made it clear that modern caseload standards, suitable for representation in the twenty-first century, must include more criminal case categories than the felony-misdemeanor-appeal triad of the NAC standards." **A Determination of Caseload Standards pursuant to §IV of the *Hurrell-Harring v. The State of New York* Settlement** (December 8, 2016) at 13.

January 2017: Publication of analysis of Impact of Eligibility Standards

ILS' eligibility standards, published in April of 2016, were made mandatory in the Hurrell-Harring counties in October of that year. Responding to concerns from some counties that the application of these standards would result in significant increases in caseloads for public defenders, we examined their impact and published our findings in January, 2017. Each of the five counties had different eligibility determination procedures prior to the implementation of the new standards, but the impact of the new standards was relatively muted across all of them. Although the proportion of applicants deemed eligible for services increased in all the counties we studied, the increase was less

than 4% on average, and no more than 6% in any county. A short Addendum to the report was published in March 2017 with data on Suffolk County that had not previously been available.

Original Report: https://www.ils.ny.gov/files/Hurrell-Harring/Eligibility/Research/The%20Impact%20of%20Eligibility%20Standards%20in%20Five%20Upstate%20New%20York%20Counties%20-%20ILS%20report%20January%202017.pdf

Suffolk County Addendum report: https://www.ils.ny.gov/files/Hurrell-Harring/Eligibility/Research/The%20Impact%20of%20Eligibility%20Standards%20-%20Suffolk%20County%20Addendum%20-%20March%202017.pdf.

April 7, 2017: Publication of first report on the Counsel at First Appearance Project

ILS' collaboration with SUNY Albany to assess the impact of Counsel at First Appearance (CAFA) in six upstate counties produced its first publication this year. The article, titled *Court Reform: Why Simple Solutions Might Not Fail? A Case Study of Implementation of Counsel at First Appearance*, appeared in the Spring 2017 volume of the Ohio State Journal of Criminal Law. The article documented the process of implementing CAFA in the counties under study, and sought to identify the ways counties and providers had overcome the obstacles they faced. It concluded that "programs largely overcame these difficulties by adopting incremental approaches to expanding defense services, designing programs that were adapted to local conditions, and by persevering in the face of political resistance." This project was begun in 2014 with funding from the National Institute of Justice. Further publications from the CAFA team are expected in the future.

Full reference: Alissa Worden, Andrew Davies, Reveka Shteynberg and Kirstin Morgan (2017), "Court Reform: Why Simple Solutions Might Not Fail? A Case Study of Implementation of Counsel at First Appearance." 14(2), Ohio State Journal of Criminal Law 521-551.

Other research activities:

- Alyssa Clark, ILS research analyst, was admitted to study for a Ph.D. in criminal justice at the SUNY Albany in fall of 2016.
- Davies co-edited a volume of empirical research on public defense in the *Ohio State Journal of Criminal Law* with Prof. Janet Moore of the University of Cincinnati. Davies was co-author on two pieces – one of which was the CAFA article referenced above, and the other of which reported results of a survey of practicing public defenders on what they thought researchers should investigate. (Full reference: Janet Moore and Andrew Davies (2017), "Knowing Defense." 14(2), Ohio State Journal of Criminal Law 345-371.)
- In fall of 2016, Davies was named co-Principal Investigator on the *Survey of Publicly Appointed Defense Attorneys*. This project, funded by the Department of Justice's

Bureau of Justice Statistics, will develop a survey instrument to gather nationally representative information on publicly appointed defense attorneys and their work. Other collaborators on the project are the National Association for Public Defense and the Urban Institute.

- Davies organized the third annual series of panels dedicated to research into indigent legal services at the 2016 *American Society of Criminology* meeting in New Orleans, Louisiana, in November of that year.
- He also presented before the National Right to Counsel Consortium (on 'Research and Reform') in September, 2016, and the White House Interagency Roundtable (on 'Indicators of Access to Justice') in October, 2016.

Parental Representation Activity

Angela Burton, ILS Director of Quality Enhancement, Parent Representation, engaged in the following highlighted activities:

- **April 8, 2016:** Delivered opening remarks at the CUNY Law Review Symposium, Reimagining Family Defense. Her article *Introduction to Symposium: Reimagining Family Defense* was published in the Winter 2016 issue, 20 CUNY L. Rev. 1, http://academicworks.cuny.edu/clr/vol20/iss1/
- **June 10, 2016:** Presented to Family Court Judges on ILS Standards for Parental Representation in State Intervention Matters at 9th JD Family Court Judges meeting in Pleasantville, at invitation of Hon. Kathie Davidson, 9th JD Family Court Supervising Judge
- **August 21, 2016:** Presented on ILS Standards at 8th JD Family Court Judges Meeting in Buffalo, at invitation of Hon. Michael Griffith, Supervising Judge
- **March 2, 2017:** Presented on ILS Standards at meeting of NYC Family Court Judges, Child Protective Affinity Group in Manhattan, at invitation of Hon. Jeanette Ruiz, Administrative Judge, NYC Family Court
- **Families Matter 2016:** Co-sponsored this second successful statewide conference on October 14-15, 2016 in Albany with the New York State Defenders Association (NYSDA) and the NYS Child Welfare Court Improvement Project (CWCIP). This conference, attended by over 200 public defense attorneys representing parents in Family Court, featured opening remarks (via video) by Chief Judge DiFiore, and the presentation of the inaugural **Ella B. Family Justice Award** to Lauren Shapiro, Esq., Brooklyn Defender Services.

Child Welfare Court Improvement Project:

- Participated on NYS Office of Child and Family Services (OCFS) Stakeholder Review Team for Federal government's Child and Family Services Review; recruited attorneys for Parent Attorney Focus Group requested by the CFSR team, and participated in the Focus Group

- Submitted written recommendations to OCFS for inclusion in federally required Program Improvement Plan for the CFSR, including a proposal that OCFS issue statewide guidelines to ensure adequate parenting time for children placed in foster care (Parenting Time Policy)
- Suggestion for Statewide Parenting Time Policy, although not included in the Program Improvement Plan, was adopted by OCFS to be drafted, with input from Angela, as a statewide Administrative Directive

Model Upstate Parental Representation Office: On March 20, 2017, ILS issued a competitive RFP to establish a model Parental Representation Office in a county outside of New York City, which will implement a client-centered, holistic, and multidisciplinary model of representation as embodied in the ILS *Standards for Parental Representation in State Intervention Matters*.

Regional Immigration Assistance Centers

- **June 2 and December 1, 2016:** Statewide meetings of the six RIACs led by ILS Director of Regional Initiatives Joanne Macri, including training sessions and roundtable exchanges of information

- **October 27, 2016:** RIAC staff visited the Department of Homeland Security (DHS) Buffalo Federal Detention Facility; attended a session on local policy issues by the DHS Office of Chief Counsel, and engaged in a discussion of statewide enforcement policies and practices impacting access to counsel in criminal proceedings with the District Director of US Customs and Immigration Enforcement (ICE) and the DHS Chief Counsel.

- **January, 2017:** ILS developed and released a shared library of resources for statewide use by the RIACs, as a means to develop statewide materials that may be utilized in each region.

- **Trainings Conducted:** During this year, Joanne Macri conducted 27 trainings or presentations related to the RIACs and to the participation by ILS on the NYS Interagency Task Force on Human Trafficking. These included six training sessions for judges on the RIACs and Immigration Consequences, one was a program on Human Trafficking at the Westchester Bar Association, and one was a presentation at the New York State Bar Association Annual Meeting on behalf of the NYSBA Criminal Justice Section.

Summary of Accomplishments and Challenges:

The April, 2017 enactment of Executive Law § 832 (4) gave the ILS Office, in consultation with the Board, the authority and responsibility to extend three key provisions of the *Hurrell-Harring* settlement – counsel at arraignment, reduced caseload limits, and specified quality improvement initiatives – to every one of the sixty-two counties in New York, including New York City, at state expense. By April 1, 2023 every provider of publicly funded criminal defense representation should have the resources and the support needed to provide high quality, effective representation to every client, in every criminal case. The Board expresses its deep and lasting gratitude to Governor Cuomo and his staff; to Assembly Speaker Heastie and Senate Majority Leader Flanagan; to Senator DeFrancisco and Assemblymember Fahy; and to all the organizations who supported this year's legislative authorization and fiscal commitment. The Board expresses its thanks to the New York State Bar Association (NYSBA) and the New York State Association of Counties (NYSAC) for their unswerving and influential support over many years.

Even as the Board acknowledges and applauds and begins to implement the statewide reforms in public defense, it is keenly aware that its responsibility and that of the Office to improve the quality of parental representation in Family Court has not yet achieved statutory reform or fiscal relief. While incremental progress is being made, and alliances are being established, we have a long way to go before it can be said that structures and funding are in place to assure effective representation of every client in every case. The achievement of these twin goals, structural reform and appropriate state funding, is a core priority of the Office and the Board going forward.

Approved on this third day of November, 2017.

Janet DiFiore, Chair

Michael G. Breslin

Carmen Ciparick

Sheila DiTullio

Vincent E. Doyle

John R. Dunne

Joseph C. Mareane

Leonard Noisette

Leahy, Bill (ILS)

From: Burton, Angela (ILS)
Sent: Thursday, October 26, 2017 10:33 AM
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Subject: NEW DIRECTIVE: Parenting Time for Children in Foster Care
Attachments: 17-OCFS-ADM-14.pdf

Good morning Chief Defenders and Family Court Mandated Representation Providers:

I write to ask your assistance in disseminating an important new Administrative Directive (ADM) from the NYS Office of Children and Family Services (OCFS), effective October 5, 2017, *Family Visiting for Children in Foster Care*. This policy was developed with substantial input from providers of Family Court mandated representation across the state, including many included on this list. A copy is attached and available on the OCFS website (http://ocfs.ny.gov/main/policies/external/OCFS_2017/ADFs/17-OCFS-ADM-14.pdf). I need your help to get this out as soon as possible to the widest possible distribution, including attorneys at institutional provides and 18-B panel attorneys.

The ADM includes a requirement that by early January 2018, each Local Department of Social Services must have a written plan, consistent with its principles. Starting in January 2018, the local DSS must provide the plan to parents and other caretakers, foster parents, attorneys for children, and attorneys for parents when a child is placed in foster care. The plan must be developed in consultation with relevant stakeholders, including providers of Family Court mandated representation. Please encourage attorneys in your county who provide 18B family court representation to participate with the local Department of Social Services in the development of their county's plan.

Among many important points are: (1) an initial presumption of unsupervised, regular, and frequent parenting time; (2) when the agency seeks supervised visitation, "to assist the judge's decision-making, specific evidence supporting the request" must be offered on the record and entered into CONNECTIONS; (3) guidance on factors to consider in determining the least restrictive level of supervision when supervision is indicated; and (4) clarification that the OCFS regulation regarding bi-weekly parenting time establishes a *minimum,* not a *maximum*.

We hope this new policy will be a powerful tool in our efforts to help separated parents and children in foster care maintain and strengthen their connections, thereby improving the likelihood of timely and successful family reunification. Also, please stay tuned for upcoming training events that will highlight the significance of the policy and explore strategies for implementation.

Take good care,
aob

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NEW YORK STATE | Office of Children and Family Services

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Sheila J. Poole
Acting Commissioner

Administrative Directive

Transmittal:	17-OCFS-ADM-14
To:	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies (or other specific types of agencies)
Issuing Division/Office:	Child Welfare and Community Services
Date:	October 5, 2017
Subject:	Family Visiting Policy for Children in Foster Care
Suggested Distribution:	Directors of Social Services Child Welfare Supervisors Foster Care Supervisors LDSS and Agency Attorneys Caseworkers
Contact Person(s):	See section V of this ADM.
Attachments:	None

Filing References ***(check on these –be sure that are correct and there are no typos)***

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
		18 NYCRR 428.6(a)(2)(viii), (4)(iii),(6)(iii), and 7(iii) 430.12(d)(1), 431.10(e) and 431.14	Social Services Law §§384-a and 398(6)(o); Family Court Act §§1030, 1081 and 1089		

I. Purpose

The purpose of this Administrative Directive (ADM) is to advise local departments of social services (LDSSs) and voluntary authorized agencies (VAs) of the need to develop a written policy, consistent with the safety and best interests of the child, related to regular parenting time (visitation by the parent of the child in foster care) and family visitation for children in foster care. This ADM notes that contact between the child and his or her parent(s) is aimed at parenting the child, thus throughout it is called parenting time. For other family members, it is called visitation. This ADM provides guidance to LDSSs and VAs on developing a

written policy, which should also be developed in consultation with relevant stakeholders and made available to families and stakeholders no later than 90 days from the release of this ADM.

Your district's written policy should be a guide when developing each child's visiting plan with his or her parent(s), guardian(s), sibling(s), half sibling(s) and other significant family member(s), potential permanency resources, and/or any other person of significance to the child. The written policy should also include determining the least restrictive level of supervision needed during visits for foster children with their families.

II. Background

As New York State strives to improve its child-centered, family-focused child welfare practices to achieve better outcomes for children and families, LDSSs and VAs are encouraged to review current practices and policies related to parenting and family visiting for children in foster care. To guide decision-making about parenting time and family visiting, it is required that each LDSS and VA will develop a written policy that is consistent with the principles expressed in this ADM. Such written policy must be made available and provided to parents and other caretakers, foster parents, attorneys for children, and attorneys for parents when a child is placed in foster care. Transparency about expectations and decision-making processes provides the parties and all stakeholders with clear guidance about maintaining and cultivating children's connections with their parents and families while they are in foster care.

It is critical that children in foster care maintain frequent contact with their parents and other family members when it is safe to do so, unless the child is freed for adoption. Contact with family reduces the trauma of separation for children, improves their well-being while separated from their families, and helps expedite permanency regardless of the permanency goal.

New York law recognizes the importance of maintaining and strengthening children's connections with their family while in foster care. For example, the respondent in an Article 10 abuse or neglect proceeding "...shall be granted reasonable and regularly scheduled visitation unless the court finds that the child's life or health would be endangered thereby...." [Family Court Act § 1030(c).] Frequent and consistent parent-child contact that takes place in as natural an environment as possible preserves the emotional attachment of parents and children to each other, reduces the trauma of separation for both the child and the parent, allows parents to practice day-to-day parenting skills, and can expedite reunification. Where appropriate, visiting that includes "shared parenting" responsibilities (e.g., with the parent accompanying the child and foster parent to medical and school appointments or assisting the child with homework) could help to maintain and strengthen the parent-child bond and support the parent's ability to plan for the child's future.

III. Program Implications

General Principles for Successful Parenting Time and Family Visiting

Frequent contact between children in foster care and their families is critically important to child well-being and to timely reunification and other permanency goals. Research regarding the experiences of children in foster care has consistently demonstrated that

parenting time and family visiting is associated with positive outcomes and shortened lengths of separation of children from their families.[1]

A child's separation from his or her family and removal from his or her home is often a traumatic event for both the child and the parent. Regularly scheduled parent-child interaction when safe and appropriate, in as natural an environment as possible, can lessen the impact of the separation; help improve parenting skills; and maintain and strengthen the parent-child bond. Moreover, ongoing and increasingly frequent parent-child interaction is critical for the well-being of a child who is in foster care. Frequent parenting time also supports better informed permanency decisions as it allows for an evolving assessment of parental capacity and of the parent-child relationship.[2]

Maintaining contact with siblings, when they are not placed together, is equally important for a child's well-being. Authorized agencies are responsible for ensuring that diligent efforts are made to facilitate regular biweekly visitation or communication between minor siblings or half-siblings who have been placed apart, unless such contact would be contrary to the health, safety, or welfare of one or more of the children, or unless geographic distance precludes visitation.[3]

Subject to any court orders pertaining to visiting, decisions about the level of supervision during visits are to be made in accordance with each LDSS's written policy, as more fully discussed in section III of this ADM, Program Implications. This section establishes the presumption that unless certain conditions are present, *parent-child visitation ("parenting time")* should be unsupervised. Supervision of parenting time is appropriate when, for example, in regard to Family Court Article 10 proceedings, there is a reasonable basis to believe that a child may be at serious risk of physical and/or emotional harm or injury if visits are unsupervised, or a court has found that supervised visitation is in the child's best interest and issues an order to that effect.[4]

1. **Frequency and Location of Initial and Ongoing Visits:** Meaningful, frequent, and quality parent-child interaction has been shown to be highly predictive of safe and lasting reunification.[5] OCFS regulation 18 NYCRR 430.12(d)(1), requires, for children with the permanency goal of discharge to parents, that LDSSs and VAs plan for and make efforts to facilitate *at least* biweekly parenting time(visitation) between the child and the parent or caretaker to whom the child is to be discharged, unless such parenting time (visiting) is specifically prohibited by court order or prohibited by a voluntary placement agreement, or the child is transferred to an Office of Mental Health or Office for People With Developmental Disabilities, or because the appropriateness of the placement makes biweekly parenting time (visitation) an impossibility. This regulation has been widely

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[1] Hess, Peg, *Visits: Critical to the wellbeing and permanency of children and youth in care* (2014). In Hess, P. and Mallon, G. (Eds.), "Child Welfare for the Twenty First century: A Handbook of Practices, Policies and Programs" (pp. 647-662). New York: Columbia University Press.

[2] Smariga, M. (2007). *Visitation with infants and toddlers in foster care: What judges and attorneys need to know*. Washington, DC: American Bar Association and Zero to Three.

[3] 18NYCRR 431.10(e).

[4] Family Court Act §1030(c).

[5] *See* Jillian Cohen and Michele Cortese, "Cornerstone Advocacy in the First 60 Days: Achieving Safe and Lasting Reunification for Families," *Child Law Practice*, Vol. 28, No. 3 (May 2009); U.S. Department of Health and Human Services, "Family Reunification: What the Evidence Shows," *Child Welfare Information Gateway Issue Brief*, June 2006, pp. 6-7, https://www.childwelfare.gov/pubPDFs/family_reunification.pdf.

interpreted as permitting a *maximum* parenting time (visitation)of once every two weeks, typically for one hour, which means that a child would only see his or her parent for a little over one day (26 hours) per year. **It is important to note that *this regulation establishes a minimum, not a maximum* for parenting time for children in foster care.**

The efforts of LDSSs and VAs to facilitate regular and frequent parenting time when safe and appropriate (but at least biweekly) must include the following:

- Provision of financial assistance, transportation or other assistance, which is necessary to enable biweekly parenting time to occur
- Follow-up with the parent or relative when scheduled visits do not occur to ascertain the reasons for missed visits, and to make reasonable efforts to prevent similar problems in future visits
- Arranging for visits to occur in a location that assures the privacy, safety, and comfort of the child and his or her parent and other family members[6]

2. **Initial Visit**: The transition into foster care involves abrupt changes in close relationships and family environments that can be traumatic for both children and parents,[7] so it is important to schedule parenting time as soon as possible after the child is separated from his or her parent(s). This initial interaction serves several purposes, including the following:

- Providing continuity and reassurance for the child
- Supporting the continued exercise of parental responsibilities and obligations
- Giving the parent the opportunity to immediately begin to address the reasons for the agency's removal of the child from the home
- Beginning the process of determining the permanency plan for the child[8]

Unless there is a court order or other exceptions listed under 18 NYCRR 430.12(d)(1)(i) setting out a different timeframe or directing that no visits take place, the initial parent-child contact should occur as soon as practically and logistically possible, preferably within 2-3 days of the child's placement into foster care. Immediate phone contact between parents and children (if the parent has phone access) after a removal can be facilitated by providing the parent's phone number to the foster parent, with prior consent from the parent. Frequent phone or email contact, and Skype, FaceTime or other electronic face-to-face technologies, along with the exchanging of family photos, is encouraged throughout the child's stay in care.

3. **Ongoing Visits:** Unless prohibited or otherwise limited by court order and other exceptions listed under 18 NYCRR 430.12(d)(1)(i), regular and frequent visiting must continue after the initial visit to reduce the trauma of separation, maintain and establish attachment among family members, and promote parent and child engagement in the permanency planning process. Generally, parenting time should take place as frequently as possible. Research suggests that infants and toddlers should see their parent as often

[6] 18NYCRR 430.12(d)(1)(i)(a)-(c).

[7] Monique Mitchell, "Does anyone know what is going on? Examining children's lived experience of the transition into foster care," 32, *Children and Youth Services Review* 437 (2010).

[8] Minnesota Department of Human Resources. *Child and family visitation: A practice guide to support lasting reunification and preserving family connections for children in foster care*. Minneapolis: Minnesota Department of Human Resources (2009). DHS-5552-ENG 1–09. Retrieved March 28, 2017, from https://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-5552-ENG

as possible, and no less than two or three times per week to maintain, encourage, and strengthen the parent-child bond [9] Additionally, special consideration must be given to accommodating mothers who are breastfeeding.

LDSSs and VAs should assist with arrangements for parents to participate in their child's medical visits, educational and special events, and other occasions.

4. **Location of Parenting Time:** As soon as is safely possible, parenting time should take place in the home of the parent (or other suitable home-like setting) or in the community (e.g., public library, park, YW/YMCA, house of worship, etc.).

5. **Weekend and Overnight Visits:** As a general rule, a child should not be trial- or final-discharged without first having experienced successful overnight and weekend visits with the parent over a period of time. For families who are residing in a temporary residence (e.g., a shelter or with relatives or friends), the caseworker should work with the parent and the shelter administration, relative, or friend to develop a plan for overnight visits (which might include, for example, the child staying at the shelter, or a relative hosting the visits).

In cases where the court orders an immediate discharge, the order must be obeyed and implemented accordingly, regardless of whether there have been prior overnight and/or weekend visits, unless the order is stayed or modified.

6. **Scheduling Considerations:** Visiting arrangements must take into consideration the schedules of all those involved, including the parent, child, and foster parent. Caseworkers must factor in obligations the parent may have, such as work schedules, participation in a drug treatment program, medical appointments, job searches, income maintenance appointments, and obligations and responsibilities to other family members. The child's school schedule, extracurricular activities, and commitments to supportive services must also be considered when making scheduling decisions. Caseworkers must consider travel distance and cost, safety considerations for parents in domestic violence situations, and cultural, religious, and language issues. Alternative sites as well as evening and weekend hours should be considered as appropriate. When there is a conflict between the parent's availability and the availability of the foster parent, the agency must arrange for visiting that works for the parent.

7. **Suspension of Parenting Time:** A child in placement has a right to maintain frequent and regular connection with his or her parents, unless the child is freed or parental contact is limited by a court order. Parent-child visits must not be suspended due to a parent's noncompliance with the service plan or poor behavior on the part of the parent, as long as the non-compliance or poor behavior does not compromise the physical and emotional safety of the child or others during visits and has not otherwise been limited or

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[9] See, Smariga, M., *Visitation with infants and toddlers in foster care: What judges and attorneys need to know*, Washington, DC: American Bar Association and Zero to Three (2007); Douglas F. Johnson, Vice President, National Council of Juvenile and Family Court Judges, *Babies Cry for Judicial Leadership*, http://www.casaforchildren.org/atf/cf/%7B9928CF18-EDE9-4AEB-9B1B-3FAA416A6C7B%7D/0710_reasonable_efforts_in_the_dependency_court_issue_0119.pdf ("Standard supervised biweekly, one-or-two hour visitation is inadequate, inappropriate and unacceptable. Reasonable efforts in this context means meaningful daily or near daily parenting time to build the infant/parent relationship and achieve permanency.")

prohibited by court order. Such visits shall also not be suspended or otherwise altered if doing so would be contrary to an order of the Family Court.

When an authorized agency determines to terminate or limit visiting rights between a parent or guardian and the child voluntarily placed in foster care in accordance with Social Services Law §384-a, parenting time (visitation) may not be terminated or limited except by court order in a proceeding in which the parent or guardian was a party.[10] Visitation is to continue until a court order is obtained, except in cases of imminent danger to the child's life, health and safety. In cases of imminent danger of the child's life, health and safety, the authorized agency may terminate or limit patenting time (visitation) without a court order. On the same day visitation is terminated or limited, the authorized agency must commence a court action, and if action is already before the court, shall seek an order of the court as if the child had been taken into protective custody. The above reference provisions do not apply where the parent or guardian had agreed to such limitation in the voluntary placement agreement.

8. **Additional Parenting Time in Special Circumstances:** If a child is experiencing a crisis, the caseworker should arrange additional parenting time; when so doing will not place the child at risk of physical or emotional harm. Examples of such circumstances are:

- The child is hospitalized for a medical or psychiatric reason.
- The child is re-placed into another foster home and is separated from his/her siblings.
- The child has experienced a trauma or crisis in the foster home, school, or place of employment, for example, and would benefit from the support of the parent to process what happened.
- There has been a death in the family.
- A clinician recommends that additional contact would be beneficial for the child to improve his/her relationship with the parent.

B. Considering Whether and How Much Supervision and/or Monitoring Is Necessary

Best practice presumes that parenting time with a child who is in foster care is to be unsupervised unless supervision is warranted. The Family Court Act §1030(c) provides that the court "may order visitation under the supervision of an employee of a local social services department upon a finding that such supervised visiting is in the best interests of the child."[11] In the absence of evidence demonstrating that supervision is in a child's best interest, parenting time for a child in foster care should be unsupervised. When an LDSS or VA seeks a court order for supervised visitation, to assist the judge's decision-making, specific evidence supporting the request should be offered on the record, and should also be entered into CONNECTIONS for use when re-evaluating the level of supervision needed.

Every family situation is different, and the level of supervision a family requires must be determined on a case by case basis, taking into consideration the reasons the child came into care, the child's age, and other family needs. The factors listed below are offered as an aid to LDSSs and VAs in determining the least restrictive level of supervision needed for a particular child. Between closely supervised, agency-based visits and liberal

[10] 18 NYCRR 431.14.
[11] FCA §1030(c).

unsupervised visits, there is a range of options that should be considered in making that determination.

Determining the degree of supervision is important to maintaining child safety. Unsupervised parenting and family visiting time should be implemented as early as is safely possible to promote healthy, positive connections for the child and the entire family. Parent-child and family contact should occur in settings that encourage the most natural interaction between family members while minimizing any risk that may exist to the child. These gatherings can and should include parental and family participation in normally occurring events in the child's life; for example, school conferences and other school events, medical appointments, church programs, and extracurricular activities. Below are some factors to consider when deciding the least restrictive level of supervision when supervision is deemed appropriate.

Factors to Consider in Determining the Least Restrictive Level of Supervision Necessary for Children in Foster Care

a) Parenting time and visitation should be supervised only when there are safety issues that may endanger the child's physical or emotional safety. Supervision is appropriate when one or more of the following conditions exist:

- There is a court order that requires supervised visits.
- There is reason to believe that the child may be at serious risk of physical and/or emotional harm or injury during the visit.
- There is reason to believe that the parent may attempt to influence, interfere with, manipulate, or coerce the child's potential testimony in court.
- There is reason to believe that the parent may abscond with the child.
- In the presence of the child, a parent has displayed explosive, emotionally uncontrolled behavior toward agency staff or the foster parent(s).

b) During the supervised visit, the staff is present to help the parent(s) building parenting skills and to respond to the parent's requests for assistance and support.

c) The person supervising the visit must also assess the safety of the child, paying close attention to the physical contact between the parent and child, as well as the reaction the child has to any physical contact, and verbal or non-verbal communication.

- The person supervising the visit must be present with the parent and child during the entirety of the visit and, depending on the allegations of the case and/or other safety factors, must be able to hear all communication between the child and parent(s) during the visit.
- If the child and/or parent speaks a language other than English, an interpreter must be used during the visit.

d) Whenever possible, supervised visits should take place outside of the agency to promote the parent-child relationship and offer the caseworker the opportunity to determine whether to decrease the level of supervision.

e) Staff must have a clear safety plan for the visit.

f) Staff should not stop the visit, except in the following instances:

- If there is imminent danger to the child's life, health and safety, including but not limited to:
  i. if the parent attempts to leave the visiting area with the child and is not otherwise authorized to do so;
  ii. if, in the presence of the child, a parent has displayed explosive, emotionally uncontrolled behavior toward agency staff or the foster parent(s); or
  iii. if the parent is under the influence of drugs or alcohol.

- If there is a court order authorizing stopping the visit
- If the parent tried to influence, interfere with, manipulate, or coerce the child's potential testimony for court

g) Staff should document their observations and assessments of supervised visits in CONNECTIONS for use when re-evaluating the level of supervision needed.

h) When recommending that a court order supervised visitation that impacts parenting time, the facts supporting the recommendation should be explained to the court with specificity and documented in CONNECTIONS for use when re-evaluating the level of supervision needed.

C. Increasing or Decreasing Level of Supervision

1. The LDSS or VA should regularly assess the continuing necessity for supervision. The level of supervision should be decreased if none of the factors listed above in B.A.1 exist and there are no other determined child safety related issues that would require parenting time be supervised.

2. Visits need not be supervised when there are no safety issues requiring supervision and the child is comfortable being alone with the parent. Whenever consistent with safety and the child's comfort, caseworkers must increase the frequency of parenting time and decrease the level of supervision, as appropriate. Conversely, when safety or risk concerns arise, caseworkers may need to increase the level of supervision of visits. Caseworkers must be attentive to changes whether positive or negative in parental and child behavior patterns once unsupervised parenting times have begun.

3. Before moving to unsupervised parenting time, the caseworker should contact the agency attorney to determine whether the Family Court judge has issued orders regarding visits, whether such order(s) addresses the issue of supervised parenting time and ascertains whether the attorney has any additional information to be considered before moving to unsupervised parenting time. If the caseworker has reasons to change the level of supervision, but a court order prevents the change, the caseworker must address the issue with the agency attorney about modifying the order. The caseworker may not make a change in the visit plan until receiving confirmation from the agency attorney that the court has ordered that the change may proceed except in cases of imminent danger.

4. If there is no court order regarding the level of supervision, the caseworker may increase or decrease the level of supervision on a case, provided that the caseworker consults first with the agency attorney and the case manager. The caseworker must notify the agency attorney, the parent's attorney and the attorney for the child of the modified visit plan.

Conclusion: Family visiting plans that meet the child's developmental needs and allow for safe, frequent contact between the child and members of their family must be created for all children in foster care.[12] These visiting plans must include the planned frequency and location of the visits, the name of the child, the names of the persons who are scheduled to visit the child, any arrangements or assistance necessary to facilitate frequent and regular parenting time and family visiting time, and, if supervised visits are planned, the reasons such supervision was deemed appropriate.[13]

IV. Required Action

LDSSs and VAs will need to assess change readiness and the potential training needs within their agency to successfully implement the principles set out in this ADM. LDSSs will additionally need to assess their relationship with the Family Court regarding court orders. A certain degree of flexibility regarding the level of supervision and frequency of parenting time is necessary to allow for plan adjustments that strive to meet the individual needs of children in foster care and their families. LDSSs and VAs in need of assistance are encouraged to contact their regional office. LDSSs and VAs must develop a written policy, which should also be developed in consultation with relevant stakeholders and made available to families and stakeholders no later than 90 days from the release of this ADM.

V. Contacts

Any questions concerning this release should be directed to the appropriate regional office, Division of Child Welfare and Community Services:

Buffalo Regional Office - Amanda Darling (716) 847-3145
Amanda.Darling@ocfs.ny.gov
Rochester Regional Office - Karen (Buck) Lewter (585) 238-8201
Karen.Lewter@ocfs.ny.gov
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Spring Valley Regional Office - Yolanda Désarmé (845) 708-2498
Yolanda.Desarme@ocfs.ny.gov
New York City Regional Office - Ronni Fuchs (212) 383-1676
Ronni.Fuchs@ocfs.ny.gov
Native American Services - Heather LaForme (716) 847-3123
Heather.LaForme@ocfs.ny.gov

VI. Effective Date

Upon release of this ADM.

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[12] 18 NYCRR 428.6(a)(2)(viii).
[13] 18 NYCRR 430.12(d)(1).

/s/ Laura M. Velez

Issued By:
Name: Laura M. Velez
Title: Deputy Commissioner
Division/Office: Child Welfare & Community Services

Implementing the *Hurrell-Harring v. The State of New York* Settlement

2017 Update

October 30, 2017

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

2017 Update to the 2015 Plans to Implement the Counsel at Arraignment and Quality Improvement Objectives of the *Hurrell-Harring v. State of New York* Settlement

The New York State Office of Indigent Legal Services (ILS) submits this report to update its 2015 plan *Implementing the Quality Improvement Objectives of the Hurrell-Harring v. State of New York Settlement* (Quality Plan) and its 2015 plan *Implementing the Counsel at Arraignment Obligations in the Hurrell-Harring v. State of New York Settlement* (Counsel at Arraignment Plan). This report follows up on our update reports issued in November 2016 for the Quality Plan and the Counsel at Arraignment Plan. The 2016 update reports detailed steps the five *Hurrell-Harring* counties had taken to implement the Quality Plan and the Counsel at Arraignment Plan. This report focuses more comprehensively on the progress made towards ensuring that counsel is present at all arraignments and towards improving the quality of criminal defense representation.

Where relevant, this report incorporates progress made in implementing the ILS *Criteria and Procedures for Determining Assigned Counsel Eligibility* (Eligibility Standards), which were issued in April 2016, and the Settlement's caseload relief obligations, which New York State funded in fiscal year 2016-2017 at a total cost of $10.4 million for the five *Hurrell-Harring* counties (Caseload Relief I) and is funding in fiscal year 2017-2018 at a total cost of $19 million (Caseload Relief II). In so doing, this report acknowledges that the Settlement's four core sections - counsel at arraignment, eligibility standards, quality improvement, and caseload relief – are inextricably interconnected. For example, in some counties the presence of counsel at arraignment has facilitated more immediate decisions about financial eligibility for assignment of counsel. Similarly, Caseload Relief funding has resulted in further initiatives to improve the quality of representation not only by allowing attorneys to spend more time on cases, but also by increasing access to non-attorney professionals and bolstering quality control infrastructures and training. If implementation is viewed only in discrete sections, it is not possible to meaningfully capture the significant improvements the *Hurrell-Harring* counties have made over the past two years.

This report uses information gathered from a variety of sources, including the following: meetings with county officials and providers; ongoing communication with the eleven *Hurrell-Harring* providers; media accounts of Settlement implementation; and data the *Hurrell-Harring* providers have sent to ILS. This report also relies upon information gleaned from the 146 hours of court observations ILS staff conducted between November 2016 and August 2017 and the 29 structured interviews of provider staff attorneys conducted between March and August 2017, both of which are summarized below.

Court Observations

Between January and August 2017, ILS staff observed a total of 62 court sessions in a variety of courts, including the following:

Onondaga County: County Ct; Syracuse City Ct (Traffic part, Felony part, Drug Court part, DV part, part 4); Clay Twn Ct; DeWitt Twn Ct, Camillus Twn Ct; Salina Twn Ct
Ontario County: County Ct; Canandaigua City Ct; Geneva City Ct; Canandaigua Twn Ct
Schuyler County: County Ct; Montour Falls Vlg Ct; Watkins Glen Vlg Ct
Suffolk County: County Court; District Court (parts D-11, D-41, D-42, D-43, D-52, D-54, D-55, D-56, Prisoner Part, Drug Court, Mental Health Court, Felony Part); and Riverhead Town Ct
Washington County: County Ct; Ft. Edward Vlg Ct; Ft. Edward Twn Ct; Kingsbury Twn Ct

We observed a total of 247 arraignments, 418 case adjournments, 109 plea proceedings, 58 sentencing proceedings, 4 jury trials, 1 bench trial, and 1 SORA proceeding.

Structured Attorney Interviews

Between March and August 2017, ILS staff interviewed a total of 29 provider staff attorneys or panel attorneys, as follows:

Hiscock LAS: 1 appeals attorney; 1 parole revocation attorney
Onondaga ACP: 3 panel attorneys (one a mentee)
Ontario CD/ACP: one CD staff attorney; 2 panel attorneys
Ontario PD: 3 staff attorneys
Schuyler ACP: 3 panel attorneys
Schuyler PD: 1 part-time staff attorney; 1 full-time staff attorney
Suffolk ACP: 3 panel attorneys
Suffolk LAS: 1 East End staff attorney; 1 County Court staff attorney; 2 District Court staff attorneys
Washington ACP: 3 panel attorneys
Washington PD: 2 staff attorneys; 1 assistant supervising attorney

Finally, this report also acknowledges a recent change in law regarding off-hour arraignments. On November 28, 2016, Governor Andrew Cuomo signed into law legislation that amends the Judiciary Law, the Criminal Procedure Law, and the Uniform Justice Court Act to allow for New York's Chief Administrative Judge to approve the creation of centralized arraignment parts in

each county to "facilitate the availability of public defenders or assigned counsel for defendants in need of legal representation" at off-hour arraignments. *See* Judiciary Law § 212(1). Centralizing arraignments in this manner is one of the recommendations in our 2015 Counsel at Arraignment Plan. The legislation became effective on February 26, 2017. On December 19, 2016, the Office of Court Administration (OCA) convened a meeting of stakeholders to discuss this new legislation, identify potential issues, answer questions, and provide an overview of OCA's plan for implementation. Since then, stakeholders in some *Hurrell-Harring* counties have been meeting to discuss centralized arraignment plans, and the Chief Administrative Judge has approved the creation of centralized arraignment parts in two *Hurrell-Harring* counties – Onondaga and Washington. This report discusses the plans for centralized arraignments in these two counties.

This report is divided into the following sections:

- County-specific updates on implementation of the Settlement, with a focus on progress made in improving quality and ensuring counsel is present at arraignment
  - I. Onondaga County
  - II. Ontario County
  - III. Schuyler County
  - IV. Suffolk County
  - V. Washington County

- Counsel at arraignment: benefits, county initiatives, and next steps

- Ongoing barriers to providing quality representation

- The June 2017 ACP Summit

COUNTY-SPECIFIC UPDATES

I. ONONDAGA COUNTY

Since the 2016 update reports, both of Onondaga County's primary providers, the Onondaga County Bar Association's Assigned Counsel Program (ACP) and Hiscock Legal Aid Society (Hiscock), have experienced a change in leadership. For Hiscock, the leadership transition has continued the organization's focus on using State funding effectively to improve quality. For the ACP, as detailed below, the leadership change has been a critical turning point.

As described in our 2016 update report, since the summer of 2015 ILS had been working with the ACP's then-Executive Director, Renee Captor, to implement the Settlement, but we often met resistance. In June 2016, Onondaga County issued a Request for Proposals (RFP) seeking a vendor to provide the mandated representation services the ACP had been providing since 2004. The goal was to select a vendor by August 2016 and transition to this vendor by January 2017. During this RFP process, ILS continued working with Ms. Captor, urging her to take steps to implement the Settlement. To overcome the ongoing resistance, we adopted various priorities and strategies. For priorities, we focused on implementing the programs called for in the 2015 Quality and Counsel at Arraignment Plans but held off on implementing data collection and maintenance requirements. We also decided to wait to develop a plan for Caseload Relief I funding until the County selected a primary provider. For strategies, we involved Kathy Dougherty from the County Attorney's Office to press Ms. Captor into taking steps necessary to implement the arraignment programs called for in the Plan. We also conducted weekly phone meetings with Ms. Captor and Ms. Dougherty to ensure that the ACP was on target to meet the November 11, 2016 Settlement deadline for implementing the programs needed for full arraignment coverage. For the Quality Plan, in consultation with Ms. Dougherty, we assumed the primary role in developing and implementing the Mentor Program and training initiatives called for in the 2015 Quality Plan. For example, ILS developed the protocols for the Mentor Program, including the protocol for selecting the mentors; ILS scheduled and organized the orientation program for the mentors and the joint orientation program for the mentors and mentees; and ILS, in consultation with the mentors, created and implemented a curriculum of Continuing Legal Education (CLE) training programs for panel attorneys and then partnered with the New York State Defenders Association (NYSDA) and the New York State Association of Criminal Defense Lawyers (NYSACDL) to deliver these programs. Additionally, ILS assumed the responsibility of notifying panel attorneys about these initiatives.

In September 2016, the County announced that the ACP had been selected as the primary provider of mandated public criminal defense services. We intensified our efforts to work with Ms. Captor on Settlement implementation and, among other things, urged her to: work closely with ILS to develop a plan for effectively utilizing the Caseload Relief I funding; take more responsibility for the Mentor Program and training initiatives; significantly reform her protocols for reviewing attorney vouchers; revamp the ACP's expert payment policies to ensure the availability of non-attorney professionals; and start collecting and maintaining relevant data. We continued to meet resistance.

In mid-November 2016, Ms. Captor announced that she was resigning as the ACP Executive Director effective December 2016. The ACP Board immediately initiated a search for new ACP leadership, including an Executive Director, a full-time Deputy Director, and a Quality Enhancement Director.

By January 2017, Kathy Dougherty had been hired as the new ACP Executive Director; she began the position on January 17, 2017. Her first task was to work with the ACP Board to recruit and hire Laura Fiorenza as Quality Enhancement Director and David Savlov as Deputy Director. Ms. Fiorenza began working for the ACP on February 27, 2017, and Mr. Savlov on March 6, 2017. Once these three individuals were on board, ILS worked with them to develop an updated Quality Plan that accounts for the change in ACP leadership and the money available in caseload relief which allows the ACP to bolster its quality oversight infrastructure.

It is within this context that we detail the County's progress in implementing the Settlement.

A. Quality

Onondaga County was allocated $588,677 of the Settlement's $2 million in Quality funding to improve the quality of indigent criminal defense representation. The ACP received $432,934 and Hiscock received $155,697. Additionally, the County was allocated $4.2 million in Caseload Relief I funding. These two sources of funding, combined with new leadership for both mandated providers, have resulted in Onondaga County making significant progress toward improving the quality of public defense.

1. Hiscock Legal Aid Society

Hiscock received $155,697 from the Settlement's Quality funding to address its most pressing need: a significant criminal appeals backlog. Because of this backlog, defendants typically wait two years, often while incarcerated, before their assigned appellate attorney can start working on their appeal. Pursuant to the 2015 Quality Plan, the $155,697 was used to hire two appellate attorneys to help alleviate the backlog. Hiscock advertised, interviewed, and hired two full-time appellate attorneys in May 2016.

While this has allowed Hiscock to keep pace with the current level of newly assigned appeals, it has had only a minimal impact on the appeals backlog. This issue was fully illuminated in December 2016, when ILS issued its Caseload Standard Report, which identified the average minimum number of new assigned appeals each provider should receive each year. The information ILS has received from Hiscock suggests that, in terms of *newly assigned* cases, they are on target to meet this caseload standard. But the caseload standards do not account for case backlogs, and Hiscock appeals attorneys continue to confront the dilemma of devoting sufficient time to their current cases or devoting less time on each current case so they can resolve the backlog.

Hiscock and ILS have worked together to address this problem, and the current plan for the new Caseload Relief II funding sets aside funding to implement an appellate backlog project that should resolve the backlog within three years.

The Caseload Relief I funding also allowed Hiscock to hire a third attorney for its parole revocation unit. In August 2017, Hiscock hired Craig Schlanger, an experienced and reputable criminal defense attorney. During our structured attorney interviews earlier this year, the parole revocation attorney we interviewed identified the need for the parole unit to have a supervising attorney. The plan for Caseload Relief II funding provides Hiscock with the money needed for a supervising attorney. Fortunately, Linda Gehron, Hiscock's new President and Chief Executive Office, has been able to re-allocate resources internally, on an interim basis, to enhance Mr. Schlanger's salary so he can serve as Supervising Attorney. Ms. Gehron has reported to ILS that since he has been hired, there is better quality oversight of the parole revocation unit. Mr. Schlanger is also regularly working with the ACP to enhance the communication between Hiscock's parole revocation attorneys and the assigned criminal defense attorney in those cases in which the parole revocation is attached to a new criminal charge. As our structured attorney interviews revealed, and as Ms. Gehron has corroborated, Hiscock's parole revocation unit still needs a full-time social worker to support the attorneys, particularly where connecting clients with treatment can prevent them from having their parole revoked. The current plan for Caseload Relief II fund provides for the hiring of a social worker.

2. Assigned Counsel Program

The new ACP leadership has quickly undertaken initiatives and policies to transform the ACP and improve the quality of defense in Onondaga County. These initiatives are described below.

a. Vouchers

Upon becoming Executive Director, Ms. Dougherty learned that the prior ACP Executive Director had several unwritten rules or guidelines she used in reviewing vouchers, which often resulted in cuts to substantive attorney services. Ms. Dougherty jettisoned these unwritten rules so that substantive attorney services are no longer cut. Additionally, at a July 15, 2017 quarterly meeting with panel attorneys, Ms. Dougherty told them that they can now bill for substantive services for which they previously could not bill, such as: i) assisting their clients in completing the assigned counsel application; ii) helping clients charged with Aggravated Unlicensed Operation of a Vehicle (AUO) resolve issues pertaining to license suspensions or revocations with the Department of Motor Vehicles (DMV); and iii) spending time resolving the AUO's underlying tickets. The ACP also updated the ACPeeper voucher system which blocked attorneys from completing their vouchers unless they explained why they had spent more than one hour on certain substantive services. The ACP notified attorneys of this change in its August 14, 2017 email newsletter.

Panel members report that these changes are positively impacting their practices. In an August 28, 2017 article in the Syracuse *Post-Standard*, attorneys reported that the ACP is more supportive and that substantive services are not being cut.[1] Charles Keller, a high-quality panel attorney, was quoted as saying: "When you know that the program supposed to be reimbursing you isn't doing it, then it's a strong motivator not to do things you think you need to do." He

[1] http://www.syracuse.com/crime/index.ssf/2017/08/how_millions_in_state_money_for_poor_defendants_helped_in_syracuse_murder_acquit.html

went on to explain that this is no longer happening: "[Y]ou're not getting nickled and dimed for anything." The ACP is timely reimbursing for reasonable expenses the attorneys incur representing their clients, and the voucher review has been shortened from 6-8 weeks to 1-2 weeks. ILS' structured interviews of panel attorneys corroborated the change in voucher review; the interviewed attorneys reported that they are seeing a dramatic difference in the voucher review process and that vouchers are being processed quicker and are not being cut for substantive work.

b. Access to Non-Attorney Professional Supports

As the Settlement recognizes, non-attorney professionals, such as experts, investigators, interpreters, social workers, and mitigation specialists/sentencing advocates, are critical to quality representation. Data disclosed during the *Hurrell-Harring* litigation and information from 2014 provided to ILS by the former ACP leadership suggest that Onondaga ACP panel attorneys have traditionally used non-attorney professionals in less than 1% of cases. With Settlement funding, the new ACP leadership is trying to increase the use of these non-attorney professionals by implementing policies requiring or urging attorneys to engage these services, including the following:

- Investigators are to be used in all homicide cases or when an attorney interviews a fact witness;
- A mitigation specialist should be used in any felony case where the client is eligible for Youthful Offender adjudication or in Juvenile Offender cases;
- Interpreters must be used for non-English speaking clients; and
- Attorneys are expected to contact the Regional Immigration Assistance Center (RIAC) for any non-citizen client.

The ACP leadership has also implemented a protocol for panel attorneys to apply directly to the ACP to obtain these services. Under this new protocol, panel attorneys are no longer required to apply to the court (and thus "preview" their case), but instead simply complete and email a short application form to the ACP. The presumption is in favor of granting the attorney's application unless the request does not make sense, is incomplete, or is unclear. In such circumstances, the ACP will contact the panel attorney to obtain more information before approving the application. The ACP will seek to process these applications as quickly as possible, with the goal of responding to the request the day of receipt. The ACP has used the quarterly panel attorney meetings, its weekly email newsletter, and direct communication with attorneys to inform the panel attorneys of the expectations regarding use of non-attorney professionals and of the new protocols for engaging these services.

The ACP's efforts to facilitate access to non-attorney professional supports was highlighted in the August 28, 2017 *Post-Standard* article. On the eve of the homicide trial of his 17-year old

Afterward, Keller credited new leadership – and a huge infusion of state money – to the Assigned Counsel Program for helping him provide the strongest defense he could on [his client's] behalf. Before this year, Keller said he didn't think a new expert would be approved in time for trial. Such was the red tape that left many lawyers dejected, causing their work to suffer, he said. The adversarial justice system only works if both sides – the prosecutors and defense lawyers – have the resources to do their jobs, Keller said. "You can't say it's an adversarial system if the New England Patriots are playing the local high school team," Keller said. "It's not David and Goliath anymore." Keller's reaction was echoed among other defense lawyers who routinely take cases on behalf of people who can't afford their own lawyers.

-Syracuse Post-Standard, August 28, 2017

client, defense attorney Charles Keller's expert forensic pathologist became unavailable because of a scheduling conflict. Mr. Keller notified the ACP leadership, and with their assistance and their agreement to make funding immediately available, he retained another reputable expert within two days. Mr. Keller's 17-year-old client was acquitted of murder.

The ACP has also addressed the issue of the hourly payment rate to ensure access to non-attorney professionals. Until August 2016, non-attorney professionals were paid hourly rates consistent with guidelines issued by the Chief Administrator of the Courts in 1992. Thus, for example, investigators were reimbursed at $32 per hour; interpreters between $30 and $40 per hour. These hourly rates were well below the rates these non-attorney professionals could make in private retained cases or other types of assigned cases (such as federal cases), and well below rates that other ACPs across the state pay for reimbursement. In June 2016, the ACP Board raised the hourly rate for investigators to $50, and after taking over as ACP Executive Director, Kathy Dougherty met with the two investigators used most often by ACP attorneys and convinced them to begin taking assigned cases again. For other non-attorney professionals, the ACP does not cap the hourly rate.

The ACP has also begun compiling lists of experts and other non-attorney professional supports to facilitate access to these professionals. Additionally, the ACP is developing contractual relationships with reputable investigators, interpreters, social workers, and/or sentencing advocates to ensure that these resources are accessible to attorneys. Having contractual relationships with non-attorney professionals will significantly facilitate panel attorney access to these services, thereby encouraging their use. Ms. Dougherty met with the mentors in February 2017 to discuss non-attorney professional services and to identify some of the better respected professionals in Onondaga County. She has also obtained the approval of the ACP Board to subcontract with high-quality, non-attorney professionals.

The ACP also will incorporate into its training and CLE curriculums use of non-attorney professional services and where appropriate, invite investigators, experts, and other non-attorney professionals to participate in trainings. The training curriculum that the ACP is developing will emphasize the importance of using these services and identify clear steps in accessing them. The foundation for this training has been set – i.e., on March 3, 2017, the ACP co-sponsored an

"Investigating Your Case" CLE that included a presentation by Paul Chambers, the Senior Investigator for the Ontario County Public Defender Office.

c. Communication with Panel Attorneys

The ACP has taken several steps to enhance communication with its panel attorneys. Panel attorneys raised this issue with ILS early on, with one attorney describing communication as "a black hole," explaining that his emails and phone calls to the ACP typically went unanswered. This issue was aptly illustrated during a November 18, 2016 meeting with panel attorneys which ILS organized. In response to ILS' suggestion that attorneys could email information to the ACP, one attorney asked: "Does the ACP do business by e-mail? I've sent numerous correspondence by e-mail and no response. I've sent them to the Director, Assistant Director, and others. I assumed you do not do business by e-mail."

When Kathy Dougherty took over as Executive Director in January 2017, she prioritized effective communication with panel attorneys, a priority now shared by all ACP staff members. Strategies for effective communication include the following:

- *Regular meetings with panel attorneys*: The ACP has conducted three panel-wide meetings thus far: one on January 19, 2017; one on July 11, 2017; and one on September 12, 2017. The ACP plans to continue these meetings on a quarterly basis.

- *A weekly email newsletter*: In June 2017, Ms. Fiorenza began her weekly email newsletter (*ACP Defender*) which is sent to all panel attorneys each Monday. In *ACP Defender*, Ms. Fiorenza describes new or changing policies, provides court updates, notifies panel attorneys of training opportunities, provides a schedule of upcoming trials for attorneys to observe, and highlights ACP attorney successes. She also provides links to legal updates and articles relevant to panel attorney work.

- *An on-line presence*: While the ACP is in the process of developing a website, Ms. Fiorenza began an ACP Facebook page on May 15, 2017.

Perhaps most importantly, Ms. Dougherty ensures that the ACP is responsive to attorney questions and concerns. She has circulated to the panel a list of all staff and their emails. During the September 2017 panel meeting, she introduced key ACP staff members to the panel; they received a spontaneous round of applause.

During ILS' structured interviews, attorneys commented on the accessibility of ACP staff and their sense that the ACP is there to support and not hinder their work.

ILS has been copied in on some emails that highlight this culture shift. For example, on June 29, 2017 Mr. Keller sent the following email to the panel: "I want to commend the new ACP leadership for all the hard work in changing the culture at ACP." He went on to explain that he had made a mistake in a voucher he submitted the previous week, and that he called the ACP and the mistake was immediately resolved, with "no hassle, no threats and no finger wagging." Other panel attorneys have also emailed their comments about the ACP's transformation.

- I, for one, want to thank you and the staff for their efforts and the vast improvements I have seen with the Program.... Others have noticed. I did an off-hour arraignment last night with Justice Pavone and he stated that there was a big improvement in voucher turnaround. I let him know there has been significant progress in many other areas.

-I personally feel the entire ACP system has done a 180. Vouchers are processed quickly and we are being paid for actual work completed without fear of having vouchers reduced for "too much time talking to client." [M]any attorneys have expressed the sheer joy of feeling like the ACP is here to back us up and make our jobs easier.

-Please accept my thanks for the wonderful job done by you and your staff. I completely agree, the processing of vouchers have improved incredibly since the beginning of this year. I appreciate all your efforts.

-The ACP staff is just amazingly helpful... you're all very much appreciated!

- Panel attorney emails to the ACP

d. Addressing Systemic Issues

The commitment to effective communication and to addressing legitimate concerns of the panel attorneys has also resulted in the ACP addressing systemic barriers to quality representation that had been previously ignored. Early this year, for example, panel attorneys complained about two jail policies: first, the jail was not permitting investigators to meet confidentially with their incarcerated clients unless the assigned lawyer was also present; and second, attorneys were not permitted to bring laptops to the jail so they could review case-related videos, electronic discovery, and other case-related digital media with their clients. Ms. Dougherty met with jail officials and obtained their agreement for investigators to meet confidentially with clients without the lawyer being present as long as the lawyer sends the jail verification that the investigator is engaged in the case. Jail officials also changed their policy so that ACP attorneys and investigators can bring laptop computers to the jail to allow clients to review case-related information.

Another systemic issue that emerged is judicial resistance to second chair assignments. As discussed below, the ACP has worked to create more second chair opportunities for panel attorneys. Under the previous ACP administration, any application for a second chair assignment was made to the trial judge, who would decide whether to approve the application. Panel attorneys reported to the new ACP administration that some judges were reluctant to approve second chair applications. Ms. Dougherty and Mr. Savlov met with the individual County Court judges to explain the importance of the second chair program and to encourage the approval of second chair applications. However, certain County Court judges continued to deny approval of the applications and made remarks to Ms. Dougherty and Mr. Savlov such as: "This is a straight-forward homicide; a second chair isn't needed" and "You don't want to spend all your money on this second chair, do you?" In August 2017, the ACP announced that it was taking over the second chair application approval process. Under the new process, the lead attorney can submit a request for a second chair directly to Mr. Savlov. The lead attorney can either request to have a specific panel attorney be a second chair, or can ask that the ACP select someone to be assigned. Mr. Savlov works to match the lead attorney with the second chair, considering the needs of the lead attorney (i.e., research, sharing trial responsibilities) while accounting for the training opportunities for panel attorneys who are interested in moving to felonies, homicides, etc. Thus far, this process has worked in ensuring that the ACP's second chair program is well-utilized.

The appointment of assigned counsel for an appeal is another systemic issue the ACP leadership has sought to address. In November 2016, Criminal Procedure Law (CPL) § 380.55 was enacted to allow trial judges, upon application of trial counsel, to appoint appellate counsel for clients who are unable to afford an attorney. Previously, clients would have to wait and apply to the Appellate Division. The ACP notified attorneys in its weekly email newsletter that attorneys should be using CPL § 380.55 to ensure that their clients have appointed appellate counsel. One ACP attorney did so, but the trial judge denied the application in a manner suggesting that the judge was unwilling to ever consider appointing appellate counsel. The ACP attorney contacted the ACP for assistance. Ms. Dougherty promptly met with Onondaga County Court judges to address this issue. It is unclear whether it has been resolved; still, the ACP continues to urge trial attorneys to take advantage of the new statute.

Finally, the ACP has also sought to enhance attorney-client communication by responding to calls from detained ACP clients reporting that their assigned attorneys are not visiting them. The previous ACP administration ignored such calls. The new ACP administration has filled this gap by designating Mr. Savlov as the lead for responding to calls from detained ACP clients and then following up with the assigned attorney to ensure that he or she is notified of the client's complaint. Mr. Savlov also guides attorneys on how to resolve these complaints. Mr. Savlov keeps notes on each of the complaints by attorney name. Those notes are then incorporated into the panel attorney's "quality folder" so that the ACP has a complete picture of the panel attorneys when the attorneys are up for recertification.

e. Mentor Program

The bulk of the quality money, $361,480, is earmarked for the development and implementation of a Mentor Program. The Mentor Program, which consists of 8 high-caliber criminal defense attorneys mentoring less-experienced ACP panel attorneys, has been operational since Summer

2016. In November 2016, the Mentor Program was opened to the entire panel to allow any attorney who wants mentoring support to join the program. As of May 2017, the ACP has taken ownership of the Mentoring Program, and Ms. Fiorenza is now meeting regularly with the mentors.

Since October 2016, the mentors have provided over 200 hours of mentoring. The mentors also have been instrumental in development of the training program detailed below. Moreover, the mentors have been available to the new ACP administration as "sounding boards" and thought partners as the new leadership works to implement policies and protocols that will improve the quality of mandated representation in Onondaga County.

The Quality funding provides for a part-time administrative assistant to support the Mentor Program. The ACP transitioned a part-time employee to full-time status to fill this position in May 2016, but she left the program on December 1, 2016. ILS administered the program until the new ACP leadership was hired. Caseload Relief I funding is being used to supplement this Quality funding so that a full-time assistant to the Quality Enhancement Director could be hired; this position was filled on June 19, 2017.

ILS met with the mentors on February 18, 2017 and June 2, 2017 to obtain their input on how the program is going. The mentors reported that the program continues to be functioning well, though the level of mentee participation varies. Some mentors are acting more like supervisors for their mentees, while others are more like consultants. The mentors report that they believe the Mentor Program is beginning to build a culture of quality defense within Onondaga County.

In April 2017, ILS conducted a follow-up survey of the mentees to ascertain how the program is functioning and to also gain feedback about training programs. The survey was brief, asking the same questions asked in the Fall 2016 survey discussed in the 2016 update report, with these results:

> Has the mentoring program enhanced your skills in any one of the following areas (percentages indicate percent of respondents who checked this skill):
>
> Client Communication – 37.5%
> Bail – 50%
> Issue Spotting – 50%
> Motions/Pleadings – 75%
> Investigations – 37.5%
> Use of experts, social workers, interpreters – 12.5%
> Plea Negotiations – 87.5%
> Hearings/Trials – 75%
> Sentencing (expertise and/or advocacy) – 37.5%
> Case Management – 37.5%
> Office Management – 25%
>
> How would you rate the quality of the advice you have received from your mentor (irrespective of case outcome)?
>
> Very high quality – 75%
> High quality – 25%

(0% of respondents checked Low quality or Very low quality)

Overall, have you found the mentoring program beneficial to your practice?
Extremely beneficial – 100%
Somewhat beneficial – 0%
Not beneficial – 0%

We also asked the mentees to identify one thing that can be done to improve the Mentor Program. Several mentees said that they would like to have more group events for the mentors and mentees to foster a culture of communication and support. Suggestions included the creation of a "forms" database, having a mentor work one case with the mentee from beginning to end, being able to watch the mentor in action, and having a dedicated meeting time with the mentor. Additionally, we asked the mentees to provide input for additional trainings which ranged from training on legal issues to more advanced trial practice. The mentors were provided with the survey results so that they could incorporate these suggestions into their work with mentees as appropriate. The ACP administration also received the results, so that they could use the suggestions as they develop their training curriculum.

ILS interviewed a mentee as part of our structured attorney interviews. He reported that he meets regularly with his mentor, and this relationship has helped him "immeasurably."

While it is evident that the Mentor Program has contributed to the knowledge and skills of those attorneys who take advantage of it, the challenge is identifying and reaching those panel attorneys who would benefit from the program, but do not voluntarily participate. The ACP intends to meet this challenge by revising its Handbook to, among other things, formalize the structure of the Mentor Program and outline the circumstances in which panel attorneys will be required to participate in the program. Doing so will ensure that less experienced attorneys and attorneys in need of remediation have the support and quality control oversight that a mentor provides.

f. Consultation: Resource Attorneys

The 2015 Quality Plan included as part of the Mentor Program a consultation component to allow any attorney on the panel to access experienced attorneys – or "Resource Attorneys" – for brainstorming or advice on case-related issues. As noted in our 2016 update report, the ACP had not yet implemented this component of the Quality Plan. Since she has been hired as Quality Enhancement Director, Ms. Fiorenza has implemented this program by recruiting experienced attorneys, some of whom already serve as mentors, to serve as Resource Attorneys. She has notified the panel of the availability of this resource in person and through the ACP's weekly email newsletter, the *ACP Defender*.

In the September 18, 2017 issue of *ACP Defender*, Ms. Fiorenza highlighted this resource by describing how one of the panel attorneys relied on more experienced attorneys (at least one of whom is a Resource Attorney), to achieve an acquittal in a City Court case:

Congratulations Ian Rennie, Not Guilty All Counts

Ian's client was charged with Forcible Touching and Endangering the Welfare of a Child, and found NOT Guilty on both counts. Through a lot of hard work, research and intelligent cross examination Ian was able to overcome steep mountains to gain an acquittal. "It was a very hard earned and satisfying result as I had real doubt about the allegations from the start. I owe gratitude to Sue Carey, Stuart LaRose, Jeff DeRoberts and Alan Rosenthal who all provided me with their own unique insights into how to handle the case and were available any time I needed assistance. I question if I would have been able to achieve this result without each of them," said Rennie. Congratulations Ian Rennie and thank you to all who offered their expertise on this road to success. Bravo!!

- September 8, 2017 *ACP Defender* Newsletter

Notably, this was Mr. Rennie's first trial. The not guilty verdict saved his client from the lifetime of sex offender registration he would have endured had he been convicted of the misdemeanor sex offense.

g. Second Chair Program

The 2015 Quality Plan also provides $37,500 in funding to expand and more fully utilize the ACP's Second Chair program. The Second Chair program serves dual purposes: it ensures that defendants have quality representation, particularly in serious or complex cases, and it allows for panel attorneys to develop trial skills and experience. Though the ACP had long had a Second Chair program, it had been under-utilized and the former ACP leadership had discouraged attorneys from requesting a second chair or asking to serve as a second chair to gain experience. Indeed, to utilize the program, attorneys had to agree not to voucher for their time as second chairs. Mr. Savlov is now coordinating this program and the ACP leadership is actively encouraging the use of second chairs by: i) implementing a protocol that makes it easy for attorneys to request a second chair or add themselves to a list of attorneys willing to serve as a second chair; ii) requiring that a second chair be used in certain cases, such as homicide cases or when an attorney is handling his or her first or second trial; and iii) by encouraging attorneys to voucher for the time they serve as a second chair.

The ACP leadership also promotes use of the Second Chair program in the *ACP Defender* newsletter by celebrating successful trials and listing the primary and second chair attorneys. **Notably, at least two of the second chair opportunities have resulted in acquittals of clients on homicide charges as well as a verdict of not-guilty of the homicide charge on a third case.**

ACP IS THE PLACE TO BE THIS SUMMER-

June 16th 2017- P v Lakeisha Brown- **Acquitted of 1st and 2nd degree manslaughter**
http://www.syracuse.com/crime/index.ssf/2017/06/syracuse_woman_who_stabbed_boyfriend_to_death_during_fight_acquitted_of_crime.html
Attorneys Chuck Keller, Co-Counsel Stephen Heath with Inv. Joe Spadafore

June 21, 2017- P v Sangsouriyanh Maniphonh – **Acquitted of murder 2nd-**
http://www.syracuse.com/crime/index.ssf/2017/06/armory_square_shooter_of_murder_in_thanksgiving_day_fight_with_romantic_rival.html
Attorneys Susan Carey, Patrick Hennessy with Inv. Gabe Ramos

July 17, 2017- Client Acquitted Of Resisting Arrest and Obstructing Governmental Administration-
Attorney Scott Kim with Mentor Ben Coffin used as a resource

July 18, 2017- P v William Holmes- **Homicide Charge Dismissed-**
http://www.syracuse.com/crime/index.ssf/2017/07/surprise_revelation_clears_syracuse_man_of_murder_an_hour_before_trial.html
Attorneys Ben Coffin and Lou Mannera, the fifth and sixth assigned to the case, with Investigator Joe Spadafore

August 3, 2017- P v Farod Mosley- **Acquitted of Murder 2nd-**
http://www.syracuse.com/crime/index.ssf/2017/08/syracuse_boy_17_not_guilty_of_murdering_woman_convicted_of_breaking_in_to_steal.html#incart_river_index
Attorneys Chuck Keller, Todd Smith, with Inv. Gabe Ramos, Inv. Joe Spadafore and Carlina

- August 7, 2017 *ACP Defender* newsletter

h. Training

To enhance training opportunities, the 2015 Quality Plan allocated $10,000 to ACP's already-existing CLE program and $24,000 for intensive, hands-on trainings. As set forth in the 2016 update report, ILS had struggled to get the ACP to effectively use this money and repeatedly urged them to: i) develop protocols for access to scholarships and notify panel attorneys of these protocols; ii) notify the panel of training opportunities; and iii) sponsor trainings specific to the needs of panel attorneys. Though the ACP was recalcitrant, the mentors advocated for more training opportunities, identifying several areas of needed training. ILS partnered with the mentors, the New York State Defenders Association, and the New York State Association of Criminal Defense Lawyers to develop and implement the following CLE training programs:

- September 10, 2016: Full day training on arraignments, accusatory instruments, and client interviewing (mentee attendees only)

- November 5, 2016: Full day training on law office management, building and maintaining a file, including file preparation for hearings and trials, defective accusatory instruments, and motions (mentee attendees only)

- December 9, 2016: Two-hour training on the basics of sentencing and sentencing advocacy (30 attendees)

- January 28, 2017: Full day training on litigating your case (CPL § 710.30, search and seizure, subpoenas, suppression hearings) (40 attendees)

- February 10, 2017: Two-hour training on felony sentencing issues (Navigating New York's Sentencing Maze) (33 attendees)

- March 3, 2017: One-and-half hour training on investigations (Investigating Your Case) (13 attendees)

- May 19, 2017: Two-hour training on ShotSpotter – (What you need to know - New technology used by Syracuse Police Department) (27 attendees)

Perhaps the most important training was the three-day Trial Training conducted April 7-9, 2017 at Syracuse Law School. This training emphasized key trial skills and provided participants multiple opportunities to practice these skills. The training involved not only presenters and attorney-coaches, but also community-members who played jurors and actors who played witnesses. Approximately 20 panel attorneys participated in all three days of this training. While the ACP leadership was too new to participate in the planning of this CLE (which had begun in December 2016), they did participate in recruiting volunteer jurors, and they attended the program. This program was supplemented by an April 28, 2017, half-day, hands-on, skill development training on opening and closing statements. This training included actor coaches who helped attorneys with their courtroom presence. While all the trainings above received excellent feedback and evaluations from the attendees, the hands-on skills trainings in April 2017 drew the most positive feedback, including the following: "Best CLE I ever had"; "Direct feedback and progressive building blocks allowed me to naturally progress"; "Very helpful. I feel confident now in a new style of cross-examination."

April 2017 Onondaga ACP Trial Trainer – Mock Cross-Examination

April 2017 Onondaga ACP Trial Trainer – Lecture on Cross-Examinations

ILS has harnessed the mentors' energy to lay the foundation for a vibrant training program for the Onondaga ACP. With three core leaders in place, the ACP is well-positioned to build upon this foundation. Notably, Ms. Fiorenza has already taken over the responsibility of communicating with panel attorneys about training opportunities throughout Central New York. Additionally, Ms. Fiorenza, in consultation with the mentors, has developed a series of CLEs for 2017-2018, as well as a week-long "Nuts-and-Bolts" training for new panel attorneys.

i. ACP Office Morale

Perhaps the most visible change is the boost in ACP staff morale. Through Caseload Relief I funding, Ms. Dougherty increased staff salaries to reflect the work they had been doing in addition to their new responsibilities. The previous salaries were so low that many staff had to have a second job to provide for themselves and their families. Ms. Dougherty has also empowered staff to use their talents and skills to flourish instead of being subjected to rigid and limited roles. For example, Ms. Dougherty learned that one of her staff members has strong computer skills that were not being utilized. She learned another staff member is extremely good at data calculations and problem-solving through data analysis. She has given those staff responsibilities that reflect their talents. Third, Ms. Dougherty has given her staff responsibility to communicate directly with the panel attorneys to help resolve problems. Panel attorneys know that if there is an issue with eligibility, they can call or email a certain staff member. When the case management system was recently unavailable due to updates, attorneys were provided the emails of two staff members who responded quickly (and on the weekend) to address attorney questions and concerns that arose from the updates. The staff, having been empowered, are comfortable responding to attorneys and providing an open and prompt line of communication.

Panel attorneys have noticed this change and have sent unsolicited emails commending Ms. Dougherty and the staff for their hard work in supporting the delivery of quality representation. Some comments have been:

> *-You guys are doing a great job at ACP FYI!*
>
> *-I really like this new system, dear Ishmael. Please let everyone know how their hard work is appreciated by one of their groupies.*
>
> *-I, for one want to thank you and the staff for their efforts and the vast improvements I have seen with the Program.*
>
> *-I do feel that I need to let you know that the overwhelming majority of the panel attorneys appreciate the work that you and your staff are doing.*
>
> *-The ACP staff is just amazingly helpful*
>
> *-Please accept my thanks for the wonderful job done by you and your staff.*
>
> *-ACP panel attorney emails*

ILS has noticed a tangible difference in the ACP staff and office. The *Hurrell-Harring* team frequently visits the ACP office, and the transformation in office atmosphere is apparent. Now upon entering the office, a staff person is there to greet visitors. Staff members are now smiling and engaged, actively participate in meetings, and are involved in the discussions about the work they are doing. One long-time staff member told ILS that staff "used to be kept in the dark. Now we understand the work that needs to be done." It is evident to us, as it is to the panel attorneys, that ACP staff members are motivated and committed to assisting attorneys in providing their clients high quality representation.

As stated earlier, the ACP's ongoing challenge is continuing to train attorneys to work their cases more zealously and working with attorneys who do not fully utilize the resources, training, and mentoring opportunities available to them. The ACP also recognizes the need to assess all panel attorneys to better match their experience and skills with the types of cases assigned to them. The ACP is working to complete an updated Handbook, which will provide the foundation and framework for meeting these challenges.

B. Counsel at Arraignment

Onondaga County has four programs to ensure that counsel is present at all arraignments, some of which pre-existed the Settlement through County funding, ILS funding, or a combination of

both, and some of which were implemented by the Settlement. These programs are discussed below.

1. Syracuse City Court arraignments

People arrested in Syracuse are either issued an appearance ticket or detained at the local jail until the next arraignment session in Syracuse City Court, which is usually in the morning. In 2001, the County funded defense counsel for in-custody defendants being arraigned in Syracuse City Court. In 2006, using federal funding, the program was expanded to cover in-custody arraignments that occur in the afternoon arraignment session, and in 2013, the County began using ILS non-competitive grant funding to include the representation of people who are arraigned on an appearance ticket. The County has also provided the funding needed to ensure that there is an attorney present at arraignments in Syracuse City Community Court, which conducts arraignments one day per week. Thus, excepting the Syracuse Traffic Court part, *Hurrell-Harring* Settlement funding was not needed to provide representation at City Court arraignments.

Despite the existence of the programs needed to cover Syracuse City Court arraignments, in our 2016 update report, ILS noted that during our City Court observations, we repeatedly witnessed defendants being arraigned without an arraignment attorney standing up for them. We brought this issue to the attention of Ms. Captor, initially in late 2015 and then again repeatedly in 2016. At the urging of the County Attorney's Office, in late 2016, Ms. Captor finally instructed the City Court arraigning attorneys to represent every person being arraigned and to record any missed arraignment and the reason for the miss.

Since Ms. Dougherty has assumed leadership of the ACP, she has reiterated the importance of representing every defendant being arraigned unless the defendant waives representation or has a retained attorney. Ms. Dougherty discovered that at least part of the problem was caused by the common practice of some arraignment attorneys leaving the arraignment session early. She has made it clear to attorneys that they will not be permitted to continue staffing arraignments if they leave early. Additionally, in August 2017, the ACP updated its arraignment forms so that arraigning attorneys can note any missed arraignments and the reason for the miss. On August 26, 2017, the ACP met with the City Court arraigning attorneys to explain the updated forms and to disseminate written instructions for completing them. On September 5, 2017, the forms and written instructions were emailed to the entire panel. On September 12, 2017, at the quarterly panel meeting, the ACP reminded attorneys of the importance of using the new forms and recording information about missed arraignments.

During our court observations of Syracuse City Court in November 2016 and August 2017, ILS observed that the arraigning attorneys were representing all defendants; we did not witness any missed arraignments. The ACP sent ILS data for the first quarter of 2017 (January 1, 2017 through March 31, 2017) which reveals a total of 1,924 people represented at arraignment under this program. Of note, a significant majority of these - 1,461 - were in-custody arraignments. This is a significant increase over the same period in 2016 during which 1,272 defendants were represented at arraignment, of which 835 were in custody.

As discussed below, the implementation of a Centralized Arraignment Program will impact the City Court arraignments by adding an evening arraignment part while simultaneously expanding City Court arraignments to include town and village court in-custody arraignments. Currently, it is hard to predict how this change will impact the number of arraignments in City Court each day. ILS will work with the ACP to monitor this to ensure that City Court arraignments are sufficiently staffed.

2. Syracuse Traffic Court arraignments

The Settlement funds a program to staff the Syracuse Traffic Court part with an arraigning attorney to represent those individuals who are entitled to assigned counsel. Data the ACP sent to ILS shows that from January 1, 2017 through June 30, 2017 this program resulted in the arraignment representation of 593 people.

Under the 2015 Counsel at Arraignment Plan, the arraigning attorneys are to be paid $200 per session. However, when Ms. Captor started the program, she authorized payment of only $150 per session. The reason for this lower per session payment is unknown, and ILS was not aware of it until Ms. Dougherty brought it to our attention. Ms. Dougherty will increase the payment to the $200 rate set forth in the plan.

3. Town and Village Court arraignments – regular court sessions

Until 2013, there was no program for arraignment representation of town and village court defendants. In 2013, however, Onondaga County received an ILS Counsel at First Appearance competitive grant award that funded the ACP to have attorneys present at the regular court sessions of the 14 largest town and village courts to represent defendants at arraignment. In 2015, noting that there was extra funding available from this grant award, the ACP added a 15th court.

The 2015 Counsel at Arraignment Plan extended this program to include the remaining 13 town and village courts. As set forth in the 2016 update report, this program started on June 1, 2016. Our 2016 court observations of regular sessions of ten justice courts did not reveal any flaws in these programs. Similarly, in 2017, we observed court sessions in Clay, Dewitt, Camillus, and Salina justice courts, and as with our 2016 court observations, we did not observe instances in which defendants were unrepresented at arraignment.

Data the ACP has sent us indicates that in 15 largest courts, for the first two quarters of 2017 (January 1, 2017 through June 30, 2017), the program resulted in 2,036 people being represented by counsel at their arraignment. For the 13 smaller courts, ACP's data reveals that from January 1, 2017 through June 30, 2017, this program resulted in the representation of 111 people at their arraignment.

4. Off-hour arraignments: the on-call program

As set forth in the 2015 Counsel at Arraignment Plan, Onondaga County had no pre-existing program to cover off-hour town and village court arraignments. The 2015 Counsel at Arraignment Plan called for and funded the creation of an on-call program to cover these

arraignments. As described in the 2016 update report, this on-call program divides the County into seven regions and schedules two attorneys (a "primary" and a "back-up" attorney) per region to be on-call for a full week. Each region has a "primary" and "back-up" phone, and once their on-call week is over, the attorneys must arrange a meeting with the on-call attorneys scheduled for the following week to hand off the phones.

In the months following implementation of the program, ILS called participating attorneys to learn how the program was going. Over the course of four months (October 2016 through January 2017) ILS spoke to eleven different on-call attorneys. All of them stated that the program is providing a critical service. They reported that at arraignment, counsel can effectively: i) advocate for the defendant's release or the possibility of release with a bail amount the defendant can make; ii) ensure that defendants know their rights and that they do not inadvertently compromise their rights by talking about the charged offense; and iii) provide defendants with the confidence that they are not alone and someone is there to advocate for them. Most did not report problems with the program, though some reported that being on-call during business hours posed significant challenges because it is disruptive to their practice. For example, one attorney reported that both she and the back-up on-call attorney were in court the same day waiting for their cases to be called when their phones rang for an arraignment. They arranged for one to attend to the arraignment while the other covered the cases for which they were in court. But the situation was not ideal.

The ACP has reported to us that it is growing increasingly difficult to find a pool of attorneys willing to be on call, and they are forced to schedule the same attorneys repeatedly. Since the attorneys are assigned to the cases when they conduct arraignments (an incentive for participating in the program), this creates a potential issue with attorney caseloads.

Additionally, the on-call program is covering almost twice as many arraignments as originally anticipated, which means the program will significantly exceed the budget set forth in the 2015 Counsel at Arraignment Plan. Data the ACP sent to ILS indicates that between January 1, 2017 and June 30, 2017, the on-all program covered 949 arraignments. Based on this number, we estimate that the on-call program will cost about $190,000 more per year than budgeted. Fortunately, as discussed next, the County is implementing a centralized arraignment program to replace the on-call program.

5. Off-hour arraignments: implementation of a centralized arraignment program

Pursuant to newly-enacted Judiciary Law § 212(1)(w), the Office of Court Administration (OCA) has authorized Onondaga County to implement a centralized arraignment program with a Centralized Arraignment Part (CAP). Under this program, there are two arraignment sessions each day for all off-hour arraignments in the County: 1) the City Court morning arraignment session; and 2) the CAP, which runs from 5:30 p.m. to 10:30 p.m. Both sessions run every day, 365 days per year, and both have the jurisdiction to arraign any person arrested in the County. The City Court arraignment session will conduct arraignments for those arrested and detained from 10:30 p.m. to 10:00 a.m., while the CAP will conduct arraignments for those arrested and detained from 10 a.m. to 10:30 p.m.

While ILS is concerned about any plan that relies on use of pre-arraignment detention, on average this centralized arraignment program should reduce the overall amount of pre-arraignment detention in the County because it includes people arrested in the City of Syracuse. Currently, people arrested in Syracuse during the day are held overnight until the following morning for arraignment in City Court, which means they can be held for up to 24 hours before being arraigned. Now people arrested in Syracuse during the day will be arraigned in the evening and will not be held overnight pending arraignment. Since City Court accounts for a large majority of County arrests (in 2015, 6,976 of the ACP assignments were from City Court, while 480 were from the town and village courts), there is a potential for a net decrease in pre-arraignment detention. Moreover, the centralized arraignment plan approved by the OCA explicitly disfavors pre-arraignment detention unless necessary, stating as follows: "Arraignment in the Centralized Arraignment Part would only be for felonies, domestic violence charges where an order of protection needs to be issued, or other offenses requiring an immediate arraignment due to the specific nature of the offense...." This language should result in more appearance tickets and less pre-arraignment detention.

The ACP worked with ILS on developing a plan to staff this centralized arraignment program. Under this plan, the ACP will staff the CAP with two attorneys who will visit the jail prior to the arraignment session to interview detained arrestees, and then represent arrestees at their arraignment. The ACP will also staff the CAP and the City Court morning arraignment session with a program clerk. The program clerk will have a copy of the "core attorney" lists for all the courts in Onondaga County, and using these lists, will assist the CAP judge in assigning counsel at the arraignment session. The program clerk will also assist the judge in copying documents to be provided to defense counsel. To ensure that there is a program clerk available at each CAP session, including weekends and holidays, the ACP anticipates recruiting a cadre of 4 to 8 people to be available on a rotating schedule.

Finally, the ACP will have an ACP administrative staff person, the CAP Coordinator, who will be responsible for supervising the CAP program clerks (and providing back-up coverage when necessary); recruiting and scheduling CAP attorneys; and handling other administrative functions necessary to ensure that the CAP is staffed and running smoothly.

The anticipated costs of ACP's proposed CAP staffing pattern fall within the funding currently allocated by the State for the County's on-call program.

As of the writing of this report, implementation of the centralized arraignment program is scheduled for November 12, 2017. The ACP has already taken steps to prepare. Sovanndary Sok, the ACP Arraignment Assistant, has been promoted to the positon of CAP Coordinator. Ms. Sok surveyed panel attorneys and identified a pool of about 24 attorneys to staff the evening CAP session on a rotational basis. The ACP has also hired 4 people to serve as part-time program clerks for the morning and evening arraignment sessions, and going forward will assess if additional clerks are needed.

The ACP is using the evening CAP session as an opportunity to pilot new technology to enhance the collection and maintenance of data about arraignments and the conveyance of information from the arraigning attorney to the assigned attorney. The CAP arraignment attorneys will use

iPads with arraignment data collection forms that have been uploaded in PDF-fillable format. They will complete these forms at arraignment and transmit them to the ACP at the end of the arraignment session. Notably, they will not be able to transmit the forms unless the forms are fully completed – i.e., information is entered in all the requisite fields. The ACP will enter the information from these forms into its case management system the following day so the assigned attorney can immediately access the information from these forms; the ACP will also email the completed forms to the assigned attorney. If this system works well, the ACP will consider replicating it in its other arraignment programs.

On October 11, 2017, the ACP conducted a training session with the pool of CAP evening session arraignment attorneys, which ILS attended. Ms. Sok outlined the protocols for the program, including the requirement that all attorneys be trained on use of the iPads. Ms. Fiorenza noted that, in terms of staffing the CAP evening session, less experienced attorneys will be paired with more experienced attorneys. She stressed that this new arraignment session is an opportunity for arraigning attorneys to advocate more zealously at arraignments in at least two respects: release or low bail for defendants and moving to dismiss the accusatory instrument. Ms. Fiorenza emphasized that the ACP would like the CAP judges to view the arraigning attorneys as knowledgeable and forceful advocates. Additional smaller group trainings for the CAP attorneys are scheduled prior to the November 12, 2017 start date.

Overall, ILS is impressed that the ACP is using the new centralized arraignment program as an opportunity to pilot new initiatives, including: i) more ACP control over the assignment of defense counsel; ii) use of technology to enhance data collection and the handoff of information from the arraignment attorney to the assigned attorney; and iii) more zealous arraignment representation. ILS looks forward to working with the ACP to monitor and help support the success of Onondaga County's centralized arraignment program.

II. ONTARIO COUNTY

Well before *Hurrell-Harring v. The State of New York* was settled, Ontario County took significant steps to improve the quality of representation for people charged with a crime who cannot afford a lawyer. In 2007, when the lawsuit was filed, Ontario County's only provider of mandated representation was an Assigned Counsel Program (ACP) that lacked the resources and infrastructure for panel attorney support and quality oversight. In 2010, however, Ontario County created a Public Defender Office staffed with trained attorneys, eventually selecting Leanne Lapp, an experienced and highly qualified criminal defense attorney, as the Public Defender. In 2013, Ontario County created a Conflict Defender Office to be run by a Conflict Defender who would also administer the ACP. In July 2014, the county selected Andrea Schoeneman, another experienced and highly qualified attorney, as the Conflict Defender and ACP Administrator. The County's goal was to ensure that these institutional providers headed by experienced attorneys would provide the infrastructure, training, and support needed for quality representation.

It is no surprise then, that in 2014, the *Hurrell-Harring* plaintiffs reached an individual settlement with Ontario County. Still, though the County made significant progress in improving the quality of representation even prior to 2014, there were gaps. The County's well-intentioned focus on the Public Defender Office, for example, meant that the Conflict Defender Office and the ACP were not getting the attention and resources they needed. And, as with all providers across New York, caseloads continued to be such that attorneys struggled to devote the time needed for quality representation for all their clients. The County, however, has effectively used the Settlement's funding to start the process of addressing these gaps.

A. Quality

Ontario County was allocated $146,123 of the Settlement's $2 million in Quality funding to improve the quality of public criminal defense representation. In meeting with ILS to develop a plan to spend this money, it was evident that most of the funding should be targeted to the Conflict Defender Office and the ACP, with some funding going to the Public Defender Office for much-needed administrative support. Thus, it was agreed that the Public Defender Office would receive $35,000, and the Conflict Defender Office and ACP would receive $111,123.

1. Ontario County Public Defender Office

The Public Defender Office received $35,000 to fund a part-time legal support staff person to help alleviate the administrative burden placed on Ms. Lapp, and her First Assistant, Catherine Walsh, so that both could devote more time to supervision. In May 2016, Ms. Lapp used this funding to elevate a current employee, Leah Morrow, to paralegal status. Ms. Lapp reports that Ms. Morrow's support continues to be instrumental in relieving some of her administrative burden and the burden of other support staff. Specifically, Ms. Morrow continues to assist with eligibility intakes, thus enabling the receptionists at the front desk to assist walk-in clients and respond to phone calls; she also handles eligibility interviews at the jail. Ms. Morrow also interviews jailed clients to obtain needed information when attorneys are in court. She continues to undertake appellate responsibilities by drafting Notices of Appeal and Applications to Proceed as a Poor Person. More recently, Ms. Morrow has been trained in the NYSDA Veterans Defense Program, and has taken on the role of "veterans' liaison" for the Public Defender Office. In that

role, she completes a thorough intake of the Office's veteran clients, requests records, coordinates with the NYSDA Veterans Defense Program, and works with the County's Veterans Treatment Court. Ms. Morrow's work on this project has been an asset for Ms. Lapp and all the Office's staff attorneys.

To address the issue of caseloads and to comply with ILS' caseload standards, the County decided to slightly shift the responsibilities of its providers. The Public Defender Office will no longer be the primary provider for parole revocation cases, but will accept these assignments only when a parole revocation is attached to an arrest for a new offense. Otherwise, the Conflict Defender Office and the Assigned Counsel Program will handle parole revocation cases. In addition, Ms. Lapp will monitor the office's caseloads, and if caseloads become too high, she will refrain from accepting new case assignments until the Office's caseload stabilizes, with these assignments going to the Conflict Defender or ACP.

Caseload funding has also been used to bolster the Public Defender Office's administrative support infrastructure, and the Public Defender Office has received funding to hire an Office Specialist. As of the writing of this report, Ms. Lapp has interviewed several candidates and identified some qualified applicants, though she has not yet extended an offer. She anticipates filling this position in November 2017.

2. Ontario County Conflict Defender and Assigned Counsel Program

Ms. Schoeneman began the work of improving the quality of representation and "raising the bar" for panel attorney performance in 2015 when she completed a draft Assigned Counsel Plan and Handbook. She worked with the Ontario County Bar Association, which approved and adopted the Plan and Handbook on January 29, 2016. Together, the Plan and Handbook provide a framework for quality representation and set forth expectations for panel attorneys.

The $111,123 in Quality funding has allowed Ms. Schoeneman to take additional steps to improve quality. The funding is targeted as follows: $30,000 to contract with an experienced attorney to be a mentor to the ACP panel attorneys; $40,000 for investigators and experts; $31,123 for social worker/sentencing advocacy services; and $10,000 for a pilot post-conviction project.

a. Mentor Attorney:

As reported in the 2016 update report, the ACP identified Robert Zimmerman to fill the role of mentor for the panel. Since October 28, 2016, Mr. Zimmerman and Ms. Schoeneman have been holding monthly meetings with the panel attorneys to brainstorm cases, discuss new initiatives in the County, and review recent trials. For example, in March 2017, an ACP attorney received an acquittal in a trial on the charge of Rape in the Second Degree. This trial involved not only a second chair attorney but extensive investigation. At the following monthly meeting, the panel attorneys discussed the case and learned about the strategies the attorneys and investigator used to secure the acquittal. At another meeting, Ms. Schoeneman invited Jeffrey S. Rougeux, the Director of Ontario County Probation, to discuss a new County initiative intended to reduce incarceration rates at the local jail. Under this initiative, judges have the option of sentencing a

person to a "weekend of treatment" instead of jail. The treatment is provided by Finger Lakes Addictions Counseling and Referral Agency, and runs from 8:30 a.m. to 1:00 p.m. Saturday and Sunday.[2] During the meeting, Mr. Rougeux provided attorneys with documents describing the program and how to make referrals.

Mr. Zimmerman has also conducted court observations during trials of some ACP panel attorneys. He has identified trial skills as a need for training; the plan for Caseload Relief II funding allocates money for these trainings.

Our structured attorney interviews revealed that the ACP panel attorneys value the monthly meetings and view Mr. Zimmerman as a resource. Despite this positive feedback, however, the ACP panel attorneys are not using Mr. Zimmerman as much as they could. ILS and Ms. Schoeneman are working to address this issue. Ms. Schoeneman has decided to implement a policy that, absent a conflict, in all felony cases that will likely result in a trial, the panel attorney must consult with Mr. Zimmerman. Moreover, Ms. Schoeneman is considering engaging a second mentor who is more skilled at "pushing in" and encouraging panel attorneys to use the resource.

b. $40,000 for investigators and experts:

Investigative services have been well utilized by the panel. As reported in the 2016 update report, the ACP attorneys can now access investigators and experts directly through the ACP program without having to "preview" their case by applying to the court. Ms. Schoeneman developed a protocol that requires panel attorneys to use an investigator for all A, B, and C level felonies. For D and E level felonies, attorneys must indicate specific reasons if they believe an investigator is not necessary in a case. This money can also be used by the Conflict Defender Office. The structured interviews revealed that attorneys welcome the new procedure. Now, the attorneys need only draft an email to Ms. Schoeneman with the request for service and relevant case information. All the attorneys reported that Ms. Schoeneman is responsive and gets back to them quickly. The success of having a protocol that facilitates use of investigators is reflected in the amount spent on investigators in 2015, prior to Settlement implementation, versus the amounts spent in 2016 and 2017. In 2015, the Conflict Defender and ACP spent only $5,983 for investigators. In 2016, the Conflict Defender and ACP spent $19,931.25 on investigators, more than a three-fold increase. Through August 2017, they have already spent $10,770 on investigations and historically they receive a high influx of invoices toward the end of the year.[3] Thus, Ms. Schoeneman believes they are on track to exceed their spending for 2016.

c. $30,000 for social work and sentencing advocacy services

Ms. Schoeneman recruited a licensed, clinical social worker, Kimberly Goulding, to conduct sentencing advocacy for the panel attorneys. Ms. Goulding is a local resource with extensive

[2] A link to a news article describing this program is here: http://www.mpnnow.com/news/20170326/ontario-county-tries-treatment-instead-of-incarceration.

[3] This is because, for accounting reasons, the County requires panel attorneys to submit vouchers for all outstanding costs, even in cases that are not yet resolved.

experience in mitigation work. Unfortunately, due to the County's contract requirements, Ms. Schoeneman has not been able to contract with Ms. Goulding to facilitate attorney access to her services. In lieu of a contract, Ms. Schoeneman is encouraging attorneys to use Ms. Goulding's services by asking that the court assign her as an expert. Ms. Schoeneman is concerned that Ms. Goulding will not have enough time to handle all the potential cases in Ontario County, and she continues to search for other possible sentencing advocates. She has reached out to the Center for Community Alternatives (CCA), a non-profit organization in Syracuse, New York, to provide these services. CCA currently is unable to take new case assignments because of a transition in staff. Ms. Schoeneman hopes that CCA will be sufficiently staffed and able to take new cases in early 2018.

d. $10,000 post-conviction pilot project

For this post-conviction pilot project, it was decided that attorneys can use the available funding to research and investigate potential post-conviction claims, and where appropriate, file a motion with the sentencing court to be assigned to represent defendants in a post-conviction matter pursuant to Criminal Procedure Law § 440.10 or § 440.20. There are currently two cases pending that will use these funds.

e. Additional updates

The Conflict Defender Office, through ILS' non-competitive distribution funding, hired an experienced criminal defense attorney, Carrie Bleakley, as First Assistant Conflict Defender in August 2016. As set forth above, to ensure that the Public Defender Office can comply with ILS' caseload standards, the Conflict Defender Office is now the primary provider for most parole revocation cases and therefore, needed to hire an additional attorney through Caseload Relief I funding. In October 2017, Ms. Schoeneman hired Benjamin Gilmour to fill this role. The Caseload Relief I funding also allowed the Conflict Defender Office to hire a second administrative assistant, who began work in September 2017. The administrative assistant will enable the office to increase its data collection ability as well as provide additional support to the attorneys and to Ms. Schoeneman.

Combined, the Settlement's Quality and Caseload Relief funding have allowed the County to substantially bolster and improve the infrastructure of the Conflict Defender Office and the ACP. With this stronger infrastructure, Ms. Schoeneman anticipates that she will have more time to spend on supervision and quality oversight of the ACP panel attorneys.

B. Counsel at Arraignment

To its credit, prior to the Settlement, Ontario County had already implemented programs for representation of defendants at their first court appearance. By late 2015, the Ontario County Public Defender Office was already covering arraignments that occur during regularly scheduled DA court sessions[4] and all off-hour arraignments that occur prior to 10:00 p.m. The latter requires the Public Defender Office to maintain three on-call programs: i) a rotation for off-hour justice court arraignments that occur during regular business hours (8:30 a.m. to 5:00 p.m.); ii) a

[4] These are court sessions at which attorneys from the District Attorney's Office regularly appear.

rotation for off-hour justice court arraignments that occur in the evenings (5:00 p.m. to 10:00 p.m.); and iii) a rotation for off-hour arraignments that occur on the weekends and holidays (8:30 a.m. to 10:00 p.m.). These on-call rotations are staffed by all the Public Defender Office's attorneys.[5]

For overnight arraignments, the County had a centralized arraignment program that was started in 2012. People arrested after 10:00 p.m. are either issued an appearance ticket or detained until the next morning to be arraigned with defense counsel present in either Canandaigua City Court or Geneva City Court.

1. The Settlement's Counsel at Arraignment Programs

At the time of the 2015 Counsel at Arraignment Plan, the Public Defender Office had twelve staff attorneys, including the Public Defender, Leanne Lapp. Ms. Lapp questioned the sustainability of the on-call programs and was concerned that her attorneys would experience "burn-out" from sacrificing their evenings and holidays in addition to performing their regular duties.

Given the above, the 2015 Counsel at Arraignment Plan identified the following two potential gaps in arraignment coverage:

i) Weekend and overnight arraignment coverage

In 2015 when the Counsel at Arraignment Plan was developed, there was a concern that two justice courts were not regularly participating in the centralized arraignment program, and that it therefore was necessary to create an on-call overnight arraignment program to be staffed by private attorneys. The 2015 Plan also called for the creation of a private attorney weekend on-call program to replace the Public Defender Office's program, and thus reduce attorney burn out. However, as set forth in the 2016 update report, an assessment of missed arraignment data over a longer period revealed no discernible pattern to missed arraignments and no reason to believe that some courts were not participating in the centralized overnight arraignment program. Additionally, the Public Defender Office was not able to recruit a pool of private attorneys willing to participate in an overnight or weekend on-call program. Fortunately, as discussed below, the hiring of two additional staff attorneys has significantly diminished the burden of the Public Defender Office's on-call programs.

ii) Non-DA court sessions

The Public Defender's Office did not have the staff to regularly cover arraignments in these court sessions, and thus coverage was sporadic. The 2015 Counsel at Arraignment Plan provided funding so that the Public Defender's Office could hire two additional attorneys to create the capacity for covering arraignments at these non-DA court sessions, at a total cost of $210,000 per year. The first attorney was hired and began working in March 2016. Because of the County's budget approval process, Ms. Lapp was unable to hire the second attorney until

[5] Ms. Schoeneman assists one night a month in staffing the on-call program, scheduling either a Conflict Defender Office staff attorney or an ACP panel attorney.

February 2017. Having these two attorneys has allowed the Public Defender Office to staff all court sessions, including non-DA court sessions. These attorneys have also rotated into the Public Defender Office's on-call programs, significantly reducing the stress and potential for attorney burn-out.

2. Assessment of Ontario's Counsel at Arraignment Programs

Data the Ontario County Public Defender Office provided reveals that between November 1, 2016 and June 30, 2017, the Office's counsel at arraignment program covered approximately 1,899 arraignments.[6] ILS' 2016 and 2017 observations of city and justice court sessions have not revealed any issues with Ontario County's arraignment program, and though we observed multiple court sessions in 2016 (described in the 2016 update report) and again in 2017 (described above), we did not observe any missed arraignments.

Of course, our court observations are not comprehensive, and for that reason, the Public Defender Office has worked to develop and implement protocols for tracking missed arraignments. These protocols include reviewing the county jail's intake logs each morning, having attorneys track any arraignments of which they are notified and unable to make, and including on the application for assignment of counsel a question about representation at arraignment. According to the missed arraignment data the Public Defender Office sent ILS, between October 1, 2016 and June 30, 2017, the Public Defender Office missed a total of 17 arraignments. Only three of these missed arraignments were during the overnight hours, further reinforcing the conclusion in the 2016 update report that an overnight on-call program is not necessary. Five were the result of lack of notification to the Public Defender Office or a judge refusing to wait for the Public Defender Office attorney to arrive for the arraignment. Three were appearance ticket arraignments during non-DA court sessions, all of which occurred in late 2016 or early 2017; it is anticipated that now that the Public Defender Office is sufficiently staffed to cover non-DA court sessions these missed arraignments will be even less frequent. The reasons for the remaining six missed arraignments ranged from conflict to attorney error.

In the 2016 update report, ILS noted that the $97,000 made available in Settlement funding for the overnight and weekend private attorney on-call program is not being spent. We suggested that the money might be re-allocated for: 1) the creation of an administrative assistant position in the Public Defender's Office; and 2) any excess mileage costs associated with the Public Defender Office's arraignment programs. Regarding the first, this position will be funded by the Settlement's Caseload Relief funding. As for the second, ILS will work with the County to ensure that, if need be, any excess mileage costs are paid through the Settlement's Counsel at Arraignment funding.

Of note, Leanne Lapp has told us that a County committee was created to discuss creating a formal centralized arraignment program pursuant to newly-enacted Judiciary Law § 212(1)(w). The committee has drafted a plan to create morning and evening centralized arraignment parts for off-hour, in-custody arraignments. Though the status of this proposed plan is unclear, Ms.

[6] This likely under-represents the total number of arraignments covered because, prior to early 2017, the Public Defender Office was not vigilante about tracking appearance ticket arraignments the Office covered. Since early 2017, the Public Defender Office has been more vigilante about tracking and counting these arraignments.

Lapp looks forward to its eventual implementation because, while the two attorneys hired with Settlement funding have diminished the burden of the Public Defender Office's on-call programs, being on call remains a burden nonetheless. Centralizing arraignments will go far in enhancing attorney morale and allowing attorneys to focus on their cases without the disruption inherent in on-call arraignment programs.

III. SCHUYLER COUNTY

Since 2004, Schuyler County has had a full-time Public Defender Office, but it has long been understaffed and under-resourced. For several years, Schuyler County had a contract with a private lawyer who worked part-time to represent defendants in conflict cases. But this contract conflict defender was even more under-resourced than the Public Defender Office, and she struggled to provide quality representation with her overwhelming caseload. Schuyler County did not have a formal Assigned Counsel Program. Instead, when there were defendants who could not be represented by either the Public Defender Office or the contract conflict defender because of a conflict, the Public Defender's Office Manager would call lawyers from a list of eight private lawyers she knew and ask them to take the assignment. But with this small pool of lawyers willing to take Schuyler County assigned cases, it was often challenging to find a lawyer within a reasonable time frame. Of course, this system also meant that there was no quality oversight or support for lawyers who were willing to take assigned cases in Schuyler County.

Beginning in 2013, the Public Defender Office began to effectively use ILS competitive funding to increase attorney staff and implement programs to cover arraignments. But this funding was limited, and the Public Defender Office still struggled with high caseloads and a lack of non-attorney supports; additionally, Public Defender Office staff were stretched too thin to cover all arraignments. Moreover, ILS funding was insufficient to allow the County to meaningfully address the severely under-resourced system by which conflict cases were handled.

This was the situation in late-2015 when ILS worked with the County to finalize plans for improving quality and providing counsel at arraignment. Just two years later and Schuyler County now has a better resourced Public Defender Office and a regional Assigned Counsel Program that not only has recruited a large pool of attorneys willing to take assignments in Schuyler County, but also provides quality oversight and support for panel attorneys. Additionally, there are now programs in place to cover virtually all Schuyler County arraignments. This transformation is described in more detail below.

A. Quality

The Settlement's 2015 Quality Plan allocated $55,956 to Schuyler County for quality improvement initiatives. It was quickly agreed that this funding should be targeted to improving the quality of representation for defendants who the Public Defender Office cannot represent because of a conflict. With only $55,956 in funding, it was unrealistic to devote some money to enhancing resources for the contract conflict defender while simultaneously creating an Assigned Counsel Program infrastructure. To resolve this problem, Schuyler County decided to forego its contract with its conflict defender and instead partner with Tompkins County to create a regional Assigned Counsel Program to be administered by Tompkins County's Assigned Counsel Program, which has a full-time experienced Coordinator, Julia Hughes, and a part-time Supervising Attorney, Lance Salisbury. Schuyler devoted all the Settlement's $55,956 quality funding to this initiative. This regional Assigned Counsel Program ("regional ACP") has been operating since April 1, 2016.

According to data received from the regional ACP, from September 1, 2016 through August 31, 2017, the program has received about 100 new criminal case assignments and about 77 Family

Court assignments. The regional ACP has approximately 30 panel attorneys who take assignments in Schuyler County, which ensures that Schuyler County has enough qualified attorneys who have the time and resources needed to handle Schuyler's conflict cases. Since the program began in April 2016, there have been two instances in which multiple co-defendants were arrested and in need of assigned counsel. Previously, it would have taken weeks if not months to find counsel for all these defendants. The regional ACP has been able to ensure that qualified counsel is assigned within just one to two days. Just as importantly, the regional ACP provides quality oversight and training opportunities for panel attorneys.

Through the structured attorney interviews, ILS learned that the program is functioning well, though attorneys discussed two issues. First, some attorneys reported that the travel to Schuyler County can be a drawback, particularly for those attorneys who live and work further from Schuyler County's border. Second, while attorneys reported that Julia Hughes is accessible and an excellent resource for them, they are more hesitant to reach out to Lance Salisbury because he is so busy. During meetings with ILS, Ms. Hughes and Mr. Salisbury acknowledged this issue. To resolve it, it was decided that Caseload Relief II funding would be used to improve the regional ACP's administrative capacity and for paid mentor attorneys. Ms. Hughes and Mr. Salisbury have identified some experienced and trustworthy attorneys they have used in the past to mentor less experienced attorneys. They believe that using paid mentors will be an effective means of improving quality oversight and enhancing support for attorneys who take Schuyler assignments.

Despite these issues, there is evidence that the panel attorneys are improving the quality of client advocacy. During ILS' structured interviews, one attorney reported that he felt like the panel attorneys were beginning to "open up the culture there," meaning that he felt that their advocacy was compelling judges to comply with the law instead of following a "business as usual" approach. Mr. Salisbury reports that more zealous advocacy has been a focus of the regional ACP, and he has seen improvement. He believes that the Schuyler County magistrates are no longer viewing the panel attorneys as "outsiders," but instead valuing their professionalism and criminal defense knowledge and experience. At the inception of the program, Mr. Salisbury urged panel attorneys to file a proceeding in superior court to challenge local magistrates' common practice of not conducting legally required preliminary hearings. The strategy worked and the magistrates now consistently uphold this right. The regional ACP attorneys have also successfully pushed back against a common local magistrate practice of sentencing defendants without first ordering that a pre-sentence investigation report be completed, even though the law requires that such reports be done prior to sentencing unless waived by the defendant.

Mr. Salisbury and Ms. Hughes report that they have received positive feedback about the panel attorneys' professionalism and advocacy from Schuyler County magistrates and the Schuyler County Court judge. They have even heard from some former clients, who praised the performance of their assigned counsel. Mr. Salisbury believes that the regional ACP panel attorneys have earned credibility with the judiciary and the District Attorney's Office, which has enhanced their ability to negotiate for favorable dispositions for their clients.

Mr. Salisbury told ILS that with Settlement funding, he is focusing on the following four priorities to continue the progress the regional ACP has made:

Working the case: Mr. Salisbury is encouraging attorneys to "work the case." He is trying to build a culture of active litigation and, where appropriate, push back against unfair and unjust judicial and prosecutorial policies and practices. The Settlement funding allows Mr. Salisbury to remind panel attorneys that there is now funding available to enable them to spend more time and resources on cases.

Early client contact and communication: Mr. Salisbury recognizes that effective client communication is vital to quality representation. He reports that some attorneys now note on vouchers a reason for failing to meet with a client right away, which he views as a signal that attorneys are beginning to internalize the importance of immediate and effective client communication.

Use of non-attorney professional supports: Now that there is more funding for non-attorney support services, Mr. Salisbury and Ms. Hughes are urging attorneys to use investigators, interpreters, expert witnesses, sentencing/mitigation advocates, social workers and other non-attorney supports where appropriate. Toward that end, on July 19, 2017, the regional ACP conducted a meeting with the panel attorneys, during which they informed the panel of money available from caseload relief funding for non-attorney professional support services. They also had a CLE presentation entitled the "The Nuts and Bolts of Effective Sentencing Advocacy" conducted by Amy Knibbs and Kelly Gonzalez of the Center for Community Alternatives (CCA). Caseload Relief I funding has made it possible for Schuyler panel attorneys to access CCA's defense-based sentencing advocacy services. This CLE served both as an introduction to CCA and a training on how to effectively advocate for a favorable case disposition.

Training: Caseload Relief II funding will allow the regional ACP to enhance training opportunities for its panel attorneys. Mr. Salisbury and Ms. Hughes are in the process of surveying panel attorneys to see what training opportunities would be most relevant to their practice. In the meantime, using ILS distribution funding, the regional ACP has conducted ongoing CLE programs for panel attorneys, including an August 2017 CLE on defending DWI cases. Because these CLE programs are conducted in Ithaca, New York, the regional ACP is trying a webinar format for future CLEs as a means of increasing access to these programs. They will try this first with a CLE on cell-phone diagnostics scheduled for this fall.

While the Schuyler Public Defender Office did not receive any of the Settlement's Quality Improvement funding, the Office, under Wes Roe's leadership, is effectively using the Settlement's Caseload Relief and Counsel at Arraignment funding to improve the quality of defense. The Caseload Relief funding has allowed the Public Defender Office to contract with Opportunities, Alternatives, and Resources of Tompkins County (O.A.R.), a community-based, non-profit organization that has long advocated for and assisted incarcerated and formerly incarcerated individuals in Tompkins County. With $50,765 in Caseload Relief I funding, O.A.R. has hired an advocate to work solely in Schuyler County. The advocate visits individuals at the jail to assist in communicating with their attorney, helps detained individuals complete the application for assigned counsel if it was not completed at arraignment, and helps connect people

soon to be released with housing, treatment, and public assistance. Mr. Roe reports that since August 1, 2017, this advocate has been visiting the jail at least three days per week and is already meeting with local county officials to develop a protocol which will allow incarcerated people to apply for public benefits prior to their release instead of waiting until after their release.

As discussed below, the Public Defender Office has also improved the quality of representation by implementing programs to ensure that defendants are represented at arraignment and that eligibility for assignment of counsel is determined promptly.

B. Counsel at Arraignment

By late 2015, when the Settlement's 2015 Counsel at Arraignment Plan was developed, the Schuyler County Public Defender Office had already implemented programs to provide for some limited arraignment coverage. In late 2013, the County received an ILS Counsel at First Appearance Grant, which bolstered staff availability so that the Schuyler County Public Defender could cover off-hour arraignments that occur during business hours. In late 2014, the Public Defender Office took advantage of ILS' Upstate Caseload Relief and Quality Improvement grant to hire a part-time assistant public defender to cover off-hour arraignments that occur in the evening (i.e., 5:00 p.m. to 11:30 p.m.). The staff made available from these two grants also ensures that the Public Defender Office can appear at and provide arraignment representation during the regular court sessions at which the District Attorney Office is present (DA court sessions).

This left three gaps in arraignment representation: 1) arraignments that occur during non-DA court sessions; 2) overnight off-hour arraignments; and 3) weekend off-hour arraignments. The 2015 Counsel at Arraignment Plan was designed to close these gaps by: obtaining law enforcement cooperation to issue appearance tickets for DA court sessions; coordinating with the Sheriff's Department for the detention of individuals arrested overnight so they can be arraigned the following morning with defense counsel present; and implementing a weekend on-call program for off-hour arraignments that occur during the daytime on weekends and holidays.

As set forth in ILS's 2016 update report, by late October 2015, the Public Defender Office, working with the Schuyler County Sheriff William Yessman, had obtained agreement from all local law enforcement agencies to issue appearance tickets for DA court sessions, and by November 2015, ILS had coordinated with the Governor's Counsel's Office to ensure that New York State law enforcement agencies also issue appearance tickets for DA court sessions. By late 2015, the Sherriff had also begun holding overnight people who are arrested and not issued appearance tickets. In early March 2016, the Public Defender Office began its weekend on-call program. Thus, by March 2016, Schuyler County had implemented the programs needed to provide representation to all arrested people.

ILS received data from the Public Defender Office regarding the number of arraignments at which they appeared between November 10, 2016 and June 30, 2017. According to this data, the Public Defender Office's counsel at arraignment program covered 210 arraignments during this time frame.

In addition to implementing its counsel at arraignment programs, the Public Defender Office worked with ILS to develop protocols to track any missed arraignments. To do so, the Public Defender Office receives notification of off-hour arraignments from three possible sources: local dispatch; local magistrates; and the District Attorney's office. This way, if there is one problem of notification (such as the magistrate fails to notify the Public Defender Office of an arraignment), there are two back-up systems. Additionally, the Public Defender Office has included on its application for assignment of counsel a question about whether the applicant was represented at arraignment.

As a result of this protocol, the Public Defender Office has tracked 21 missed arraignments between October 1, 2016 and June 30, 2017. Of these, 9 were the result of a single New York State Police arrest on November 2, 2016; all 9 arrested persons were charged with Unlawful Manufacture of Methamphetamine in the Third Degree. The Public Defender Office learned of this arrest prior to arraignment, and staff stayed on-call later than usual to handle the arraignments. But the Office never received any notification of the arraignments. The Public Defender Office later learned that the arraignments had occurred overnight, at 2 a.m. in the Town of Dix. The Public Defender Office communicated with the regional ACP to ensure the prompt assignment of counsel. The Public Defender Office also informed ILS of what had occurred. In early January 2017, ILS identified this issue during an update conference call with the *Hurrell-Harring* parties. The Governor's Office agreed to address it with New York State Police. Since then, we have not heard of additional problems with New York State Police compliance with counsel at arraignment initiatives, though we continue to be attentive to this issue.

Of the remaining 12 missed arraignments, 10 were overnight arraignments, 8 of which occurred on either a Saturday or Sunday overnight. To reduce the incidence of missed arraignments, Mr. Roe is exploring the possibility of implementing an on-call program for Saturday and Sunday overnights (9:00 p.m. to 9:00 a.m.).[7] He is considering doing so by either using private attorneys (though recruiting private attorneys is a challenge because only two criminal defense attorneys live in Schuyler County), or including this on-call responsibility as part of the job responsibilities for the staff attorney that his Office is slotted to hire with Caseload Relief II funding.

In the meantime, the Public Defender Office continues to mitigate the harm of these missed overnight arraignments by working with the courts to ensure that any missed arraignment cases are calendared for a court appearance the following morning with Public Defender Office staff present to address issues regarding pre-trial release and assignment of counsel. ILS will continue to work with the Public Defender Office on this issue.

The Public Defender Office has used its counsel at arraignment programs to facilitate implementation of the ILS' *Criteria and Procedures to Determine Assigned Counsel Eligibility*, which the Office implemented in April 2016. Now the Public Defender Office attorneys bring applications for assignment of counsel with them to every arraignment and, in most instances,

[7] As set forth in ILS' 2016 update report, the Settlement anticipated that the County might not be able to obtain law enforcement agreement to issue appearance tickets for DA court sessions only, and therefore provided $161,000 in funding for the Public Defender Office to hire two additional staff attorneys (one full-time and one part-time). Because there has been cooperation from law enforcement to issue appearance tickets for DA court sessions, this funding has not been utilized.

complete the application with the defendant at arraignment. This allows for a prompt determination as to a person's eligibility for assignment of counsel. As noted in ILS' January 2017 report, *The Impact of Eligibility Standards in Five Upstate Counties,* Schuyler County has realized a small increase in the number of people deemed eligible for assignment of counsel. Mr. Roe attributes this increase to his office's counsel at arraignment programs, and the data suggests that he is correct.[8] Since Public Defender Office staff are now present at virtually every arraignment, they explain to defendants that they are entitled to assigned counsel and the importance of having counsel, they encourage defendants to apply and assist them in applying whenever possible, and they bring the application back to the office saving defendants from having to submit it themselves. Defendants are no longer falling through the cracks, but instead are having immediate contact with counsel and applying for counsel if they cannot afford a lawyer.

[8] *See The Impact of Eligibility Standards in Five Upstate Counties*, at 23-24. This report is available at: https://www.ils.ny.gov/files/Hurrell-Harring/Eligibility/Research/The%20Impact%20of%20Eligibility%20Standards%20in%20Five%20Upstate%20New%20York%20Counties%20-%20ILS%20report%20January%202017.pdf.

IV. SUFFOLK COUNTY

With a population of almost 1.5 million people,[9] Suffolk County is the most populous *Hurrell-Harring* county. Not surprisingly, it also has the largest criminal caseload of all the *Hurrell-Harring* counties.[10] Geographically, Suffolk County is more like two counties than one. The County is 86 miles long and about 24 miles wide. The western portion of the County, called the West End, is more densely populated and more suburban. The eastern portion of the County, called the East End, is less densely populated, more bucolic, and a popular vacation destination in the spring and summer months. The East End splits into two peninsulas, called the North Fork and South Fork, which surround the Peconic and Gardiner Bays. In the late spring and summer months (the "in-season") the East End is crowded with vacationers, and travel time increases significantly.

The County's court system reflects the bi-furcated nature of Suffolk County. Since 1964, the County has operated a District Court, which was established pursuant to the Uniform District Court Act to have jurisdiction over criminal and civil cases of the West End's five towns. All the District Court's criminal cases are heard in the Cohalan Court Complex in Central Islip, where 22 judges preside over 21 different District Court parts. Suffolk County's County Court operates in Riverhead in the Cromarty Court Complex. Adjacent to the Cromarty Court Complex is one of Suffolk County's jail, which holds pre-trial detainees.[11] Riverhead is about 30 miles from Central Islip, but travel time is unpredictable: when traffic is light, the drive from Central Islip to Riverhead takes about 40 minutes, but when traffic is heavy, it can take anywhere between one to two hours.

Unlike the West End, the East End justice courts have not taken advantage of the Uniform District Court Act, but instead continue to maintain jurisdiction over criminal and civil matters. There are nine town and village courts that handle criminal cases, one of which (Shelter Island) is accessible only by ferry.

Suffolk County's large criminal caseload and its unique geography have posed challenges for its two providers of mandated representation: The Legal Aid Society of Suffolk County, Inc. (SCLAS), which is the primary provider in all criminal cases except homicide cases; and the Suffolk County Assigned Counsel Defender Plan (ACDP) which is the primary provider for homicide cases and the conflict provider for all other criminal cases. The large volume of cases has historically meant high caseloads for both providers, but particularly for the SCLAS. The County's geography has required the SCLAS to maintain two offices, one in Central Islip and one in Riverhead. It also means that felony cases that originate in District Court may end up being prosecuted 30 miles away in County Court, with the client housed in a jail miles from where the case originated. For the ACDP, the County's unique geography can mean many miles

[9] 2010 Census Data, available here: https://pad.human.cornell.edu/profiles/Suffolk.pdf.

[10] In 2015, Suffolk County's providers of mandated representation handled a combined total of more than 30,000 criminal cases.

[11] Some pre-trial detainees – usually those charged with misdemeanors – are held at a facility in Yaphank, NY.

of travel for assigned counsel lawyers who represent a client in District Court, only to have the case transferred to County Court upon indictment.

The County's geography has also posed challenges in implementing the county's counsel at arraignment programs, particularly in the East End where the courts vary significantly in the number of cases prosecuted and where it can take hours to travel from a court on one of the "forks" to a court on the other.

In the face of these challenges, the SCLAS and the ACDP have worked thoughtfully and creatively to implement the Settlement and provide high quality, client-centered representation to people charged with a criminal offense who cannot afford a lawyer. Below, we describe their progress and ongoing challenges.

A. Quality

With the funds provided pursuant to the Settlement, specifically $1,116,618 in Quality funding and $5,476,712 in Caseload Relief funding, both the SCLAS and the ACDP have made significant progress toward meeting the quality objectives set forth in the November 2015 Quality Plan.

1. Legal Aid Society (SCLAS)

As the primary provider of mandated representation, SCLAS handles most of Suffolk County's publicly funded criminal caseload. With limited County resources, SCLAS attorneys have traditionally carried high caseloads and had limited access to non-attorney professional supports like investigators, experts, social workers and sentencing advocates to aid in the representation of their clients. Prior to Settlement funding, SCLAS had some training resources but no formal curriculum.

Additionally, SCLAS has repeatedly lost some of its most promising or experienced attorneys due to poor compensation, lack of a pension, few opportunities for professional advancement within the organization, and burdensome workloads. Indeed, during the structured interviews, one attorney told ILS that they lost 7 District Court attorneys in a short timeframe due to these issues. In repeated conversations with staff attorneys and management, ILS has heard that the low rate of compensation is crippling for many attorneys in a County with a relatively high cost of living.[12] One attorney told ILS that "attorneys want to stay" but simply cannot afford to. During these conversations, ILS also learned that SCLAS did not have a modern computer network or IT infrastructure and that attorneys felt that they were at a disadvantage without an office shared drive or motion bank, making their work inefficient.

It was apparent that SCLAS needed to focus on bolstering its infrastructure, layering in supervision, lowering caseloads, increasing access to non-attorney supports, and retaining quality attorneys. Starting with the initial Quality funding and continuing with Caseload Relief I funding, SCLAS Attorney-in-Charge, Laurette Mulry, worked with ILS and key members of her

[12] *See Long Island's High Cost of Living Can't Go On*, Newsday, Editorial Opinion, April 24, 2015, available at: http://www.newsday.com/opinion/editorial/long-island-s-high-cost-of-living-can-t-go-on-1.10328771.

management team to devise plans to address these needs. The result has been an organization that has begun an admirable and significant transformation.

Staffing, Supervision, and Overall Infrastructure

Staffing, supervision, and overall infrastructure improvement are at the forefront of these plans. SCLAS recognized the importance of retaining high quality, dedicated attorneys already employed by the organization as well as the need to add new zealous advocates to reduce caseloads. SCLAS also needed to add non-attorney professional support staff to ensure proper access to investigators, interpreters, social workers, and other administrative support. Further, SCLAS added new layers of supervision and oversight to foster high quality representation.

SCLAS developed a plan to restructure the criminal practice by implementing an interdisciplinary team approach in District Court. Attorneys will now be divided into five teams consisting of 7-14 attorneys who will be overseen by a supervising attorney and a mentor attorney, and supported by an investigator, social worker, and paralegal. This new team approach brings together the work of attorneys and non-attorney professionals to effectively address the underlying causes and resulting consequences of an individual's contact with the criminal justice system. There are many potential collateral consequences that may result from an individual's arrest, consequences that can have a ripple effect on families and communities. Identifying potential mental health issues, substance abuse issues, domestic violence issues, parenting and other issues and connecting clients with a wide array of social services to address these issues, benefit the entire criminal justice system. Moreover, this approach will also enable the SCLAS to pro-actively address factors that contribute to re-offending, thereby reducing recidivism.

With the initial Quality funding, SCLAS began to lay the groundwork for improving the overall infrastructure. With subsequent Caseload Relief funding, SCLAS is now working toward fully realizing this goal.

a. Attorney Staffing

To address the issue of their historically high-rate of mid-level attorney attrition, SCLAS has employed two strategies to encourage retention of highly-qualified staff. First, with $240,000 in Quality funding, SCLAS created a retention fund and assessed 63 staff attorneys using an "aspirational grid" developed by the SCLAS management team.[13] From this review, they distributed one-time meritorious stipends in quarterly installments to 35 staff attorneys. To date, SCLAS reports that all attorneys receiving the meritorious stipends are still employed. Because of this success, SCLAS plans to expand the retention fund with Caseload Relief II funding. Second, SCLAS is committed to creating new opportunities for professional development within the organization by promoting attorneys to supervisory and mentor roles. With Caseload Relief II funding, SCLAS will create more opportunities for attorneys to progress from misdemeanor to felony level representation. The implementation of meritorious stipends and the increased opportunities for professional growth within the organization are already starting to have a positive effect on staff morale thereby encouraging attorneys to continue working for the organization.

[13] This is described in the 2016 update report.

ILS' review of SCLAS' caseloads made it abundantly clear that they need to hire more attorneys to ensure attorneys have enough time to perform tasks necessary for quality representation on each case. To address this issue, SCLAS focused first on reducing its high District Court caseloads where attorneys were averaging 500 cases per year. Using funds from Caseload Relief I, SCLAS began by actively recruiting and hiring 23 new attorneys. Four started on August 1, 2017 as the "Advance Team;" 19 more started on September 1, 2017 as SCLAS' first ever "class" of new attorneys. SCLAS has never previously had the ability to actively recruit and hire such a large class of attorneys, and they worked to hire qualified attorneys from diverse backgrounds who are committed to the defense of low income clients. These attorneys are undergoing SCLAS' newly developed "new attorney training" described below and are preparing to start work on their new teams.

SCLAS class of new attorneys during a training session, September 2017

With anticipated funding from Caseload Relief II, SCLAS plans to focus on hiring new staff for its felony caseloads and the County Court in the coming year.

With the addition of new attorney staff and the retention of experienced, committed attorneys, SCLAS has grown its criminal attorney staff from 75 to 98 in less than a year.

b. Supervision

SCLAS is bolstering its supervision and quality oversight with a combination of part-time hires and promoting from within. Using $150,000 in Quality funds, this year SCLAS added two more retired, highly respected attorneys as part-time Quality Control Supervisors who provide quality

control oversight where most needed, bringing them to a total of three.[14] Because the District Court Bureau is expanding the Quality Control Supervisors are currently working there. However, when Caseload Relief II funding is used to expand the County Court Bureau, the Quality Control Supervisors can be dispatched to that Bureau. Using Caseload Relief I funding, SCLAS is in the process of elevating 12 experienced staff attorneys to the roles of Supervisor, Team Leader, or Team Mentor for the District Court teams. SCLAS also elevated two supervising attorneys to East End Bureau Chief and District Court Co-Bureau Chief; and four staff attorneys to fill the roles of County Court Assistant Bureau Chief, East End Assistant Bureau Chief, and two District Court Co-Assistant Bureau Chiefs.

Ms. Mulry told ILS that in late September 2017, she held a leadership meeting with 22 supervisors, including existing supervisors and new members of the leadership team. Ms. Mulry said it was remarkable to see everyone working together in one room. Whereas previously SCLAS was criticized for not having enough support for staff attorneys, now there are layers of supervision and attorneys have places to turn. These promotions not only enhance supervision, support, and oversight of a growing staff, they also provide increased opportunities for professional development within the organization. This reinvigorated staff and boosted morale.

c. Non-Attorney Supports

During the structured interviews, several attorneys discussed the need for increased access to non-attorney supports, including investigators, social workers, experts, interpreters, and paralegals. SCLAS is using a combination of Quality and Caseload Relief funding to address each of these needs. Indeed, the new staffing described below will provide each of the new District Court teams with a dedicated investigator, social worker, and paralegal. SCLAS is using additional funding for contracts with experts and interpreters.

More than one attorney told ILS that while they utilize the investigators who are currently on staff to varying degrees, the organization needs more to meet the requirements of all SCLAS attorneys. Recognizing this need, as well as the need for investigation oversight and training, SCLAS developed a plan to create a new Investigator Unit. To lead the new Unit, SCLAS promoted a current investigator, Mark Sheridan, to Supervising Investigator. They next hired three additional investigators who came on staff in February 2017, September 2017, and October 2017 respectively to increase attorney access while creating a cohesive, well-trained investigations team.

SCLAS also bolstered their existing social work bureau, creating a new Social Work Unit to provide holistic support to SCLAS clients by connecting them with critical resources as well as working with attorneys to provide plea and sentencing advocacy services. This will enhance the new team structure by ensuring there are enough social workers to provide these essential services to each team of attorneys. With combined funding from Quality and Caseload Relief, SCLAS elevated a staff social worker to the role of Supervisor and hired a new social worker. SCLAS further plans to elevate another staff social worker to a Senior Social Worker position and hire an additional entry-level social worker. One SCLAS attorney told ILS that clients

[14] SCLAS established this model by contracting initially with one Quality Control Attorney funded by an ILS competitive grant funding. When the model was a success, they sought Quality funds to expand this program.

consistently obtain better dispositions when a social worker is involved in the case. She admitted to being hesitant to use the social workers at first, but when she saw the results she realized the important role they can play in a case. Now, the attorney told ILS, she uses social workers often and loves to work with them on her cases.

During the structured interviews, ILS heard an unequivocal desire for paralegal support. While SCLAS has some legal secretaries and other data support staff, they have never had the resources for dedicated paralegals on staff. One attorney told us she felt like the District Attorney has an advantage because they have paralegals to respond to motions which allows the Assistant District Attorneys to focus on investigating and building their cases. Now, with Caseload Relief I funding, SCLAS is hiring five new paralegals, one to support each new District Court team.

One area in which SCLAS has consistently faced challenges is retaining outside experts for consultation and testimony. Historically SCLAS did not have their own expert budget line, so attorneys had to apply to the court for funding from the County's 18-b budget. During the structured interviews, ILS learned from attorneys that many judges cap expert fees, or limit their use of experts altogether, or both. Many attorneys said that they have a difficult time finding experts who will work with SCLAS because they know it is it difficult to get paid from the County's 18-b budget. One attorney illustrated this problem with a story: he had retained a highly-regarded expert who produced a report and was expected to provide compelling testimony for his client at a hearing. However, the expert did not get paid and refused to testify forcing the attorney to retain someone less qualified. Ultimately the attorney lost the hearing.

Recognizing this as a critical issue, SCLAS is using some of the $50,000 in Quality funding for retainer agreements with a forensic psychologist, a forensic neuropsychologist, and a toxicologist. SCLAS also created a list of qualified experts for both consultation and testimony. SCLAS reports that attorneys now use this new resource for consultation which they previously would not have been able to do. SCLAS cited the example of a forensic psychiatric examination and report that was recently authorized for a client which revealed that the client's problematic behavior was the result of advanced Multiple Sclerosis, which had previously been undiagnosed. SCLAS also told ILS that these funds have been indispensable in securing admission to treatment programs and securing appropriate housing and medical treatment for incarcerated clients. SCLAS intends to supplement this expert fund with Caseload Relief II funding to continue to expand attorney access to these critical expert services.

Suffolk County residents come from diverse backgrounds, and more than twenty languages are commonly spoken in the County. However, until recently SCLAS attorneys had limited access to interpreters to communicate with their clients outside of court appearances. Any applications for interpreter services were made to the court with funding from the County's 18-b budget. Otherwise, SCLAS attorneys told ILS, they had to rely on other SCLAS staff who are fluent or semi-fluent in languages other than English. However, with $15,000 in Quality funding, SCLAS is working with an agency which provides interpretation services on a per diem basis. SCLAS reports that because of this funding, they recently authorized funding for an American Sign Language interpreter. Previously this type of service would be difficult to access thus inhibiting client communication. SCLAS also intends to use Caseload Relief II funding to hire a Spanish interpreter to further facilitate client communication.

Another critical need for staff attorneys was access to electronic legal research. Using Quality funding, SCLAS reports that as of October 1, 2017, all criminal attorneys including the new attorney hires will have access to LEXIS for online legal research.

d. Administration

Revamping SCLAS' infrastructure would be incomplete without providing the administrative and management backbone necessary to promote efficiency and quality oversight. Increased staff will inevitably produce an increased demand for administrative support. At the same time, there are external demands for data and reporting as well as the inherent need to navigate multiple funding streams from the County and State.

Toward that end, SCLAS is using Caseload Relief I funds to hire six new data entry support staff, elevating four existing support staff to the role of Supervisor, and hiring a new Account Assistant. Further, SCLAS created a new management role, Chief Legal Operating Officer, and elevated an existing Bureau Chief, Sabato Caponi, to fill this role. Mr. Caponi is responsible for overseeing day-to-day legal operations and works directly with Ms. Mulry to implement all grant and *Hurrell-Harring* funding and initiatives. Further, Mr. Caponi oversees the work of the new directors (described below) and assists in recruiting and hiring new staff. This new role adds a layer of managerial oversight necessary for SCLAS' growing infrastructure.

Finally, aware of the need to upgrade their technological capacity, SCLAS hired a full-time in-house IT Director in August 2017.

With this comprehensive plan for hiring and restructuring, SCLAS is on track to having the attorneys, supervision, and support necessary to provide client-centered, quality representation.

Training

Whereas previously SCLAS relied on a more ad hoc training approach, Ms. Mulry and her team recognize that it is imperative to develop in-house training expertise and curriculum. With Caseload Relief I funding, SCLAS hired its first Training Director, Kent Moston, in November 2016. In June 2017, SCLAS also promoted three attorneys to the new roles of Legal Director, Trial Director, and Outreach Director. This new team of directors is responsible for developing a training curriculum, keeping staff updated on developments in the law, identifying staff to send to external, intensive hands-on trainers, supporting staff attorneys with trials, and developing a program for community outreach and education which incorporates staff attorneys. In less than one year's time, SCLAS went from no formalized training structure to a team of directors devoted to ensuring that SCLAS attorneys have the training and support necessary for quality criminal defense representation.

Shortly after Mr. Moston assumed the role of Training Director, he began meeting with small groups of six SCLAS attorneys at a time to discuss relevant training issues. Notably because of the lack of meeting space, he could not meet with larger groups consistently (the space issue will be addressed below). However, Mr. Moston said he appreciated the smaller groups because it

gave him the opportunity to get to know the SCLAS staff as well as to identify their most pressing training needs. During our structured interviews, attorneys in SCLAS' Riverhead Office reported that they felt that their access to training was much more limited than those attorneys housed in Central Islip. Even though SCLAS hosted some lunchtime CLEs in Central Islip, the Riverhead Office is more than 30 miles away making it impractical to get to and from the training during an East End or County Court attorney's lunch hour. Very few trainings were held in Riverhead. With the hiring of Mr. Moston, SCLAS has already started to address this issue. Mr. Moston has gone out to the Riverhead Office to meet with groups of attorneys on two occasions and will continue to host trainings at the Riverhead Office in the coming year.

Additionally, with the assistance of the new directors and Mr. Caponi, Mr. Moston developed an in-house, comprehensive, 4-week long new attorney training program which was administered to both the Advance Team (August 2017) as well as the new class of attorneys (September 2017). This training is an intensive primer intended to provide a solid foundation for the new attorneys before they begin working in court. Topics range from accusatory instruments and substantive and procedural criminal law issues to crisis recognition and investigations. Throughout the training period, attorneys visit various courtrooms for observation. Being the first to undergo this new training, the Advance Team provided valuable feedback which allowed the directors to further improve the curriculum and structure for the new class. SCLAS plan to continue to refine this new attorney training for future hires.

With $52,571 in Quality funding, SCLAS enhanced its training fund which has allowed the organization to send five newly admitted attorneys to external trial training programs, and send the Outreach Director to the prestigious National Legal Aid and Defender Association (NLADA) Community Oriented Defender Network Annual Conference in June 2017. Additionally, with this funding SCLAS has further developed its training curriculum. The SCLAS has also used this funding to create opportunities to collaborate with the Suffolk County Bar Association (SCBA). On July 20, 2017, SCLAS coordinated a training with the SCBA in which Kent Moston presented the Annual Criminal Law Update. Over 50 SCLAS attorneys attended. On August 16, 2017, Mr. Moston also presented at a joint lunchtime ethics CLE with the Suffolk County Criminal Bar Association called "Whose Trial is it Anyway."

New Office Space

The need for additional space is obvious upon walking into SCLAS' Central Islip or Riverhead offices. Attorneys are doubled and tripled up in offices; some staff do not even have office space and must use tables set up as makeshift desks in common areas. In both offices, SCLAS attorneys do not have space to meet privately with clients and there are no dedicated conference rooms for large group meetings. The lack of resources to expand or make interior improvements in existing spaces has contributed to low staff morale. More than one attorney told ILS that they worry that the rundown and cramped space in which they currently work leads clients to believe the SCLAS attorneys are less professional than other attorneys and will not provide quality representation. Indeed, the desire to feel and appear more professional was a common theme during the structured interviews.

With the contemplated increase in staffing as described above, SCLAS reached a tipping point. Using Caseload Relief I funding, SCLAS is making the aspiration of adequate space a reality. They located additional office space in an office building located at 320 Carleton Avenue, across the street from the Cohalan Court Complex (the location of District Court and Family Court). As of the writing of this report the space has been renovated and SCLAS just moved in. SCLAS relocated some existing staff to this new office thus making room for the new teams at the current Central Islip office. This new space also includes a mock court room for training and trial preparation. With Caseload Relief II funding, SCLAS will add office space in Riverhead to achieve the same goals for the East End and County Court attorneys.

ILS has been impressed with the SCLAS' thoughtfulness in using Settlement funding. The SCLAS has not merely sought to hire more staff; rather, the SCLAS has sought to transform its organization and the standard of criminal defense practice by creating a strong infrastructure with multiple levels of quality oversight, by reducing attrition, and by moving toward a team approach to defense which fosters collaboration and the use of non-attorney professionals. ILS looks forward to continuing to work with the SCLAS in this transformation.

2. Assigned Counsel Defender Program (ACDP)

Suffolk County's Assigned Counsel Defender Program (ACDP), which handles all the County's homicide cases as well as conflicts, is similarly undergoing significant transformation. In the last year, with the support of Quality funding, the ACDP has incorporated, established a Board of Directors, hired a full-time administrator, strengthened its organizational capacity, and moved to new office space. Further, with Caseload Relief funding, the ACDP is expanding panel attorney access to vital non-attorney professional supports, mentoring, and training. Last year, the ACDP operated out of the private office of David Besso, the former part-time administrator. Mr. Besso was essentially donating his time to manage the program and was supported by a handful of contract staff members to assist in assignments and voucher review. Now, the ACDP is growing to an independent program with oversight and support necessary for a panel of almost 175 attorneys.

Critical to the ACDP's evolution is building a solid organizational foundation in a professional environment. The first step the ACDP took was elevating a current administrative assistant, Stephanie McCall, to the role of Deputy Administrator. During the structured interviews, more than one panel attorney told ILS that Ms. McCall has been an invaluable resource for the panel attorneys. One called her "Dave [Besso]'s best investment." She is well-versed in the day-to-day administration of assignments and vouchers and is a true support to the panel when they need assistance. Simultaneously, the ACDP embarked on the search for a full-time administrator. Mr. Besso took an active role in convening a Suffolk County Bar Association (SCBA) hiring committee and reviewing applicants.[15] Daniel Russo stood out as an applicant and received a unanimous endorsement from the hiring committee. He took the helm of the ACDP in April 2017. The same month, the ACDP held a mandatory CLE and panel meeting where Mr. Russo was introduced in his new role. During that meeting, Mr. Russo discussed the Settlement and the related initiatives and prepared the panel for the many positive upcoming changes, including the

[15] The hiring committee and search process are described in the 2016 Quality Update.

ACDP's intention to hire new non-attorney professional support staff as well as the availability of expert funding.

In the interim, the ACDP located and secured space in the office building at 320 Carleton Avenue, across the street from the Cohalan Court Complex. After a buildout and completing the necessary technological requirements, the ACDP moved into its new space in August 2017.

Using Quality funding, in mid-2017, the ACDP contracted with an accountant who has been assisting with grants management and building up the organizations' overall financial infrastructure. The ACDP has also been working with a corporate not-for-profit attorney to assist the ACDP in becoming a 501(C)(3) and, as of June 1, 2017, the ACDP has its own payroll. Whereas previously, the ACDP was run by all contract staff who were unsure if they were going to get paid on a regular basis, now the ACDP has full-time and part-time employees and it is able to offer benefits to eligible staff.

During our structured interviews, panel attorneys identified the long wait for vouchers to be paid as a problem, noting that it could take up to six months. With a better infrastructure and staff in place, the ACDP has focused on making the voucher review process more efficient to shorten the overall voucher turnaround time. Ultimately vouchers must also be reviewed and processed by the judge, the County Attorney's Office and the County Comptroller but the ACDP hopes that by making their review process more effective, the overall turnaround time will decrease. It appears to be working; at a recent panel meeting, an attorney noted that it took only 8 weeks for him to receive payment on a large trial voucher.

In addition to administrative growth and support, the ACDP is working to ensure that its panel attorneys are qualified and have access to non-attorney professional supports and training. There are still significant steps to take in this area, but Mr. Russo and Ms. McCall have developed plans to get to know the panel attorneys and make resources available. One attorney told ILS during the structured interviews that if the process to get an expert were more streamlined, he would be more likely to use one. With Caseload Relief I funding, the ACDP is developing such a process. At the April 2017 panel meeting, Mr. Russo emphasized the availability of expert funding and encouraged attorneys to utilize such funds on their cases. Mr. Russo reported that having this funding was critical to a homicide case that a panel attorney recently tried.

Further, in August 2017, the ACDP used Caseload Relief I funding to hire a full-time Spanish interpreter. Mr. Russo reports that this interpreter has provided interpretation services for attorneys when they meet with their in-custody and out-of-custody clients – something that never previously occurred. Multiple panel attorneys told ILS that access to an investigator who will provide services on their cases without fear of not getting paid is critical. One attorney told ILS that he had found a good investigator, but could not continue to use him because of difficulty in getting the investigator paid in a timely manner. Waiting for a court to authorize use of an investigator also creates a concerning delay in initiating case investigations, during which time critical evidence might disappear. The ACDP is addressing this with Caseload Relief funds by hiring a full-time investigator. The ACDP is currently searching for a qualified candidate and hopes to have someone on staff and accessible to panel attorneys by the end of this year.

The ACDP is also bringing a full-time social worker on staff who will be available to help connect assigned clients to services and programs and assist with overall advocacy. As of the writing of this report, the ACDP was still in the process of interviewing, and had identified at least one potential candidate for the position. Prior to this, ILS learned, most attorneys have had to rely solely on the court to connect clients to services and programs. With a full-time social worker on staff, panel attorneys will be able to engage in defense-based social work advocacy to assist in getting better dispositions and help clients with any collateral consequences. One panel attorney told ILS he would certainly take advantage of this type of non-attorney professional support as the real goal is "to save their life."

At a September 2017 CLE and panel meeting, Mr. Russo introduced another valuable non-attorney support available to the panel – a contract with the Consulting Project for sentencing advocacy and mitigation investigation. Reynaldo Cusicanqui, founder and Executive Director of Consulting Project, presented the forensic and mitigation services that his organization can provide to assist in pre-plea and pre-sentence advocacy. At this meeting, there was an enthusiastic response from the panel about this service. The first question a panel member asked was, "why wouldn't I use you in all of my cases?"

Understanding that panel oversight and supervision is essential to ensuring quality representation, Mr. Russo has expressed his commitment to getting to know the panel attorneys and observing them in court as much as possible. But, with his other administrative duties and the sheer size of the panel that is not always possible. As a result, Mr. Russo is using Caseload Relief funding to recruit two experienced, respected attorneys to contract with the ACDP to serve as part-time Quality Control attorneys. Additionally, Mr. Besso is serving as a mentor to both Mr. Russo in his role as administrator, and to the panel for help with legal and strategic issues. Further, with Caseload Relief II funding, Mr. Russo intends to contract with an additional well-respected attorney to serve as a resource attorney to the panel.

During the structured interviews, multiple panel attorneys told ILS that they would like to see more trainings, including more skill-building trainings that will prepare them for trial. In addition to the existing, bi-annual mandatory CLEs the ACDP hosts, Caseload Relief II funding will include resources to send panel attorneys to hands-on intensive trainings as well as to allow the ACDP to host more local trainings targeted to address panel attorney needs.

Building a program also involves building comradery and morale amongst the panel members. Indeed, from the structured interviews it is apparent that, while the panel attorneys have colleagues to whom they can turn for advice and support, there has not been a central place to build this sense of collegiality. Accordingly, the ACDP is working on building panel communication and morale. They have a new website which includes all necessary forms and information, they have staff to ensure that panel attorneys' questions are addressed in a timely fashion and, as mentioned previously, process vouchers and paperwork more efficiently. At the September 2017 panel meeting, Mr. Russo also presented awards to three panel attorneys to recognize their outstanding advocacy and litigation on behalf of assigned clients. Mr. Russo told ILS that he intends to continue to publicly recognize panel members who provide quality representation to boost panel morale and encourage client advocacy.

B. Counsel at Arraignment

As set forth in our 2015 Counsel at Arraignment Plan and 2016 update report, the 1964 creation of a District Court has facilitated having counsel at arraignment for West End defendants, particularly since the vast majority of all Suffolk County arraignments occur in this District Court. There are two parts in the District Court that conduct arraignments: D-11, for defendants who are detained at arrest and arraigned the next day; and the Street Appearance Part (SAP), for defendants who are issued an appearance ticket upon their arrest and scheduled for arraignment on a specific date. D-11 operates seven days per week so that no defendant is detained for more than 24 hours awaiting arraignment; SAP operates five days per week. The SCLAS has traditionally staffed D-11, covering arraignments for defendants when there is no conflict. In 2015, through a combination of funding from ILS' Counsel at First Appearance competitive grant and ILS Distribution #5, the ACDP began staffing SAP and also began staffing D-11 to represent defendants when there is a conflict with the SCLAS.[16] Thus, there is counsel available to represent all defendants who are arraigned in the District Court. Additionally, the SCLAS has traditionally covered all arraignments that occur in the West End village courts, using attorneys who are assigned to these village courts and regularly staff all scheduled court sessions.

Regarding the East End courts, the SCLAS has traditionally assigned attorneys to provide arraignment coverage in Riverhead and Southampton Town Courts, which are the East End's highest volume courts, accounting for about 70% of East End arraignments. In 2013, using funding from an ILS Counsel at First Appearance competitive grant, the SCLAS expanded this arraignment program to Southold and East Hampton Town Courts, hiring two full-time attorneys to cover all arraignments conducted on weekdays. As for the remainder of East End justice courts that handle criminal cases – Quogue Village Court, West Hampton Beach Village Court, Southampton Village Court, Sag Harbor Village Court, and Shelter Island Town Court – SCLAS was only able to cover those arraignments that occur at the court sessions they regularly staffed.

Given the above pre-existing arraignment programs, ILS' 2015 Counsel at Arraignment Plan identified two gaps in arraignment coverage: weekday coverage for the East End justice courts that SCLAS was not covering; and weekend and holiday coverage for all East End justice courts that handle criminal cases. Each is discussed below.

1) Weekday arraignments

The 2015 Counsel at Arraignment Plan sought to fill this gap in arraignment coverage by funding the SCLAS to hire two full-time attorneys to create the capacity to cover all weekday arraignments in East End courts, including arraignments in Quogue, West Hampton Beach, Southampton Village, Sag Harbor, and Shelter Island courts. The cost to do so, including salaries, fringe, other than personnel costs and mileage reimbursement, was estimated to be $173,808.

[16] Data received from the ACDP reveals that these grant funded programs have resulted in arraignment coverage for a significant number of people. For example, between November 1, 2016 and June 30, 2017, the grant program in D-11 resulted in 926 arraignments being covered.

As set forth in the 2016 update report, SCLAS recruited and hired two attorneys for this program, both who began working on October 17, 2016. Because these two attorneys must be available to not only cover regularly scheduled court sessions, but also on-call arraignments, there are limits as to the responsibilities they can assume other than arraignment coverage, and they spend the time between arraignments working on post-conviction motions and other assignments that allow for interruptions.

When the SCLAS began covering arraignments in East Hampton and Southold with the ILS Counsel at First Appearance grant, the SCLAS collected and maintained data on the total number of arraignments covered in these courts versus the total number covered because of the grant program. They have done the same with the new program funded by the Settlement. Below is the data collected:

East Hampton Town Court: From September 1, 2016 through August 31, 2017, the SCLAS represented a total of 167 defendants at arraignment. Of these, 52 took place on Thursday, the day that SCLAS had traditionally staffed the court session, which means that these defendants would have been represented at arraignment prior to the grant. The remaining 115 defendants would not have been represented at arraignment prior to the grant. The percentage increase in the number of defendants represented at arraignment because of the grant is 221%. Overall, the release outcomes were good for the 115 defendants represented at arraignment because of the grant, 107 (or 93%) were released the same day, either because they were released on their own recognizance (77 of those released) or because bail was set at an amount they could pay that day (30 of those released).

Southold Town Court: From September 1, 2016 through August 31, 2017, the SCLAS represented a total of 83 defendants at arraignment. Of these, 37 took place on Friday, the day that SCLAS had traditionally staffed the court session, which means that these defendants would have been represented at arraignment prior to the grant. The remaining 46 defendants would not have been represented at arraignment prior to the grant. The percentage increase in the number of defendants represented at arraignment because of the grant is 124%. The release outcomes were not as good as those for East Hampton. Of the 46 defendants represented at arraignment because of the grant, 28 (or 60.8%) were released the same day either because they were released on their own recognizance (19 of those released) or because bail was set in an amount they could pay that day (9 of those who were released).

Quogue, Southampton Village, West Hampton Beach, Sag Harbor, and Shelter Island: From November 1, 2016[17] through August 31, 2017, the SCLAS covered 23 arraignments that did not occur during the court sessions that they regularly staff – i.e., 23 arraignments that they previously would not have covered. Of these, 65% (15) defendants were released on their own recognizance; bail was set in the other 35% (8) of cases.

[17] Even though the two SCLAS attorneys were hired in October 2016 to cover these arraignments, because they needed to be trained, they did not start to provide representation at arraignment until November 1, 2016.

According to the SCLAS data on missed arraignments, from implementation of this program through July 2017, the SCLAS missed only one East End arraignment. In that case, the SCLAS had been notified prior to the arraignment that the defendant had retained private counsel; they appropriately determined that it would have been contrary to the rules of professional conduct to represent a defendant who had retained an attorney on the matter. See *New York State Unified Court System, Part 1200, Rules of Professional Conduct* (January 2017).

2) Weekend and holiday arraignments

The 2015 Counsel at Arraignment Plan provided for the creation of an on-call program of private attorneys to cover weekend and holiday arraignments, which was estimated to cost $400,000. As set forth in the 2016 update report, on the weekend of July 9, 2016, the County began a pilot version of this program to cover the largest East End courts, Riverhead Town Court and Southampton Town Court; the County also included Southampton Village Court in this pilot program because of its geographic vicinity to the other two courts. The pilot program included five attorneys who provided coverage on a rotational basis, with two designated as the on-call attorneys for Riverhead Town Court, and three designated to cover the two Southampton courts. The attorneys are paid a flat fee of $32,000 per year to participate in the program.

On the weekend of May 27, 2017, the County expanded this pilot program to include the next two busiest East End courts: East Hampton and Southold, using four additional private attorneys, two each designated to staff Southold and East Hampton Town Courts. These attorneys are also paid a flat rate of $32,000 per year to participate in the program.

As set forth in the 2016 update plan, in June 2016, in collaboration with the County Attorney's Office and with input from SCLAS' staff, ILS developed a "Model Arraignment Form." It was agreed that each attorney participating in the on-call program would complete one form per appearance. The completed forms are then photocopied, the copies are attached to the corresponding case files and are passed on to the SCLAS first thing on Monday mornings. The original arraignment forms are submitted to the County Attorney's Office each month along with the arraigning attorneys' vouchers. The County Attorney's Office subsequently mails the submitted arraignment forms to ILS for data processing. Currently, and on an interim basis, ILS has assumed the responsibility of compiling data from the forms that are mailed to us each month. ILS has committed to this interim data maintenance and reporting obligation through December 31, 2017, after which it will be the County's obligation. The data we have collected from the County Attorney's office reveal that between July 9, 2016, when the pilot program started, and July 31, 2017, the program covered a total of 656 arraignments, as set forth in the table below:

Month	Forms received	Coverage	Weekends / Holidays	
July 2016 – Oct 2016	199	7/9/16-10/30/16	17 weekends, 2 holidays	Labor Day, Columbus Day
November, 2016	41	11/3/16-11/27/16	4 weekends, 2 holidays	Thanksgiving Day, Election Day. Note: No arraignments on Veterans' Day.
December, 2016	47	12/3/16-12/31/16	5 weekends, 1 holiday	Christmas Day
January, 2017	31	1/1/17-1/29/17	4 weekends, 2 holidays	New Year's, Martin Luther King's Day
February, 2017	44	2/4/17-2/26/17	4 weekends, 2 holidays	Lincoln's Birthday, Presidents' Day
March, 2017	33	3/4/17-3/25/17	4 weekends, no holidays	-
April, 2017	36	4/1/17-4/30/17	5 weekends, no holidays	-
May, 2017*	62	5/6/17-5/29/17	4 weekends, 1 holiday	Memorial Day. Note: No arraignments on Sunday, 5/7/17.
June, 2017	67	6/3/17-6/25/17	4 weekends, no holidays	-
July, 2017	96	7/1/17-7/30/17	5 weekends, 1 holiday	Independence Day
TOTAL	656	# of Months: 12	56 weekends, 11 holidays	-

Of these 656 arraignments, 56 resulted from the May 2017 expansion of the weekend on-call program to include Southold and East Hampton courts. Of these 56 arraignments, 11 occurred in May 2017; 19 in June 2017; and 26 in July 2017.

To date, the County has not developed a protocol for tracking missed arraignments, so we do not know if there are missed arraignments and, if so, how many and the reason the arraignments were missed.

In early May 2017, Suffolk County Attorney Dennis Brown informed ILS of its plan to operate the private attorney on-call program through December 2017, and then transition the program to the SCLAS in January 2018. This decision was prompted by Mr. Brown's concern that there would not be enough private attorney interest to expand the program to the smaller, harder-to-reach East End courts, by the fact that there was no administration over the program, and by his desire to promote vertical representation. After that meeting, the SCLAS submitted a written plan for covering all East End weekend and holiday arraignments. However, in early September 2017, Mr. Brown met with Dave Besso and Daniel Russo of the ACDP, and William Ferris of the Suffolk County Bar Association, regarding the program. They urged Mr. Brown to keep the program with the private bar, committing themselves to recruiting attorneys and promising that the ACDP would administer the program.

On September 29, 2017, the ACDP submitted a written proposal for an on-call program that would: i) maintain the program currently running; ii) expand the program to the four remaining East End courts; and iii) have the ACDP administer the program. ILS made some recommendations regarding this proposed plan, and on October 12, 2017, the ACDP submitted a revised proposal incorporating these recommendations. The ACDP will continue to use the nine attorneys who are already involved in the weekend arraignment program and has recruited three more attorneys to assist in covering the remaining courts, for a total of 12 attorneys. Two of

these attorneys will cover Riverhead Town Court on a rotational basis; three will cover the two Southampton courts on a rotational basis; two will cover Southold Town Court on a rotational basis; two will cover the East Hampton and Sag Harbor courts on a rotational basis;[18] two will cover Quogue and West Hampton courts on a rotational basis;[19] and one will cover Shelter Island.[20] The attorneys will be paid a flat rate of between $25,000 to $37,500 per year, depending on how busy their respective courts are. The projected budget for this program is $400,000, which equals the funding made available from the 2015 Counsel at Arraignment Plan for this on-call program. The County has accepted this proposal with ILS' endorsement. ILS will work with the County and the ACDP on monitoring this program as the ACDP assumes the responsibility for administering it, collecting and reporting on data, and expanding the program to the smaller courts currently not covered.

It is anticipated that by January 1, 2018, the County will have structures in place to cover weekend arraignments in the smaller, less busy East End courts currently not covered. Thus, by sharing responsibility, the SCLAS and ACDP will have implemented programs for full arraignment coverage in Suffolk County courts.

[18] A single judge conducts arraignments for both courts, so these arraignments will be staggered to allow the on-call attorney to cover all arraignments in both courts.

[19] These courts are in close geographic vicinity, and the judges have agreed to stagger arraignments so that one attorney can cover all arraignments in both courts.

[20] This attorney lives on Shelter Island and has often been asked by the judge to provide representation at arraignment on a pro bono basis. Mr. Russo, the ACDP Administrator, will provide back-up arraignment coverage four weekends per year and in case of emergencies.

V. WASHINGTON COUNTY

In 2015, prior to Settlement implementation, Washington County had a Public Defender Office staffed by a full-time Public Defender, Michael Mercure, and seven part-time assistant public defenders who worked from their own offices, and one administrative support person. There was no office culture to speak of and calls to the Office often went unanswered. When there was a conflict, the Public Defender's administrative assistant would assign an attorney from a list of private attorneys that she maintained. There was no oversight of the work of these assigned attorneys or their qualifications to handle the cases to which they were assigned. Given this minimal infrastructure, it is no surprise that in 2015, the County did not have any formal counsel at arraignment programs and most defendants were unrepresented at their first court appearance.

In less than two years, because of Settlement funding and committed County officials and providers, this situation has significantly changed. The Public Defender Office now has six full-time attorneys (including the Public Defender), two part-time attorneys, and three administrative support staff. There is a sense of culture, professionalism, and mission. The County also has a formal Assigned Counsel Program with two full time administrative staff and a part-time Supervising Attorney who oversees the qualifications and work of assigned counsel panel attorneys and who has successfully recruited new attorneys to the program. Additionally, and perhaps most importantly, virtually all defendants in the County are now represented at their first court appearance.

This transformation, and the County's ongoing commitment and work toward improving the quality of representation, is described in more detail below.

A. Quality

Washington County was allocated $92,624 of the Settlement's Quality funding. This money, in conjunction with ILS non-competitive distributions and Caseload Relief funding, has been used to transform the Public Defender Office from a fractured group of part-time attorneys to a professional office with full-time attorneys and non-attorney staff. The funding has also been used to create the infrastructure for an Assigned Counsel Program overseen by a Supervising Attorney, Thomas Cioffi, who is committed to quality representation.

1. Public Defender Office

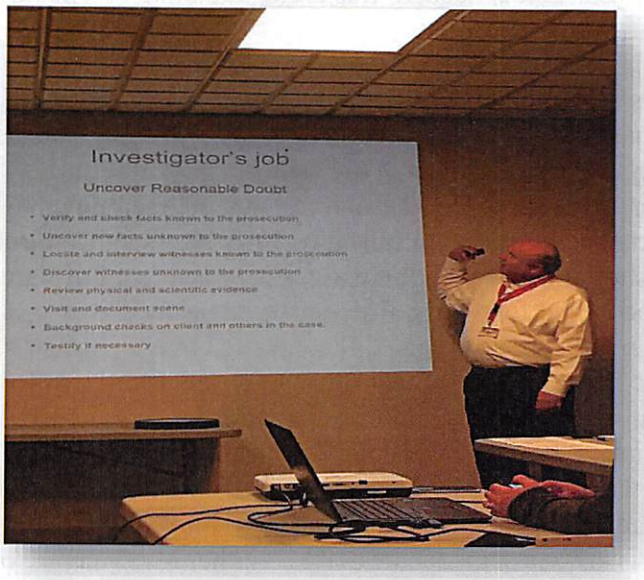
The Public Defender Office received $48,124 of the Settlement's Quality funding, which it used to hire a full-time Administrative Assistant to manage the Office's administrative functions and better support the staff attorneys. This Administrative Assistant, Lisa Ringer, started her position in a part-time capacity on February 25, 2016 and was promoted to full time on April 18, 2016. Mr. Mercure reports that her work has been invaluable and that she has grown into a role as office manager for non-attorney staff. Additionally, Ms. Ringer is tracking all the data for the Office's counsel at arraignment programs, which frees up Mr. Mercure for other matters. Ms. Ringer's tracking of the information about the Office's on-call counsel at arraignment program has been critical in preparing for the County's centralized arraignment program (discussed further below). She also provides administrative support to two attorneys, closes some family court cases, and manages the office's calendar. Given the growth in Ms. Ringer's duties, it has

become apparent that another administrative assistant is needed. It is anticipated that this position will be funded through Caseload Relief II funding

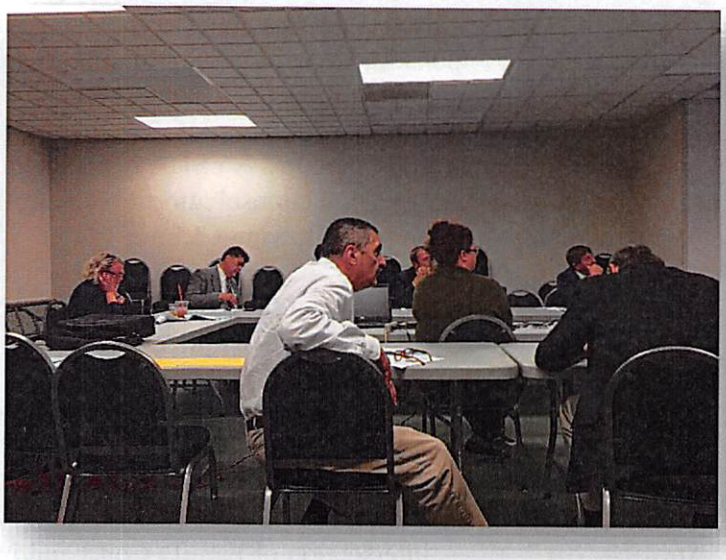
To its credit, the County has not confined its quality improvement initiatives to the hiring of Ms. Ringer. Rather, the County has effectively used ILS distribution funding and Settlement Counsel at Arraignment and Caseload Relief funding to transition most of the Office's part-time staff attorney positions to full-time. In September 2015, using ILS distribution money, the Public Defender Office transitioned three of its part-time attorneys to full-time. In 2016, using Counsel at Arraignment funding, a fourth part-time staff attorney position was transitioned to a full-time positon, and in January 2017, using Caseload Relief funding, a fifth part-time position was transitioned to full-time. The structured attorney interviews that ILS conducted over this past summer reveal that the transition of a Public Defender Office that was composed primarily of part-time attorneys to full-time attorneys has had a meaningful impact on attorney morale, support, and supervision. Because the full-time attorneys work out of one office instead of private offices scattered across the County, they regularly brainstorm their cases and consult with each other. Mr. Mercure has designated his most experienced attorney, Barry Jones, as his First Assistant, and staff attorneys feel that there is always someone available – either Mr. Mercure or Mr. Jones – to whom they can go for a case-related issue or question. Because of his comprehensive legal knowledge, the staff attorneys refer to Mr. Jones as the "almanac."

Working with ILS and the New York State Defenders Association (NYSDA), and using Counsel at Arraignment and Caseload Relief funding, the Public Defender Office and the Assigned Counsel Program have co-sponsored a series of Continuing Legal Education programs held in Washington County. On November 18, 2016, ILS met with NYSDA, Barry Jones, and Tom Cioffi, the Assigned Counsel Supervising Attorney. We discussed future training in Washington County and possible formats and schedules. NYSDA distributed an extensive survey to the assistant public defenders and assigned counsel attorneys about their training priorities. The survey was used to help develop the following CLEs:

December 14, 2016	How to Get the Most from First Appearance: The Ins and Outs of Arraignments
February 15, 2017	Immigration Issues for Criminal Defense Attorneys
March 29, 2017	Challenging Accusatory Instruments
April 18, 2017	Intersection of Family Court and Immigration for Criminal Attorneys
May 5, 2017	Challenging Fines and Fees
October 4, 2017	Pros of Investigating Your Case



Paul Chambers, Ontario Co. Public Defender Office
Senior Investigator, presenting at the October 4 CLE



October 4 CLE participants from Public Defender Office and ACP

In addition to training, Caseload Relief funding has been used to create a budget for the Public Defender Office to access non-attorney professional supports. Previously, the Public Defender Office had no dedicated funding for non-attorney professionals, and had to apply to the judge or magistrate. The Public Defender Office now maintains a fund to retain experts, investigators and any other needed non-attorney professional supports. During our structured interviews, attorneys reported that expert and investigation services are being used more often. Attorneys noted that it is much easier to use investigators since the office now has an investigator on contract, and

attorneys do not have to apply to the court for investigation use. In one case the investigator obtained exculpatory evidence early in the case which led to the dismissal of charges against a wrongly accused client. The gains that have been made by the Public Defender's office can be illustrated by the following: in 2015, the amount spent on investigations was nominal; in 2016, the Office spent $6,910.74 on investigations; and so far in 2017, the Office has spent $14,750 on investigations. Regarding experts, in 2017 the Office used the following experts in cases: a blood splatter expert and forensics expert in a homicide case; a handwriting expert in a welfare fraud case; and a psychological expert in a sex offense case.

With its growing number of full-time staff attorneys and administrative staff, space reached a crisis point for the Public Defender Office by early 2017. Attorneys were doubled up in tiny offices, and there was no conference space for client or office meetings. The Public Defender Office is housed in the County Court complex, which is a convenient location. But because there are other County agencies competing for space in this complex, there currently is not any appropriate County space to which the Office can re-locate. Finally, in August 2017, the County implemented a short-term solution and provided the Public Defender Office with additional space across the hall from their current office. Though Mr. Mercure states that this additional space is a significant improvement for the Office, no one views it as a long-term solution.

The Public Defender Office still has work to do to improve the quality of services it provides its clients, including developing a long-term solution to the Office's space problem. But as Mr. Mercure recently told ILS, with resources and a short-term solution to the space problem, the Office is now poised to begin re-examining current practices and thinking in terms of a new manner of defense: one that emphasizes oral and written advocacy, creative litigation, case investigation, and the effective use of non-attorney professionals.

2. Assigned Counsel Program

The 2015 Quality Plan provided $44,500 in funding for Washington County to professionalize its Assigned Counsel Program. Of this money, $27,500, in conjunction with additional County funding, was used to hire an administrative assistant, Patricia Connors. The rest of the ACP's Quality funding, $17,000, was supplemented by Caseload Relief funding to hire a part-time supervising attorney to support ACP panel attorneys. Thomas Cioffi was hired for the position and began his role as ACP Supervising Attorney on August 22, 2016.

Mr. Cioffi immediately began working to confront many of the issues facing the ACP. First, Mr. Cioffi took control of attorney assignments to ensure that the assigned attorneys have the qualifications necessary to handle the types of cases assigned to them. Mr. Cioffi has also started to recruit new members to the panel who have more experience in criminal defense and can handle more serious felony offenses. He also began to oversee the implementation of the ILS *Criteria and Procedures for Determining Assigned Counsel Eligibility* to ensure that defendants who cannot afford an attorney are promptly provided with one. Mr. Cioffi also installed a computer terminal in the ACP office which provides Westlaw legal research access for panel attorneys. During ILS' structured interviews, panel attorneys reported that the addition of the Westlaw computer terminal was a much-needed support. Mr. Cioffi notifies and encourages attorneys to attend the in-house CLEs described above. Again, in structured interviews, panel

attorneys reported that they found this support helpful. Additionally, attorneys reported that they liked being able to brainstorm with each other before and after the CLEs.

Finally, Mr. Cioffi met with ILS on several occasions to draft an Assigned Counsel Plan and Handbook. The Assigned Counsel Plan is a document that sets forth the structure of the program. The Handbook is a more detailed document for the panel attorneys that outlines the criteria for panel participation, resources and supports available to attorneys, and attorney responsibilities. The Plan and Handbook are being reviewed by the Washington County Bar Association with the hope that they will be approved shortly.

Armed with this Handbook and clear processes and protocols for panel attorneys, Mr. Cioffi is well positioned to work more diligently with panel attorneys on ensuring high quality representation. Mr. Cioffi has already demonstrated his capacity to reform policies and practices. As detailed in ILS' April 2017 report about implementation of the ILS *Criteria and Procedures for Determining Assigned Counsel Eligibility*, in a matter of months, Mr. Cioffi transformed the ACP's policies and procedures for determining assigned counsel eligibility to ensure that the application process is accessible to everyone and that there are no needless barriers to applying for assigned counsel.

B. Counsel at Arraignment

In 2015, Washington County had no formal counsel at arraignment programs; it was the only *Hurrell-Harring* county that had not applied for ILS' competitive Counsel at First Appearance grant. But under Mr. Mercure's leadership and with Settlement funding, the County is now representing nearly every defendant at arraignment, with only incidental and sporadic missed arraignments. Additionally, Washington County has joined Onondaga County as one of the four counties across the State to take advantage of the recently enacted legislation to implement a centralized arraignment program.

1. Washington County's Counsel at Arraignment Programs

The Washington County Public Defender Office has implemented the following programs to ensure that all arraignments are covered:

- *Regularly scheduled DA sessions*: As previously stated, in September 2015, the Public Defender Office used ILS distribution funding to transition three of its part-time assistant public defenders to full-time. This has allowed the Office to staff all justice courts' regularly scheduled DA sessions and to represent anyone being arraigned during these sessions.

- *Regularly scheduled non-DA court sessions*: With support from Anthony Jordan, the Washington County District Attorney, all county law enforcement agencies have agreed to issue appearance tickets for DA court sessions only. ILS worked with the State to obtain similar agreements from state law enforcement agencies. As described in ILS' 2016 update report, these agreements were in place by early 2016. Thus, arraignments seldom occur during these court sessions. When they do, the justices

contact the Public Defender Office's on-call attorney (discussed below) to represent the defendant.

- *Off-hour arraignments that occur during business hours:* The 2015 Counsel at Arraignment Plan provides funding for the Public Defender Office to transition an additional part-time assistant public defender to full-time to bolster the Office's capacity to cover these arraignments. As detailed in ILS's 2016 update report, this transition occurred late in August 2016. But even prior to this change, in May 2016, the Public Defender Office implemented this program by informing magistrates of it and asking them to notify the Public Defender Office of all such off-hour arraignments. Though the Public Defender Office started the program with insufficient staffing, the Office was committed to covering these arraignments and did so, even though it meant that between May and August 2016, Office staff attorneys were stretched quite thin.

- *Non-business hour (night, weekend, and holiday) off-hour arraignments*: The 2015 Counsel at Arraignment Plan funded a program of rotating on-call attorneys to cover these arraignments. Under this program, there were two attorneys on-call, a primary attorney and a back-up attorney. The program was staffed primarily by Public Defender Office attorneys, though there was funding available to allow private attorneys to rotate into the program. As detailed in the 2016 update report, the program started in May 2016 as a pilot program, consisting of just the primary on-call attorney. Throughout 2016, Mr. Mercure ran the program with just the primary on-call attorney; there was no paid back-up attorney. Still, Mr. Mercure ensured that he was notified whenever there was a need for a back-up attorney, and in most instances, he would fill this need. In January 2017, Mr. Mercure implemented the paid back-up component of the program. To date, the Public Defender Office has fully staffed the program, and has not included private attorneys in the on-call rotation.

A critical aspect of the two on-call programs has been notification of the Public Defender Office of off-hour arraignments. For various reasons, the County dispatch cannot provide notification. Thus, it was critical to obtain buy-in from local magistrates to ensure that they notify the Public Defender Office of all off-hour arraignments. Mr. Mercure worked strategically to obtain this buy-in by sending magistrates written information about the off-hour programs, regularly attending county magistrates' meetings, and engaging in informal conversation with magistrates about the program. These efforts have worked, and magistrates are regularly and consistently notifying the Public Defender Office of off-hour arraignments. The Public Defender Office also often receives cross-notification from the District Attorney's Office.

ILS received data from the Public Defender Office and the ACP regarding the number of arraignments covered from November 1, 2016 through June 30, 2017. According to this data, the Public Defender Office arraignment program covered a total of 1,426 arraignments.[21]

[21] Seven of these 1,426 arraignments were cases in which the Public Defender Office identified a conflict prior to arraignment and arranged for an ACP attorney to represent the defendant at arraignment. Two of these 1,426 arraignments were cases in which a private attorney represented defendants at arraignment on behalf of the Public Defender Office. Mr. Mercure had arranged for this attorney to assist with arraignment coverage during a brief

To assess how well its counsel at arraignment programs are working, the Public Defender Office worked with ILS to implement strategies for tracking missed arraignments. These strategies include tracking all magistrate calls about off-hour arraignments; checking jail logs daily to determine if there has been any person admitted to the jail who had not been represented at arraignment; and including a question about whether the applicant had been represented at arraignment on the application for assignment of counsel. According to the data the Public Defender Office reported to ILS about missed arraignments, during the period October 1, 2016 through June 30, 2017, the Office missed only 14 arraignments, two of which occurred in a single day and were covered by a private attorney who was present and represented the defendant at the justice's request. Six of the remaining missed arraignments occurred because of one justice who failed to notify the Public Defender Office's on-call attorney of the arraignment. Mr. Mercure has reminded this justice of the need to notify the Public Defender Office's on-call attorney of all off-hour arraignments. The remaining missed arraignments occurred for various other reasons, including, for example, an attorney's illness or the justice not waiting for the on-call attorney to arrive. Notably, there have been fewer missed arraignments with each quarter: in the last quarter of 2016, the Public Defender Office missed seven arraignments; in the first quarter of 2017, the Office missed five arraignments, and in the second quarter of 2017, the Office missed only two arraignments.

Though the Public Defender Office has done an extraordinary job in covering virtually all arraignments, the Office's off-hour program has taxed its staff attorneys. During ILS' structured interviews with staff attorneys, they described the challenges of the on-call program. One attorney, for example, reported that over the course of one weekend, she drove over 500 miles to appear at off-hour arraignments. Mr. Mercure recently told ILS that he is worried about the extraordinary amount of driving the on-call program requires, and opined that "it's a miracle that no one has been hit by a deer," which is not a remote possibility in rural Washington County.

2. Washington County's Centralized Arraignment Plan

Fortunately, on September 2017, pursuant to newly enacted Judiciary Law § 212(1)(w), Chief Administrative Judge Lawrence Marks authorized Washington County to implement a centralized arraignment program with a Centralized Arraignment Part (CAP). Under this program, there are two arraignment sessions each day for all off-hour arraignments in the County: a morning arraignment session that runs from 7:00 a.m. to 9:30 a.m.; and an evening session that runs from 7:00 p.m. to 9:30 p.m. Both sessions run every day, 365 days per year, and both have the jurisdiction to arraign any person arrested in the County. The arraignment part will be in the outer foyer of the jail to minimize law enforcement transport costs. These arraignments will be open to the public. Local magistrates will preside over these arraignments in accordance with a rotational schedule.

The Public Defender Office worked with ILS on developing a plan to staff this centralized arraignment program. Under this plan, the Public Defender Office will schedule one attorney for each arraignment session. At least initially, the Public Defender Office will also maintain the on-

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period when his office was involved in a high-profile second degree murder re-trial. The Public Defender Office staff covered the remaining 1,417 arraignments.

call program staffed with just one attorney to cover any off-hour arraignments that may occur despite the centralized arraignment parts. ILS will work with the Public Defender Office to monitor the on-call program to gauge the number and frequency of any off-hour arraignments and to assess if the program needs to continue.

The costs to fund the Public Defender Office to staff the centralized arraignment parts, continue the on-call program, and continue to pay for the transition of one part-time attorney to full-time falls within the $264,612 in funding set forth in the 2015 Counsel at Arraignment Plan and allocated by the State for full arraignment coverage in Washington County.

Washington County's Centralized Arraignment Program commenced on October 20, 2017. Mr. Mercure prepared by scheduling staff attorneys for the centralized arraignment parts and updating his Office's arraignment forms. He has also been diligent in attending meetings with OCA, County officials, State and local law enforcement, and magistrates to ensure that everyone is aware of the plan's details. ILS looks forward to working with the County and the Public Defender Office on monitoring this program.

COUNSEL AT ARRAIGNMENT: BENEFITS, INITATIVES, AND NEXT STEPS TO ELEVATING ARRAIGNMENT ADVOCACY

As described in this report, the *Hurrell-Harring* providers have worked hard to implement counsel at arraignment programs to ensure that all defendants are represented by counsel the first time they appear in criminal court. The providers have erected structures and systems to provide attorneys at arraignments during regularly scheduled court sessions and all manner of off-hours: off-hour business hours, evenings, holidays and weekends. They have asked more of existing staff, created on-call programs, managed complicated schedules, and hired and trained new staff. They have reached out to other stakeholders, including county officials, local prosecutors, law enforcement, and the judiciary to cultivate a culture where counsel at arraignment is the new normal.

Since the *Hurrell-Harring* counties have begun implementing counsel at arraignment programs, they have consistently made it clear to ILS that they are engaging in these efforts not just because the Settlement requires it, but because they know from experience that having counsel at defendants' first court appearance makes a difference. In this regard, they have told us how they have used their counsel at arraignment programs as avenues for the prompt assignment of counsel and quality improvement initiatives.

These efforts notwithstanding, there is growing recognition across the State that defense counsel can elevate the level of advocacy at arraignments to ensure that fewer people are detained pre-trial and to guard against unjust prosecutions.

Below we discuss some benefits to having counsel at arraignment, some initiatives to enhance the quality of representation and facilitate prompt assignment of counsel, and next steps to elevating the level of arraignment advocacy.

A. How Having Counsel at Arraignment Can Enhance the Quality of Representation and Facilitate Prompt Assignment of Counsel

There are some improvements to the quality of representation that inevitably flow from having counsel at arraignment. One that providers frequently mention is protecting their clients' rights against self-incrimination. It is natural for people who have been arrested to want to tell their story at their first court appearance, whether it is to proclaim their innocence or justify their actions. But doing so can implicate their rights against self-incrimination and jeopardize possible defenses in their case. Arraigning attorneys stand between their clients and the power of the state, counseling their clients on what to say and the value of using a more appropriate forum to tell their story, such as an oral or written motion made by counsel in which the story is legally relevant. The presence of counsel at arraignment serves to protect clients' rights against inadvertent and uncounseled self-incrimination, particularly for clients who are less sophisticated and more vulnerable because of their age, disability, or physical or emotional condition at arraignment.

Providers also remind ILS that having counsel at arraignment is a significant step to cultivating the client's trust in the system and in their assigned attorney. Clients are often upset or confused

at arraignment and understandably limited in what, if anything, they understand about criminal case proceedings. Arraigning attorneys explain the legal process to their clients and often their family members or loved ones. And the arraigning attorney advocates for the client, whether it is regarding release status, the issuance of an order of protection, the loss of a license, or simply insisting that the client be treated with dignity by the court system. The reassuring presence of counsel coupled with advocacy at arraignment is key to developing strong client relations that endure throughout the life of the case. It also objectively demonstrates that the criminal justice system has procedures in place for the fair treatment of accused persons.

Attorneys throughout the five counties report that counsel's presence at arraignment also makes a difference in a client's release status. Attorneys frequently comment that their presence serves as a check on overreaching by the prosecution and the judge, and they have identified many instances in which they persuaded a court to release their client or to set a more reasonable bail. Some examples include the following:

> A teacher from Pennsylvania was arrested and arraigned on a Sunday. The arraigning attorney successfully advocated for a reasonable bail to be set, even though the client was from out of state. The attorney also contacted the client's family members, and they were able to post the bail. The client was released on Monday and able to return to work.
>
> – Schuyler County Public Defender Office

> The client was charged with several misdemeanors. During the initial interview, the client raised serious issues related to the arrest and the conduct of the police. The arraigning attorney immediately obtained and reviewed the dash-cam footage of the incident, which corroborated the client's version of events. The judge was persuaded to release the client based largely on this evidence. Guided by the client's version of events and the dash-cam footage, an immediate investigation was commenced by the attorney and the case was dismissed in relatively short order.
>
> – Suffolk County Legal Aid Society

> The defendant was charged with criminal contempt in the first degree, a felony. Prior to arraignment, the attorney interviewed the client and learned that the complainant had entered the defendant's house after the alleged incident giving rise to the charges. The prosecutor was arguing for a significant bail amount, but the arraigning attorney successfully used the information about the complainant to argue for a much lower bail – one that the client could post.
>
> – Onondaga County on-call arraignment attorney

> A client with two prior felony convictions was arraigned in local court. Under the law, the prior felony convictions meant that the justice court could not set bail. But armed with information learned during the interview with the client, the attorney subsequently made a bail application to the County Court. The County Court lowered the bail to an amount the client could post, and the client was released.
>
> – Schuyler County Public Defender Office

In addition to the foregoing, providers have also taken advantage of the presence of counsel at arraignment to implement initiatives designed to improve quality and facilitate access to assigned counsel.

1. Holistic Representation

In Suffolk County, the SCLAS has implemented an arraignment initiative that fosters holistic representation by identifying and addressing clients' psycho-social needs. As described previously, Settlement funding has allowed the SCLAS to bolster its social worker unit. At arraignment, clients' non-legal needs such as housing, substance abuse treatment, income support, or veterans' benefits are identified on an intake form. This form is given to a SCLAS social worker who assists the client in accessing the services needed. Serving clients holistically in this manner can have a direct impact on the criminal case by addressing issues, such as a substance abuse or mental health problem, that contributed to involvement in the criminal justice system. Even when this service does not directly impact the criminal case, it promotes better client engagement in the defense and enhanced trust in the defense team. It can also result in clients being better equipped to avoid arrest while the criminal case is pending and after it is resolved. The following illustrates how this service enhances advocacy:

The SCLAS client was charged with felony larceny. The client was addicted to opioids, and the judge was determined to keep the client in custody so that he would detox in jail. The client's family was present in court, but unable to post this substantial cash bail. The SCLAS attorney involved one of the SCLAS social workers, who met with the client to formulate a short-term plan to address the client's addiction. Armed with this plan, the SCLAS attorney persuaded the justice to set a bond alternative to the cash bail, which the client's family could secure. Upon the client's release on bond, he was referred to a 28-day in-patient treatment program. To date, the client remains substance free and is continuing treatment.

To further promote holistic representation, SCLAS also uses arraignment as an opportunity to ascertain clients' immigration status. If a client is not a United States citizen, the attorney immediately reaches out to SCLAS' immigration unit for advice and consultation, as illuminated below:

The SCLAS client was arraigned on two felony sex offense charges. Because the client was not a U.S. citizen, the charges gave rise to potentially significant immigration consequences. The SCLAS attorney consulted with the SCLAS in-house immigration unit to determine the best approach short-term (custody status) and long term (case outcome). The SCLAS attorney also involved the SCLAS investigator unit to start an investigation and develop and corroborate mitigating factors the client raised during the interview. Additionally, the SCLAS attorney immediately reached out to the assigned prosecutor to initiate plea negotiations pre-indictment. The attorney successfully forestalled any indictment, negotiated a reduction of the charges, and worked towards an ultimate disposition of the case that minimized the adverse immigration impact upon the client.

The SCLAS' holistic approach serves as a model for other defender offices.

2. Facilitating Prompt Assignment of Counsel

Some of the *Hurrell-Harring* providers have also used the presence of defense counsel at arraignment to facilitate prompt assignment of counsel for individuals who cannot afford to retain counsel. For example, in Schuyler County, the arraigning attorneys always carry applications for assignment of counsel with them. Time permitting, they sit with clients at arraignment to help them complete the application and take it back to the office; if there is not enough time, they tell the client how to complete and submit the application. The Washington County Public Defender Office staff attorneys follow a similar model. Additionally, Washington County Public Defender Office attorneys often encourage magistrates to assign counsel immediately at arraignment when it is evident that a defendant cannot afford to retain counsel, such as when the defendant is homeless, unemployed, or in school.

Similarly, the Onondaga County Assigned Counsel Program has stationed a staff person outside the arraignment part in Syracuse City Court. This staff person assists defendants who appear on appearance tickets with completing the assigned counsel application. Detained defendants also receive help with the assigned counsel application from the arraignment attorneys during their pre-arraignment interviews. While not all defendants' applications are completed at arraignment, the presence of counsel and staff at arraignment has sped up the eligibility determination process considerably for many ACP clients.

B. Suggestions for Elevating the Level of Arraignment Practice: Pre-Trial Release Advocacy and Motions to Dismiss

Over the first two years of the Settlement, ILS' work has been focused on helping providers develop systems and procedures to have attorneys present in court to represent all defendants at their first court appearances. As this report documents, that objective has been met in each of the five *Hurrell-Harring* counties, and missed arraignments are sporadic and incidental.

ILS will continue to i) monitor the current counsel at arraignment programs; ii) provide assistance when needed to refine these programs; and iii) work with counties on implementation of centralized arraignment programs pursuant to Judiciary Law § 212(1)(w).

ILS recognizes that because the counsel at arraignment programs are in place, we can now start working with providers to enhance the quality of representation at arraignment. There are two areas that are ripe for enhanced advocacy: pre-trial release alternatives and motions to dismiss.

1. Pre-Trial Release Alternatives: More Effective Advocacy Under New York's Bail Statute

One critical area is defendants' release status. Providers typically argue for clients to be released on their own recognizance or under supervision or, if they lose this argument, for a bail amount the defendant can pay. But all too often judges set bail amounts that are excessive in relation to the need to secure the defendant's presence in court. This results in too many defendants being needlessly detained while their charges are pending. As defense attorneys know from experience, pre-trial incarceration dramatically affects case results. Social science research is in accord, as multiple studies show significantly better case outcomes for defendants who are not incarcerated during the pendency of their case.[22]

Typically, attorneys ask for and judges rely on only two forms of bail: cash bail or insurance company bail bond. But even relatively low cash bail amounts can be out of reach for defendants, and many defendants lack the resources to pay any amount of cash bail upfront. Nor can low-income defendants meet the requirements for insurance company bonds, which require payment of a 10% premium and often other conditions, such as other payers who can provide proof of employment and are willing to be liable for the bond amount.

Although judges and attorneys rely primarily on cash bail or bond, New York's bail statute, Criminal Procedure Law (CPL) § 520.10, authorizes nine different forms of bail. The two alternatives that hold the most promise for low-income or indigent defendants are partially secured and unsecured bonds. Partially secured bonds require a money deposit of no more than 10% of the bond. An unsecured bond requires no deposit of money or property, only a sworn promise by the payer to pay the bond if the defendant fails to appear.

The Nine Forms of Authorized Bail

1. *Cash*
2. *Insurance company bail bond*
3. *Secured surety bond*
4. *Secured appearance bond*
5. *Partially secured surety bond*
6. *Partially secured appearance bond*
7. *Unsecured surety bond*
8. *Unsecured appearance bond*
9. *Credit card or similar device*

These forms of bail are rarely sought or utilized, likely because defense attorneys and judges tend to be unfamiliar with them. Yet there is growing awareness among defense attorneys as to these alternative forms of bail. For example, in September 2017, the Vera

[22] See ILS 2016 Update, *Implementing the Counsel at Arraignment Obligations in the Hurrell-Harring v. The State of New York Settlement*, p. 42, citing research studies.

Institute of Justice issued a report describing the overall positive results that emerged from a three-month project in New York City involving 99 cases in which a secured or partially secured bond was set. Entitled "*Against the Odds: Experimenting with Alternative Forms of Bail in New York City's Criminal Courts*," the report recommended, among other things, that stakeholders be educated about these alternative forms of bail.[23]

Additionally, the New York State Defenders Association's annual conference in July 2017 included a continuing legal education program by Joshua Norkin, an attorney from the New York City Legal Aid Society, about alternative forms of bail. Mr. Norkin argued that better advocacy can reduce the number of people detained pretrial, particularly if this advocacy includes arguments for use of the alternative forms of bail available in New York. He noted that New York's bail statute was reformed in 1970 to authorize nine forms of bail with the express goal of "reduc[ing] the un-convicted portion of our jail population."[24] During this program, Mr. Norkin detailed how these alternative forms of bail, particularly the unsecured surety bond and the unsecured appearance bond, can work in securing the pre-trial release of clients. Attorneys must educate themselves and judges about the use of these alternative forms of bail.

As noted in the Vera report, use of these alternative forms of bail requires more work on the part of the court and the defense, and a shift in culture. One of the judges responsible for many of the cases discussed in the Vera report aptly described this:[25]

> *What initially happened is that a partially secured bond was requested. I gave it thought and I did it. Initially, I met some resistance to completing the paperwork. It's more work for the defense attorney and for the court. But any time you're doing something new or different it takes time. Culture change. You can do it but it takes time.*

This recent education about and advocacy around the use alternatives forms of bail provide an opportunity for the *Hurrell-Harring* providers to develop training programs for its arraigning attorneys to advocate more effectively for pre-trial release. ILS will work with the *Hurrell-Harring* providers to connect them with information and training opportunities so that these alternative forms of bail can be sought and utilized more often.

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[23] This report is available at: https://www.vera.org/publications/against-the-odds-bail-reform-new-york-city-criminal-courts.

[24] Temporary Commission on Revision of the Penal Law and Criminal Code, *Proposed New York Criminal Procedure Law* (New York: West Publishing Co., 1969), Section 5, https://perma.cc/3VM5-FRLN.

[25] *See Against the Odds*, at 25.

2. Motions to Dismiss

Another important aspect of arraignment practice are motions to dismiss the charging document, often called the accusatory instrument. Review of the charging document is key to full representation at arraignment. It is necessary for the attorney to know the penal law provision the client is accused of violating, exactly what the client is accused of doing, including when and where, and the specific factual basis for the charges. An accusatory instrument is facially insufficient if it does not contain allegations which, if true, establish every element of the criminal offense charged and the defendant's commission of that offense. Facially insufficient accusatory instruments are jurisdictionally defective and subject to dismissal.

Moving to dismiss in appropriate cases is key to forceful arraignment advocacy; a dismissal is obviously of great benefit to the client.[26]

In Ontario County, the Public Defender Office is actively working to enhance the use of motions to dismiss at arraignment. Motivated by a training on this topic, Ontario County Public Defender Office staff attorneys have started to make oral motions to dismiss at arraignment on a regular basis. In some cases, the court will adjourn with the request that the motion be submitted in writing, to give the prosecution time to respond, or both. The Public Defender Office is working on a written template which attorneys can bring to court, fill in case-specific details, and submit at arraignment. The Public Defender, Leanne Lapp, reports that the judges do not like to dismiss cases at such an early stage, so success on these motions is infrequent. However, she and her staff believe that pointing out weaknesses in the prosecution's case is helpful in the advocacy for pre-trial release or a reasonable bail and in framing up front key aspects of the defense.

The Ontario County Public Defender Office's arraignment initiative is a model that can be replicated in other counties and an opportunity for cross-pollination of initiatives amongst the *Hurrell-Harring* providers who are all seeking to enhance the quality of their advocacy.

[26] Dismissals may be with or without prejudice. If without prejudice, the case could, but need not be, refiled.

ONGOING BARRIERS TO QUALITY REPRESENTATION

For the 2016 update report, we identified some barriers to quality representation based on some informal interviews of staff attorneys, our court observations, and our regular meetings with the *Hurrell-Harring* providers. As detailed earlier in this report, this past year we once again systematically observed court proceedings in the five *Hurrell-Harring* counties, prioritizing whenever possible County Court sessions and special lower court sessions. In total, we observed 62 different court sessions. We also developed a protocol for interviewing provider staff attorneys and panel attorneys which focused on supervision, training, use of non-attorney professionals, and client communication. Using this protocol, we interviewed 29 staff attorneys and assigned counsel panel attorneys. Finally, we conducted a very preliminary review of the data that we obtained from the Case Closing Forms (CCFs) described in the 2016 update report, focusing on use of non-attorney professionals.[27]

Based on this, we again discuss some barriers to quality representation, where appropriate incorporating and updating what we discussed in the 2016 update report.

A. Compensation Rates for Assigned Counsel and Voucher Processing

As stated in the 2016 update report, the statutory hourly rates for assigned counsel set forth in County Law § 722-b present a barrier to quality representation. The rates, which are $60 per hour for misdemeanors and $75 per hour for felonies, have not been raised since 2004. County Law §722-b also imposes a cap on the total amount an attorney can bill for each case, capping misdemeanors at $2,400 and felonies at $4,400. Attorneys who exceed these caps cannot be paid unless they convince the court that there are "extraordinary circumstances" requiring payment above the cap.

The process for reviewing and paying vouchers can exacerbate this problem. In some counties, for example, assigned counsel programs have sought to save money by severely limiting the services for which attorneys can bill, not allowing attorneys to bill for certain necessary administrative functions, such as copying and mail costs, or completing time sheets and other required documentation. Some assigned counsel programs also limit substantive services for which attorneys can bill, such as travel time and mileage, reviewing case files, making telephone calls, etc. Additionally, in some counties there is a delay in processing vouchers, resulting in a significant delay from the attorney's submission of the voucher to its payment. During the June 2017 ACP Summit (discussed below), experienced ACP leaders identified prompt voucher payment as perhaps the most significant advantage over retained cases that an assigned counsel program can offer panel attorneys. Thus, delay in paying vouchers is a disincentive for quality attorneys to remain on the panel.

[27] Because of unanticipated complications in updating provider case management systems so that the data from the CCFs could be extracted and reported to ILS, we are still in the process of reviewing the CCF reports the providers have given us, identifying and pulling out "bad data," and resolving issues of missing data. Once this is done, we will be in a better position to review the data we have received in the context of what we have learned from attorney interviews and court observations.

There is no question the hourly rates and case caps set forth in County Law § 722-b should be re-examined and raised. In the meantime, however, ILS is working with the *Hurrell-Harring* assigned counsel programs to eliminate the voucher processing disincentives to participation on the assigned counsel programs. Ideas for eliminating these disincentives were discussed during the June 2017 ACP Summit, and we have already seen *Hurrell-Harring* ACPs take steps to address them. For example, as previously described, the Onondaga ACP has significantly transformed its voucher review process by: i) abandoning the practice of cutting vouchers for substantive services; ii) abandoning the practice of requiring attorneys to explain why they spent more than a certain amount of time on services (for example, why they spent more than 0.9 hours on client communication); iii) notifying attorneys of substantive services they can voucher for, such as assistance in working with DMV in license-related offenses; and iv) significantly decreasing the delay in processing vouchers so that attorneys are paid promptly after submitting their vouchers. Similarly, the Suffolk County ACDP is working diligently to decrease the delay in processing vouchers so that attorneys are paid in a reasonable amount of time. The Suffolk ACDP is also encouraging other stakeholders involved in the voucher review process, including County officials and judges, to prioritize this issue.

B. Compensation for Non-Attorney Professionals

An additional and pressing barrier to quality representation is inadequate compensation rates for non-attorney professionals. Access to non-attorney professionals can make all the difference in a case. This is aptly illuminated in a recent homicide trial in Onondaga County. A 17-year old male was charged with second-degree murder and burglary for allegedly killing an 18-year old female acquaintance and then stealing her television. He was represented by Charles Keller, an Onondaga County ACP panel attorney. A key trial issue was the victim's time of death. The defense's original forensic pathologist became unavailable at the last minute because of a scheduling conflict. The Onondaga County ACP worked with Mr. Keller to ensure that he could retain an experienced and credentialed forensic pathologist, who effectively rebutted the prosecution's forensic pathologist about the time of death. Based largely on this testimony, the 17-year old was found not guilty of second-degree murder. A seasoned reporter from the Syracuse *Post-Standard,* Doug Dowty, contacted ILS after this trial, and explained that he had observed much of it. He remarked that the not guilty verdict likely would not have been possible without access to a credentialed and experienced forensic pathologist. He further remarked that the trial outcome represented the system working as it should: because of an adequately resourced defense, a young man was found not guilty of a murder that he did not commit.

As stated above, the Onondaga ACP does not cap hourly rates of experts; it is for this reason that Mr. Keller could quickly access the services of a reputable expert. But many courts do cap hourly rates for experts and other non-attorney professionals, often relying on a 1992 Administrative Order issued by the then-Chief Administrator of Courts setting out guidelines for hourly compensation rates for non-attorney services (1992 Guidelines). These Guidelines have not been updated in the twenty-four years since they were issued, and are still often used by courts and assigned counsel programs. Additionally, while County Law § 722-c authorizes courts to set an hourly rate for non-attorney supports, it caps payment at $1,000 absent a showing of "extraordinary circumstances." Thus, there are two ways that compensation is limited: unreasonably low hourly rates; and a cap on total amount of time spent.

There has been some progress on this issue this year, at least regarding hourly compensation rates for non-attorney professionals. On August 8, 2017, the Office of Court Administration's Administrative Board of the Courts issued *a Request for Public Comment on Proposed Increase in Hourly Rates of Compensation of Court-Appointed Experts Pursuant to Judiciary Law § 35 and County Law § 722-c.* The New York State Defender Association (NYSDA) has responded to this request for comment, and ILS has joined NYSDA's response. (The original request for public comment, NYSDA's response, and ILS' letter joining this response are attached to this report as Exhibit A). Notably, in responding to the Administrative Board of Courts' request for public comments, NYSDA referred to ILS' 2016 update report as demonstrating the dire need for increased payment of non-attorney professionals. ILS is optimistic that the Administrative Board of Courts will consider NYSDA's comments and ultimately issue compensation guidelines that attract qualified non-attorney professionals so that justice can be done in more cases, as it was in the case of Mr. Keller's 17-year old client.

C. Use of Non-Attorney Professionals: A Necessary Culture Shift

ILS' structured attorney interviews and our very preliminary review of data from Case Closing Forms suggest that regular use of non-attorney professionals will require a culture shift for the *Hurrell-Harring* providers. Because of limited county funding, provider staff attorneys and assigned counsel attorneys have consistently confronted severe limits to the use of non-attorney professionals. For example, in Suffolk County, the Legal Aid Society was never provided enough funding for experts. Staff attorneys who needed experts had to apply to the court under County Law § 722-b for funding, which would be taken from the ACDP's already limited budget line. Attorneys in Washington County Public Defender Office and the Schuyler County Public Defender Office similarly would have to apply to the court for the services of experts and other non-attorney professionals. And of course, as described above, all the *Hurrell-Harring* assigned counsel programs have traditionally been required to apply to courts for any non-attorney professional service. Often courts would deny use of the service or grant it, but at a lower amount than needed and with the noncompetitive compensation rates described above.

The result is a dearth of qualified non-attorney professionals who are accustomed to working with criminal defense teams. In Ontario County, Ms. Schoeneman has confronted this issue in seeking to secure sentencing advocacy services for her program. Settlement funding is available, but Ms. Schoeneman has been struggling for over a year to find such services in Ontario County. In some counties, qualified professionals exist, but refuse to work for public defense providers because of the difficulty of getting promptly paid at a competitive rate.

The enduring barriers to accessing non-attorney professionals have also resulted in a culture of triage, in which defense attorneys seek to access non-attorney professionals only in the most serious cases likely to result in a trial. In less serious cases, attorneys have traditionally gone without. This means, for example, that attorneys are conducting their own investigations or relying solely on the information disclosed by the prosecution. It also means that many attorneys simply have no idea what types of services might be helpful. For example, many attorneys have little understanding of what a sentencing advocate/mitigation specialist is or how to use one.

Attorneys often comment that they would like to use a social worker, but have been hesitant because they have never used one since the service was unavailable.

ILS' structured attorney interviews and our preliminary review of the data from the Case Closing Forms suggest that it is going to take some time to change this culture of triage. But the interviews and the data provide clues as to how the culture can be transformed so that use of non-attorney professionals becomes the norm rather than the exception. First, training is critical, particularly if the training includes non-attorney professionals. Second, the providers that have clear expectations and written protocols regarding use of non-attorney professionals tend to use these services more often. Third, access to these services is critical, as evidenced by the fact that these services are used more often among those providers that have these services in-house. The importance of access is why ILS strongly endorses NYSDA's comments to the Administrative Board of Courts regarding their proposal to raise the Guideline rates for non-attorney professionals.

As this update report describes, the *Hurrell-Harring* providers are already implementing strategies to encourage attorneys to use non-attorney professionals more often, including: i) offering trainings on use of non-attorney professionals; ii) hiring non-attorney professionals so attorneys have access to these services "in-house"; iii) developing retainer agreements with key non-attorney professionals to facilitate access for attorneys; iv) developing protocols and expectations about use of non-attorney professionals; and v) for ACPs, having their own funding for the service so that attorneys may apply to the organization rather than to the court for the service. It will take time and even more creativity for the providers to cultivate pools of non-attorney professionals who are qualified and willing to work with people charged with criminal conduct. ILS looks forward to continuing to work with the *Hurrell-Harring* providers on shifting the culture and overcoming the barriers to use of non-attorney professionals.

D. Client Communication: Jail Access and Poverty

During the structured attorney interviews, it was clear that attorneys value effective client communication. Uniformly, however, they identified two barriers. First, in most of the *Hurrell-Harring* counties jail policies about attorney visits often pose a barrier to communicating in person with detained clients. Jails tend to deny attorneys access for one to two hours mid-day and then again in the late afternoon. For some jails, this means that the facility is closed to attorney visits for up to 3 hours during the day. Some jails also have very limited confidential meeting space available, and attorneys must compete for this space. Recently, ILS learned of one jail that bars access to female attorneys wearing underwire bras.

ILS urges county officials to become aware of these issues and to work closely with jail officials to dismantle needless restrictions on attorney visits of detained clients.

The second barrier that attorneys identified is poverty. This is manifested in several ways. Attorneys noted that it is often challenging to contact out-of-custody clients because they are homeless, frequently moving, or because their cell phones are not working. Attorneys also expressed frustration that some clients do not prioritize their criminal case. This can be demoralizing for the attorney, but it often occurs because the client is overwhelmed by more

immediate priorities, such as shelter, food, or childcare. Poverty is also related to a host of other barriers to client communication, including mental health, substance abuse, and a history of trauma.

There is no quick or easy answer to the barriers that poverty poses to effective client communication. But ILS is interested in exploring possible strategies with providers. For example, some providers are contemplating the use of text messages as a means of enhancing client communication, especially since low-cost cell phone plans tend to render text messaging accessible even when voice calls are not. Many attorneys shared with us an interest in training on cultural competency so that they can better understand the perspectives of their clients and hence, be more adept at communication strategies. Finally, Suffolk County Legal Aid Society's strategy of connecting clients to social workers as soon as possible (described above) offers a possible strategy for overcoming the barriers that poverty poses to effective client communication.

THE 2017 ASSIGNED COUNSEL SUMMIT

As part of the *Hurrell-Harring* Settlement, ILS has worked with Onondaga, Ontario, Schuyler, Suffolk, and Washington counties to improve the quality of their assigned counsel programs. In doing so, we have often sought the advice of four current and former ACP administrators (who we call "advisors") who are committed to quality representation and are recognized as leaders in the delivery of mandated representation through assigned counsel programs. We have also encouraged the *Hurrell-Harring* ACP administrators to use this group of advisors as a resource. The *Hurrell-Harring* administrators encouraged us to bring everyone together so that they could exchange ideas and ask advisors about their experiences and different strategies they have used.

The resultant ACP Summit was held in Albany on June 15, 2017. The program was jointly sponsored by ILS and the Onondaga County ACP. It was the first time in New York State that ACP administrators came together to discuss issues unique to effectively running a high quality assigned counsel program.

The following 23 individuals attended:

Advisors:

Name	Title
Nancy Bennett	Deputy Chief Counsel, Private Counsel Division, Massachusetts Committee for Public Counsel Services
Bob Lonski	Former Administrator, Erie County Bar Association Assigned Counsel Program
Claudia Schultz	Former Deputy Administrator, Erie County Assigned Counsel Program
Julia Hughes	Program Coordinator, Tompkins County Assigned Counsel Program
Lance Salisbury	Supervising Attorney, Tompkins County Assigned Counsel Program

Providers:

Name	Title
Kathy Dougherty	Executive Director, Onondaga County Bar Association Assigned Counsel Program (OCBAACP)
Dave Savlov	Deputy Director, OCBAACP
Laura Fiorenza	Quality Enhancement Attorney, OCBAACP
Daniel Russo	Administrator, Assigned Counsel Defender Plan of Suffolk County
Stephanie McCall	Deputy Administrator, Assigned Counsel Defender Plan of Suffolk County
Andrea Schoeneman	Ontario County Conflict Defender and Assigned Counsel Plan Administrator
Tom Cioffi	Supervising Attorney, Washington County Assigned Counsel Program
Pat Halstead	Tompkins/Schuyler Regional Assigned Counsel Program

ILS and New York State Defenders Association:

Name	Title
Bill Leahy	Director, Office of Indigent Legal Services (ILS)
Joseph Wierschem	Counsel, ILS
Patricia Warth	*Hurrell-Harring* Chief Implementation Attorney
Matthew Alpern	Director of Quality Enhancement for Criminal Defense, ILS
Amanda Oren	*Hurrell-Harring* Quality Improvement Implementation Attorney
Nora Christenson	*Hurrell-Harring* Caseload Relief Implementation Attorney
Lisa Robertson	*Hurrell-Harring* Eligibility Standards Implementation Attorney
Melissa Mackey	Senior Research Associate, ILS
Giza Lopes	Senior Research Associate, ILS
Charlie O'Brien	Managing Attorney, New York State Defenders Association (NYSDA)

ILS Director Bill Leahy opened the Summit with a welcome and an overview of the Summit's significance, highlighting two issues. First, he noted that efforts to improve the quality of mandated representation have largely focused on institutional providers. The *Hurrell-Harring* ACPs are in the vanguard of putting a spotlight on the importance of quality ACPs. Second, providers have told ILS that they are often working in isolation – a disadvantage of New York's county based system of mandated representation. He described the Summit as a significant and important step toward breaking down silos and supporting providers in developing collaborative and supportive approaches to achieving the goal of improved quality.

The rest of the day was devoted to topics critical to the delivery of quality representation. ILS' Matt Alpern began by previewing ILS' forthcoming standards for administering assigned counsel programs. This was followed by Nancy Bennett's presentation about her "ACP checklist," which identifies several operational imperatives for assigned counsel programs, including: building key relationships in the community; attracting quality panel attorneys; fostering a culture of accountability and high expectations; getting local bar support; strategies to diminish the impact of statutory hourly rates that are too low; certification of panel attorneys; mentoring; training; handling client complaints; and use of awards to foster a culture of pride.

Participants next turned to the unique challenge of implementing caseload standards in assigned counsel programs. Nora Christenson introduced this topic by discussing ILS' caseload standards report, finalized in December 2016, emphasizing that the standards are not "caps" but instead reflect the minimum average number of hours that attorneys should spend in particular types of cases. Nancy Bennett and Bob Lonski contributed their experience in implementing caseload standards in their respective programs, identifying the challenges they faced and strategies they utilized to address these challenges. Both Bob and Nancy emphasized that caseload standards should inform, but not replace, ACP administrator judgments about case assignments. There are several subjective factors that must be considered in assessing attorney workloads, including the

overall quality of attorney performance, attorney experience, the seriousness of the cases assigned, and the likelihood they would go to trial, etc.

The Summit participants next discussed implementation of recertification protocols, measures of accountability, and training requirements for existing panel attorneys. This is a unique challenge for ACPs that traditionally had little quality control oversight, clear expectations, or measures of accountability. All the *Hurrell-Harring* providers described their desire to raise the bar for panel attorneys but also their concerns about how to do this without alienating quality panel attorneys or subjecting themselves to counterproductive confrontations with panel attorneys. Bob Lonski, Claudia Schultz, Lance Salisbury, Julia Hughes, and Nancy Bennett offered a variety of strategies and suggestions. For example, though ACP administrators may feel compelled to initiate a new recertification process with poorer performing attorneys, the more experienced ACP administrators suggested starting with high performing attorneys as a means of de-stigmatizing recertification and fostering credibility in the process. Participants also discussed the many strategies available for improving attorney performance, including mentoring, second chair programs, consulting attorneys, and ongoing training with a focus on skill development training. Overall, the advisors urged the *Hurrell-Harring* providers to strike the balance between their sense of urgency (and thus, moving too quickly) and the need to be strategic, and to consider long-term implications of new policies and protocols. Changing the culture, they advised, is a process that takes time and thoughtfulness.

As a final topic, Summit participants discussed the benefits of having the ACPs control case assignments but the difficulty of doing so in counties where the judiciary has traditionally assigned panel attorneys to cases. This discussion produced several strategies for encouraging the judiciary to defer to the ACPs in case assignments including, for example, building an alliance with the local bar association leaders which can then help demonstrate to judges how judge-controlled assignments result in an unfair distribution of cases among panel attorneys.

The Summit ended with agreement that the dialogue should continue, and ideas for how to do so including in-person meetings and phone meetings.

Post-Summit, *Hurrell-Harring* ACP administrators have begun to implement many of the strategies discussed during the Summit. For example, in Suffolk County, Dan Russo and Stephanie McCall of the Suffolk ACP honored three panel attorneys with awards at its last panel attorney meeting as a means of fostering pride and collegiality. In Onondaga County, Laura Fiorenza is effectively using her weekly email newsletter to build a culture of collegiality, promote training programs, and advertise how use of ACP resources (such as mentors, resource attorneys, and non-attorney professional services) can make all the difference in case outcomes. In Ontario County, Andrea Schoeneman is using her mentor attorney, Bob Zimmerman, to lead monthly meetings with panel attorneys about topical issues. In Schuyler County, the regional ACP began its program by first meeting with the judiciary to foster trust and credibility in the program. In Washington County, Tom Cioffi is coordinating with the Public Defender Office to host in-county Continuing Legal Education (CLE) programs, which panel attorneys view as not only a means of professional development, but also as a previously unavailable opportunity to meet with their colleagues. All the *Hurrell-Harring* ACPs are using Settlement money to

implement mentor programs, increase the availability of second chair opportunities, and promote a variety of training opportunities (from informal lunch-and-learn programs to more intensive multi-day, hands-on skills training). The ACPs are also taking steps to cultivate trust, support, and credibility as the first and most important step towards implementing certification protocols and measures of accountability.

ILS looks forward to further fostering the dialogue among *Hurrell-Harring* providers that started with the 2017 ACP Summit.

Some of the June 2017 ACP Summit participants

CONCLUSION

Tremendous progress has been made toward implementing the *Hurrell-Harring* Settlement in the last two years. This significant achievement results from the commitment of everyone involved in the implementation process. The State has stepped up to meet its obligation to fully fund *Hurrell-Harring* implementation, including continuing the $2 million each year in Quality Improvement funding beyond the two years the Settlement requires. Officials in the *Hurrell-Harring* counties have worked diligently to ensure that their public defense providers can access Settlement funding, even when faced with political opposition to spending money on poor people accused of crimes. Most critically, the eleven *Hurrell-Harring* providers have worked tirelessly

to implement the Settlement. These efforts are creating a change in the practice of public criminal defense which is already improving the quality of representation that clients receive, and that will endure far beyond the life of the Settlement.

In the coming year, ILS looks forward to working with the *Hurrell-Harring* counties as they work to develop and implement centralized arraignment programs, further their efforts to professional their assigned counsel programs, and as they work to implement ILS' caseload standards to ensure that all people accused of a crime are represented by a lawyer who has the time and resources needed to provide high-quality defense.

EXHIBIT A

NEW YORK STATE
Unified Court System
OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

JOHN W. McCONNELL
COUNSEL

MEMORANDUM

August 8, 2017

To: All Interested Persons

From: John W. McConnell

Re: Request for Public Comment on Proposed Increase in the Hourly Rates of Compensation of Court-Appointed Experts Pursuant to Judiciary Law § 35 and County Law § 722-c

The Administrative Board of the Courts is seeking public comment on a proposal, proffered by the Attorney for the Child Directors in the Appellate Division of Supreme Court, to increase the hourly rates of compensation to experts appointed by the court pursuant to Judiciary Law §35 and County Law §722-c. As described by the Directors in a supporting memorandum (Exh. A), the compensation schedule currently in use has remained unchanged since 1992, leading to growing difficulties in recruitment of well qualified and experienced mental health and other professionals as expert witnesses. The proposal calls for reimbursement of psychiatrists at a rate identical to that of physicians, and hourly rates of compensation of experts as follows:

	Current Rate	Proposed Rate	Full Cost-of-Living Increase (1992-2017)
Physician	$ 200	$ 250	$ 350
Psychiatrist	125	250	220
Psychologist	90	150	156
Social Worker	45	75	80
Investigator	32	55	55

A copy of the 1992 Administrative Order setting the current rates is attached as Exh. B; copies of Judiciary Law §35 and County Law §722-c are attached as Exh. C. It is anticipated that the Unified Court System will seek legislative amendment of those provisions in Judiciary Law §35(4) and County Law §722-c which currently cap the compensation of court-appointed experts in various proceedings absent a finding of "extraordinary circumstances."

Persons wishing to comment on the proposed rates should e-mail their submissions to rulecomments@nycourts.gov or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004. **Comments must be received no later than October 11, 2017.**

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

New York State Defenders Association, Inc.

Public Defense Backup Center
194 Washington Ave. · Suite 500 · Albany, NY 12210-2314

Telephone (518) 465-3524
Fax (518) 465-3249
www.nysda.org

To: John W. McConnell, Counsel, Office of Court Administration

Re: Comments on Proposed Increase in the Hourly Rates of Compensation of Court-Appointed Experts Pursuant to Judiciary Law § 35 and County Law § 722-c

Date: October 11, 2017

Thank you for the opportunity to submit comments regarding the proposed increase in the hourly rates of compensation of court-appointed experts pursuant to Judiciary Law § 35 and County Law § 722-c.

The New York State Defenders Association (NYSDA) is a not-for-profit membership association; its mission is to improve the quality and scope of publicly supported legal representation to low income people. Most of NYSDA's over 1,700 members are public defenders, legal aid attorneys, assigned counsel, and private practitioners throughout the state, along with others who support the right to counsel, including client members. With funds provided by the State of New York, NYSDA operates the Public Defense Backup Center (Backup Center), which offers legal consultation, research, and training to nearly 6,000 lawyers who represent individuals who cannot afford to retain counsel in criminal and family court cases. As part of its support services to public defense providers and state and local governmental entities, NYSDA provides consultation and technical assistance about legal and policy issues relevant to criminal and family court systems, delivery of defense services, and barriers thereto.

I. Proposed Increase in Hourly Rates of Compensation Would Help Support the Right to Present a Defense

NYSDA supports the proposal to increase the hourly rates of compensation of court-appointed experts pursuant to County Law § 722-c and Judiciary Law § 35. Public defense clients have a right to present a defense[1] and are entitled to funds for investigative, expert, and related auxiliary services.[2] County Law § 722 specifically provides that "each plan for public defense representation "shall ... provide for investigative, expert and other services necessary for an adequate defense." And state and national professional standards require that attorneys have access to and use such

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[1] *See, e.g., Crane v Kentucky*, 476 US 683 (1986); *People v Aphaylath*, 68 NY2d 945 (1986).

[2] "Essential to any representation, and to the attorney's consideration of the best course of action on behalf of the client, is the attorney's investigation of the law, the facts, and the issues that are relevant to the case." *People v Oliveras*, 21 NY3d 339, 346 (2013).

services. *See* New York State Office of Indigent Legal Services (ILS Office), *Standards and Criteria for the Provision of Mandated Representation in Cases Involving a Conflict of Interest*, [3] Standards 3 (access to and use of investigative services as needed to provide quality representation) and 4 (access to and use as needed the assistance of experts); ILS Office, *Standards for Parental Representation in State Intervention Matters*, Standards G (Model of Representation – Multidisciplinary Practice), O-1 (Ongoing social work support), and O-7 (Expert witnesses); American Bar Association, *Criminal Justice Standards, Defense Function*, Standards 4-4.1 (Duty to Investigate and Engage Investigators) and 4-4.4 (Relationship with Expert Witnesses); *see also* New York Rules of Professional Conduct, 22 NYCRR Part 1200, Rule 1.1(a) (a lawyer must "provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."); ILS Office, *Standards for Parental Representation in State Intervention Matters*, Standard B ("Experience and Training. Counsel must possess sufficient experience, training, knowledge, and skills necessary to provide high quality representation to clients in state intervention matters.").

These constitutional, statutory, and professional mandates can only be meaningfully fulfilled if statutory rates and court guidelines authorize fees that investigators and experts are willing to accept. While some qualified individuals may offer to work at reduced rates for public defense cases, this is not a practicable basis for a guideline. Setting rates at a level which will attract only those professionals willing to work for a deflated rate shrinks the pool of available experts and severely limits options for quality services.

A. Hourly Rate Guidelines Should Be Based on the Full Cost-of-Living Increase

The hourly rate guidelines should be updated to the full cost-of-living amount, not just the proposed rate. For the physician, psychologist, and social worker categories, the proposed rate does not align with the full cost-of-living increase. Unfortunately, no explanation is provided for why the proposed rate does not match the full cost-of-living increase. Unless there is some evidence that the 1992 hourly rate guidelines were higher than the actual hourly rates that experts charged for their services at that time and/or that hourly rates have not increased at a rate similar to the standard cost-of-living adjustment, there is no justification for adopting new guidelines that are below the full cost-of-living increase.

We support the proposal to align the rates of physicians and psychiatrists. There is no reason why a psychiatrist's expert witness rate should be, or in reality is, less than that of any other type of physician.

[3] These standards were extended to include all trial level representation effective January 1, 2013. *See* Standards and Performance Criteria, *available at* https://www.ils.ny.gov/content/standards-and-performance-criteria.

B. Hourly Rates Must Be Guidelines, Not a Ceiling

The August 8, 2017 memorandum does not state that the proposed hourly rates are intended to be guidelines. However, the original rates were described as guidelines in AO/73/92, and the May 17, 2017 Memorandum from the Attorney for Child Directors notes that the request was for "changes to the compensation rate guidelines ...." In the years since the 1992 guidelines were released, we have heard from public defense attorneys that some courts have treated the guidelines as a ceiling on hourly rates.[4] While the newly proposed guidelines are more in line with the current cost of retaining investigators and experts, some cases will warrant the retention of experts at an hourly rate above those rates.[5] We encourage the Administrative Board of the Courts to continue to treat the hourly rates as guidelines and to remind courts that they are guidelines and not hourly rate ceilings.

C. Guidelines Should Include a Provision for Adjustment or Review on a Regular Basis

The cost of retaining experts, investigators, and other service providers increases on a regular basis[6] and any new guidelines adopted by the Administrative Board of the Courts should include a mechanism for review and adjustment of hourly rates.[7] This could be done by adding a provision for an annual cost of living adjustment or a direction that a particular office within the Unified Court System review the rates on a regular basis, perhaps yearly or every two years. This will ensure that guideline rates do not remain stagnant for another 25 years and will provide judges, public defense providers, and funders with a more realistic picture of the cost of these critical services.

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[4] *See, e.g.*, ILS Office, *Implementing the Quality Improvement Objectives in the* Hurrell-Harring v. The State of New York *Settlement: 2016 Update*, at 32-33, *available at* https://www.ils.ny.gov/files/Hurrell-Harring/Quality%20Improvement/Hurrell-Harring%20Updated%20Quality%20Improvement%20Plan%20111016.pdf (noting that, although the 1992 Guidelines have not been updated in 24 years, the hourly compensation rates are still often used by courts and assigned counsel programs).

[5] There are a number of different reasons why a higher hourly rate may be warranted, such as where the case involves a specialized area of expertise or there are a limited number of experts in the relevant field.

[6] SEAK, Inc. (Skills, Education, Achievement, Knowledge) conducts regular surveys of expert witness fees. https://www.seak.com/expert-witness-fee-study/. In its 2014 report on the aggregate expert witness fee survey results, SEAK noted that expert rates had increased modestly since its 2009 survey; average fees for testifying at trial increased a total of 2.9% over the five-year period and the average fees for file review and case preparation have increased 12% over five years. https://www.seak.com/wp-content/uploads/2014/07/Expert-Witness-Fee-Data.pdf. And the 2017 report on the aggregate survey results noted that "[e]xpert rates have increased well beyond the rate of inflation since SEAK's last survey in 2014."

[7] In 2006, the Commission on the Future of Indigent Defense Services recommended that the Chief Administrative Judge "issue a new administrative order updating the hourly rate guidelines, and that OCA review the guidelines at least every two years and update them as needed." *Final Report to the Chief Judge of the State of New York* (June 18, 2006), Addendum at AD-2, *available at* http://www.courts.state.ny.us/ip/indigentdefense-commission/IndigentDefenseCommission_report06.pdf.

D. Guidelines Should Be Expanded to Include More Categories of Experts

The 1992 guidelines only address five categories of services, some of which overlap. In the past 25 years, the categories of experts used in criminal and family court cases has expanded. The guidelines should be expanded to include categories such as: interpreting/translation[8]; medical expertise in addition to physicians, such as nursing; DNA; mitigation; interrogation/false confession; eyewitness identification; forensic sciences (fingerprints, ballistics, blood spatter, arson, etc.); accident reconstruction; toxicology; pharmacology; engineering; biomechanics; cell phone and other technology; and forensic accounting. Having additional categories will remind judges, public defense providers, and other members of the criminal and family court systems of the wide spectrum of experts that may be needed in individual cases and rate guidelines will offer a starting point for assessing the appropriateness of a particular fee request. Whether or not new categories are added to the guidelines, the guidelines should state that it is not an exclusive list of possible experts that are covered by County Law § 722-c.

E. Increased Guidelines Will Likely Encourage More Experts to Participate in Public Defense Cases and More Applications for Expert Witnesses

The low hourly rates have discouraged many investigators and other experts from participating in public defense cases and also discouraged public defense attorneys from filing applications under County Law § 722-c. In its 2006 report, *Status of Indigent Defense in New York: A Study for Chief Judge Kaye's Commission on the Future of Indigent Legal Services*, The Spangenberg Group indicated that it "heard from attorneys in many counties that it is difficult to find experts and investigators to take cases at the available rates."[9] The report covered a number of related problems: lack of guidance on hourly rates; tacit pressure on defense attorneys not to apply for experts to keep costs down; courts "put in the position of guarding the county's coffer"; and underutilization of experts as part of the culture of the practice.[10]

Ten years later, the New York State Office of Indigent Legal Services reported similar problems.[11] Noting that "[a]n additional and pressing barrier to quality representation is compensation rates for

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[8] Defense attorneys need access to independent interpreters to communicate with their clients. *See, e.g.,* ILS Office, *Standards for Parental Representation in State Intervention Matters*, Commentary to Standard F-5 ("The attorney must ensure access to a competent sign or other language interpreter for all interactions when a communication barrier exists between the client and the attorney .... Counsel should not rely on court interpreters for attorney-client communications."); The Spangenberg Group, *Status of Indigent Defense in New York: A Study for Chief Judge Kaye's Commission on the Future of Indigent Legal Services* (June 16, 2006), at 70-72, *available at* http://www.nycourts.gov/ip/indigentdefense-commission/SpangenbergGroupReport.pdf.

[9] The Spangenberg Group, *Status of Indigent Defense in New York: A Study for Chief Judge Kaye's Commission on the Future of Indigent Legal Services*, at 76.

[10] *See id.* at 72-77; *see also* Commission on the Future of Indigent Legal Services, *Final Report to the Chief Judge of the State of New York.*

[11] ILS Office, *Implementing the Quality Improvement Objectives in the* Hurrell-Harring v. The State of New York *Settlement: 2016 Update*, at 32-33.

non-attorney supports," the report described one county where the rates provided by the assigned counsel program for investigators and interpreters were so low that experienced investigators and interpreters stopped taking public defense cases.

Increasing the guideline rates, and adopting a regular review of guideline rates, will likely encourage more investigators and experts to work with public defense attorneys. Defenders will gain access to more qualified experts and be encouraged to file applications under County Law § 722-c, thus removing a significant barrier to the provision of quality representation throughout the public defense system.

II. Amendment of Statutory Caps Critical to Quality Public Defense Services

According to the August 8, 2017 proposal, it is anticipated that the Unified Court System will seek a legislative amendment to the statutory compensation caps in County Law § 722-c and Judiciary Law § 35(4). NYSDA supports such an amendment. For the increase in the hourly rate guidelines to be meaningful, it must be accompanied by an amendment to these compensation caps. Otherwise, the number of hours an expert is able to work on a case will be severely limited, except in cases where the court finds that there are "extraordinary circumstances" for exceeding the cap. For example, if the hourly rate guideline for a physician is increased to $250, but the statutory cap of $1,000 remains in place, then the physician will only be compensated for four hours of work. In most cases, four hours is not enough time for a physician to review all of the relevant medical records, let alone discuss those records and the relevant issues with the attorney. While some courts may agree that such a limitation meets the standard of "extraordinary circumstances," others would consider this entirely ordinary and not approve an expenditure over the cap.

Conclusion

Overall, NYSDA supports the proposal to increase the hourly rates under County Law § 722-c and Judiciary Law § 35. We encourage the Administrative Board of the Courts to accept the full cost-of-living hourly rate, not the lower proposed rates; alert judges that the rates are guidelines only, not a ceiling on hourly rates; regularly review the guidelines; and expand the categories of experts included in the guidelines. We expect that the increase will encourage more providers of expert services to agree to take public defense cases, which will make it easier for defenders to locate qualified experts and in turn improve the quality of representation provided to public defense clients.

However, without a change in the statutory caps on expert compensation, the increased guideline rates will not have a sufficient impact on the quality of public defense representation. Therefore, we also support the Unified Court System's anticipated effort to seek legislative amendment to the Judiciary Law and County Law regarding the cap on expert compensation.

If you have any questions regarding these comments, please feel free to contact Charles F. O'Brien, Executive Director, or Susan C. Bryant, Deputy Director, at 518-465-3524.

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

October 11, 2017

John W. McConnell, Esq.
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25 Beaver Street, 11th Floor
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Re: **Request for Comment on Proposed Increases in Compensation Rates for Court-Appointed Experts**

Dear Mr. McConnell:

This submission is in response to your request for comments on proposed increases in the hourly rates of compensation paid to experts appointed by the court, pursuant to Judiciary Law § 35 and County Law § 722-c. The Office of Indigent Legal Services applauds the proposal, and endorses and adopts the comments of the New York State Defenders Association. NYSDA supports the proposed increases and recommends additional reforms that would advance our mission—improving the quality of mandated representation in this State.

As NYSDA states, the proposed increase in hourly rates of compensation will encourage more experts to participate in public defense cases, cause defense counsel to make more applications for experts, and improve the quality of representation to clients. The proposed increase is also consistent with ILS Standards regarding the use of experts, social workers, and investigative and other services (Standards and Criteria for the Provision of Mandated Representation in Cases Involving a Conflict of Interest, Standards 3, 4; Standards for Parental Representation in State Intervention Matters, Standards F-5, G, O-1, O-7). ILS also supports OCA's proposed legislative amendment to the statutory caps, so that extraordinary circumstances will not need to be shown when experts provide services for more than several hours at the increased rates.

We agree with NYSDA that additional reforms should be implemented. The guidelines should state that they do not enumerate an exclusive list of possible experts, given the wide spectrum of experts often needed to provide effective representation. Further, we are in accord with NYSDA that the hourly rate guidelines should provide for a full cost-of-living increase for physicians, psychologists, and social workers, and that the new rates for psychiatrists should similarly increase so that they are aligned with physician rates. In addition, trial courts should be reminded by the Administrative Board of the Courts that the hourly rates are not ceilings. As our Office has found, although the 1992 Guidelines have not been updated, the rates stated therein are often applied (Implementing the Quality Improvement Objectives in the *Hurrell-Harring* v. *State of New York* Settlement: 2016 Update, at 32-33). Finally, to ensure that the rates do not remain stagnant going forward, the amended guidelines should provide a mechanism for regular adjustments.

Very truly yours,

Cynthia Feathers

ILS Director of Quality Enhancement for Appellate and Post-Conviction Representation

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Very truly yours,

Cynthia Feathers

ILS Director of Quality Enhancement for Appellate and Post-Conviction Representation

Leahy, Bill (ILS)

From: Leahy, Bill (ILS)
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Subject: Centralized Arraignment Parts to begin operations in four counties

Attachments: Centralized Arraignment Parts 10 3 17.pdf

Dear all,

Centralized arraignment parts (CAPs) have begun or are soon to begin operating in Broome, Oneida, Onondaga and Washington counties, as explained in the attached OCA Press Release and the accompanying article in the New York Law Journal. We extend our congratulations to Chief Judge DiFiore, Chief Administrative Judge Marks, Deputy Chief Administrative Judge Coccoma, Administrative Judges Caruso, Tormey and Reynolds; and all the county officials, public defense providers, prosecutors, sheriffs and other stakeholders in the four counties for this historic accomplishment. I also want to thank Tina Luongo, attorney-in-charge of the The Legal Aid Society's criminal defense division, for her excellent statement in the NYLJ article.

We will continue to work with the counties, the providers, the stakeholders and the courts to ensure that the legal requirement that counsel be provided at every defendant's first court appearance is honored, and that it is done as efficiently as possible.

Our best to everyone,

Bill

William J. Leahy
Director

PRESS RELEASE

New York State
Unified Court System

Hon. Lawrence K. Marks
Chief Administrative Judge

Contact:
Lucian Chalfen, Public Information Director
Arlene Hackel, Deputy Director
(212) 428-2500

www.nycourts.gov/press

Date: October 2, 2017

NY Courts to Launch Centralized Off-Hours Arraignment Pilot in Four Upstate Counties to Facilitate Right to Counsel for Indigent Defendants

New York – Chief Administrative Judge Lawrence K. Marks today announced that centralized arraignment parts (CAPs) for off-hours arraignments will begin operation this month in four upstate counties, part of a pilot program to facilitate the delivery of right-to-counsel services for indigent criminal defendants, as guaranteed by the federal and state constitutions and laws of New York. The CAPs will operate during designated evening and weekend hours, beginning on October 2 in Broome County, October 8 in Oneida County, and later in the month in Onondaga and Washington counties.

The establishment of the centralized arraignment parts is authorized by newly enacted legislation amending the State's Judiciary Law, Criminal Procedure Law and Uniform Justice Court Act. By allowing arraignments in centralized locations, the new law ensures the availability of counsel for poor defendants, also promoting efficiency and reducing the burden on the various justice system stakeholders. These include the State's Town and Village Justice Courts, which operate in the 57 counties outside New York City (New York City currently has a system in place to ensure counsel at arraignment) and conduct criminal proceedings, law enforcement agencies, prosecutors and indigent criminal defense providers.

Off-hours arraignments have historically placed great strain on localities across the State, with inadequate funding, long commutes to decentralized court facilities and a shortage of qualified attorneys, among the difficulties. The new CAPs, by optimizing countywide resources and eliminating logistical barriers, will ensure that judges, defense attorneys and security staff in the selected counties are readily available at arraignment proceedings during designated evening and weekend hours. Under the pilot program, judges in the local criminal courts in the selected

counties will be assigned to a single, central court part on a rotational basis, and will conduct arraignments resulting from off-hours arrests for their entire county.

The establishment of the CAP program was spurred largely by the settlement in the landmark Hurrell-Harring class-action suit, in which plaintiffs from five New York counties sued the State, alleging that services and resources provided to indigent criminal defendants were constitutionally deficient. Under the settlement, and pursuant to an agreement between the Governor and the Legislature earlier this year included in adoption of the State budget, New York must ensure that every criminal defendant has an attorney at arraignment.

Hon. Michael V. Coccoma, Deputy Chief Administrative Judge for Courts outside New York City, under the direction of Judge Marks, led the effort to initiate the centralized off-hours arraignment parts. Working with Fourth Judicial District Administrative Judge Vito C. Caruso (Washington County), Fifth Judicial District Administrative Judge James C. Tormey (Oneida and Onondaga counties) and Sixth Judicial District Administrative Judge Molly Reynolds Fitzgerald (Broome County), Judge Coccoma was successful in bringing together the various justice partners to address the myriad issues involved in implementing the centralized parts. With input from all the local stakeholders, each CAP has been tailored to that county's local needs and resources.

The CAPs are being launched with the approval of the Administrative Board of the Courts, which sets statewide policies and practices for the Unified Court System and is made up of Chief Judge Janet DiFiore and the four Presiding Justices of New York's Appellate Division. In the coming months, the CAPs will be established in other counties around the State.

"This pilot program is a major step forward in the court system's efforts to advance the fair, timely administration of justice, ensuring poor defendants' constitutional right to counsel at arraignment, during which bail and other critical decisions are made. I commend Judges Marks and Coccoma, our Administrative Judges and justice system partners for their hard work in bringing this vital initiative to fruition," said Chief Judge DiFiore.

"The centralized off-hours arraignment pilot parts will play an integral role in the Judiciary's quest to fulfill the promise of equal justice for all New Yorkers, serving as a model for additional counties and working in tandem with other reform efforts to improve the quality and delivery of indigent defense services statewide. I want to thank Judges Coccoma, Caruso, Tormey and Fitzgerald for their tireless efforts in this endeavor, with each of the CAPs representing a large-scale collaboration," said Chief Administrative Judge Marks.

"I am grateful to our wonderful team of Administrative Judges, whose skillful coordination among the many justice system players has been instrumental in launching this

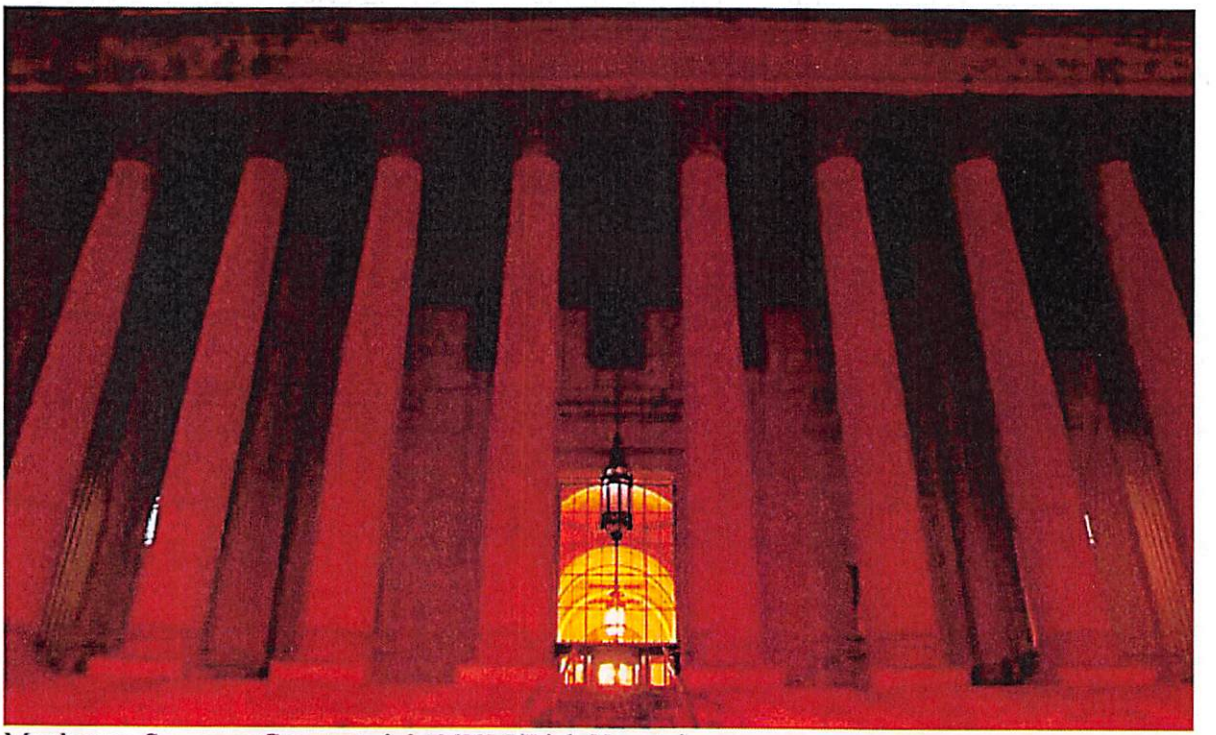
critical undertaking; and to Judges DiFiore and Marks for their ongoing leadership and support on access-to-justice issues," said Deputy Chief Administrative Judge Coccoma.

# # #

Centralized Arraignment Pilot Program Begins Upstate

Josefa Velasquez, New York Law Journal

October 2, 2017



Manhattan Supreme Court at night NYLJ/Rick Kopstein

Centralized arraignment parts for off-hours arraignments are slated to begin in four upstate counties this month, Chief Administrative Judge Lawrence Marks announced Monday.

In an effort to help deliver counsel to indigent defendants, the CAPs will operate evenings and weekends beginning Monday in Broome County and next Monday, Oct. 8, in Oneida County. CAPs in Onondaga and Washington counties are slated to begin later this month, Marks said in a press release.

The pilot program was established as part of a bill signed into law by Gov. Andrew Cuomo in November 2016. The idea of having off-hours arraignments was based on a recommendations of Marks' advisory committee on criminal law and procedure and was partly born out of New York's experience with the settlement in *Hurrell-Harring v. State of New York* (NYLJ, March 18, 2015). Plaintiffs in the class action lawsuit sued the state over allegations that services provided to indigent criminal defendants were constitutionally deficient. As part of the settlement, the

state agreed to improve indigent criminal defense in Suffolk, Washington, Ontario, Onondaga and Schuyler counties, which were named as defendants in the case.

Additional CAPs will be established in other counties in the "coming months," according to the court. The new law, the court says, ensures that counsel is available to poor defendants, promotes "efficiency" and reduces the burden on "various justice system stakeholders."

Marks said in a statement, "the centralized off-hours arraignment pilot parts will play an integral role in the judiciary's quest to fulfill the promise of equal justice for all New Yorkers, serving as a model for additional counties and working in tandem with other reform efforts to improve the quality and delivery of indigent defense services statewide." Under the pilot program, judges in local criminal courts in the four upstate counties will be assigned a single, central court part on a rotational basis, and will conduct arraignments that are a result of off-hours arrests for the rest of the county. Judges, defense attorneys and security staff in the four counties will be available at arraignment proceedings during the designated off-hours.

"Having attorneys at a client's first appearance is critical to providing effective and zealous representation when people are in need the most. Having a lawyer to advise a person on their rights, to challenge bail requests and to ensure a person's constitutional guarantees helps fulfill the promise of *Gideon v. Wainwright* and makes a huge difference to the person who is being accused," said Tina Luongo, the attorney-in-charge of The Legal Aid Society's criminal defense practice.

Contact Josefa Velasquez at jvelasquez@alm.com. Twitter: @j__velasquez

Leahy, Bill (ILS)

From: The Right to Counsel National Campaign <RIGHT2COUNSEL-L@LISTSERV.AMERICAN.EDU> on behalf of Alexandra Funk <justice@AMERICAN.EDU>
Sent: Thursday, October 26, 2017 11:06 AM
To: RIGHT2COUNSEL-L@LISTSERV.AMERICAN.EDU
Subject: R2C National Campaign: October 2017 Newsletter

To view this newsletter in a browser, visit:
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To ensure that this newsletter is delivered to your inbox, add **RIGHT2COUNSEL-L@LISTSERV.AMERICAN.EDU** to your address book.

R2C National Campaign: October 2017
Monthly Newsletter

In this Newsletter:

New Consortium Members

Please join us and become a consortium member and/or help us spread the word about R2C!

Sign Up To Receive This Newsletter

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Spotlight

R2C is getting ready for its third annual meeting! R2C's annual meetings are intended to celebrate R2C consortium member successes, raise further awareness about the unique role each stakeholder can play in securing the right to counsel, and provide an opportunity for groups that rarely engage with each other to take part in robust conversations and think collectively about how to overcome challenges to upholding the constitutional right to counsel.

At this year's meeting, the U.S. Department of Justice's Bureau of Justice Assistance (BJA) will discuss its plan for the coming year. BJA will also introduce useful tools to assist the field in carrying out the work of this campaign and share a new initiative to support strategic planning and technical assistance to state and local jurisdictions to ensure the obligations of the Sixth Amendment to the U.S. Constitution, including the right to counsel.

The meeting will be held at the U.S. Department of Justice on **Thursday, November 2, 2017, from 8:30am - 5:30pm**. R2C is delighted to share this year's agenda for this informative, action- and outcomes-focused, and memorable event. If you have not received an invitation and would like to attend or if you are unable to attend but would like to send someone else in your place, please email Genevieve Citrin Ray at citrin@american.edu.

Since the last meeting, R2C has been providing you with updates in this monthly newsletter and have kept the momentum going by hosting the R2C quarterly webinars. You can find archives of these as well as highlights from the past two R2C annual meetings on the R2C website.

the R2C website. On the top right, just enter your email address where it says "Get Updates from Us!"

In The News

Tennessee Supreme Court Recommends Boost In Legal Aid To The Poor, by Chas Sisk, *Nashville Public Radio*, October 3, 2017

'Constitutional' Podcast: Episode 08: Fair trials, by Lillian Cunningham, *The Washington Post*, October 9, 2017

Supreme Court denies petition for help from public defenders, by Morgan Lee, *Associated Press*, October 11, 2017

Courts Sidestep the Law, and South Carolina's Poor Go to Jail, by Timothy Williams, *New York Times*, October 12, 2017

Episode Fifty-Three - South Carolina's Sixth Amendment-Free Zones, NACDL's "The Criminal Docket" Podcast, October 18, 2017

Missouri Supreme Court rules on public defender caseloads, *Associated Press*, October 19, 2017

New Orleans' Great Bail Reform Experiment, by Aviva Shen, *The Atlantic CityLab*, October 19, 2017

Contact Us

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Credits

This newsletter is produced by staff at the Justice Programs Office, a center at the School of Public Affairs at American University (JPO), and by staff at the National Association of Criminal Defense Lawyers (NACDL).

Consortium Member Updates

NYS Office of Indigent Legal Services

Have you visited the NYS Office of Indigent Legal Services' website recently? The purpose of the NYS Office of Indigent Legal Services is "to monitor, study and make efforts to improve the quality of services provided pursuant to article eighteen-B of the county law." The NYS Office of Indigent Legal Services offers beneficial resources to those working in the state of New York and to those who want to learn from New York's experiences and expertise. Check out its most recent work on caseloads, and don't miss:

- ILS Director Bill Leahy's Message Regarding New Caseload Standards
- Final Caseload Standards Report
- Sixth Amendment Center Commentary On ILS Caseload Standards

National Association for Public Defense's (NAPD) Workload Conference

NAPD was established partly out of a commitment to tackle the excessive workload problem in public defense programs in America. NAPD's Workload Conference will be held on **November 17-18 at the St. Louis University School of Law** and will feature many cutting-edge thinkers on public defense. **Consortium member Bill Leahy**, long-time leader of CPCS in Massachusetts and now the director of the NYS Office of Indigent Legal Services, will be speaking on Friday, November 17, and he will also serve as a coach for small groups.

To register, contact Heather H. Hall with NAPD at heather@publicdefenders.us.

R2C Consortium Members at the American Society of Criminology (ASC) Annual Meeting

ASC will hold its annual meeting from **November 15 to 18** in Philadelphia, PA. The theme for the meeting is Crime, Legitimacy and Reform: Fifty Years after the President's Commission.

Indigent Defense Research Association (IDRA) 4th Annual Convening on Research and Data in Legal Services for the Indigent at the ASC Meeting

IDRA will hold the 4th annual convening on research and data in legal services for the indigent at the ACS meeting in Philadelphia, PA from **November 15 and 16**. IDRA will hold a series of twelve panels featuring dozens of presentations of original empirical research from scholars and defense practitioners around the country. Topics include the predictors of attorney burnout, the assessment of client experiences, the impact of early representation on bail decisions, the difference social work interventions make, the use of technology in defense practice, and tracking client outcomes in the long term, among many others.