



Andrew M. Cuomo
Governor

STATE OF NEW YORK
OFFICE OF INDIGENT LEGAL SERVICES

80 S SWAN STREET, SUITE 1147
ALBANY, NEW YORK 12210
Tel: (518) 486-2028 Fax: (518) 474-5050
E-Mail: info@ils.ny.gov
<http://www.ils.ny.gov>

William J. Leahy
Director

Joseph F. Wierschem
Counsel

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

INDIGENT LEGAL SERVICES BOARD

November 30, 2018

Agenda

- I. Approval of minutes of September 28, 2018 meeting (attached)
- II. Status report on Chief Judge DiFiore's **Commission on Parental Legal Representation** (Angela Burton) (materials attached)
- III. Update on Hurrell-Harring Implementation (Patricia Warth) (materials attached)
- IV. Preliminary Discussion of Draft ILS **Standards for Establishing and Administering Assigned Counsel Programs** (Matt Alpern and Cynthia Feathers) (Standards attached)
- V. Update on Statewide Implementation and FY 2019-20 Budget Request (Joe Wierschem)
- VI. Report on Raise the Age (RTA) Task Force meeting (Bill Leahy) (agenda attached)
- VII. Timetable and procedure for scheduling 2019 ILS Board meetings

Minutes for the Indigent Legal Services Board Meeting

September 28, 2018

11:00 A.M.

New York City Bar Association

Board Members Present: Chief Judge Janet DiFiore, John Dunne, Carmen Ciparick, Sheila DiTullio, Joe Mareane, Mike Breslin (by telephone), Suzette Melendez (by telephone)

ILS Office Attendees: Bill Leahy, Joseph Wierschem, Angela Burton, Joanne Macri

Guests: Cillian Flavin (Division of Budget) (by telephone), Susan Bryant (NYSDA)

Minutes Recorded By: Mindy Jeng

The Chief Judge welcomed Suzette Melendez to the Board. The Chief Judge also welcomed Joe Mareane back to service.

I. Approval of Minutes of June 1, 2018 Meeting

A motion was made to approve the minutes and seconded. The minutes of the June Board meeting were approved unanimously.

II. Allocation of FY 2018-2019 Aid to Localities Appropriation

Bill Leahy discussed the details of the allocation of the Aid to Localities appropriation. The size of the appropriation was \$155 million, an almost 50% increase from the previous fiscal year. The entirety of the increase was the first year of funding for the statewide expansion of the *Hurrell-Harring* reforms.

A board member moved to approve the allocation of Aid to Localities appropriation for the fiscal year, and the motion was seconded. A vote was taken, and the allocation was unanimously approved with no opposition.

III. ILS Budget Request for FY 2019-2010

Bill Leahy explained ILS' budget request for fiscal year 2019-2020. The budget included a \$1.2 million increase in State Operations. The money will be used for four additional staff positions, \$100,000 to retain and reward highly valued, longstanding staff, and the remaining funds will go to the maintenance of existing operations.

The budget request for Aid to Localities will increase by \$53 million. \$50 million is devoted to the second year of funding for the statewide *Hurrell-Harring* expansion. Three million in the Aid to Localities budget will be used for upstate caseload relief in parental representation cases. Bill stated that a lot can be done to assist upstate offices with targeted amounts of money going to caseload relief. Bill stated that this is an urgent necessity for upstate counties.

A board member noted that improving representation in Family Court is clearly needed. The budget money may be used to reduce caseloads and bring in much needed staff. A board member noted that Family Courts had felt left out of the movement to improve standards of representation. Now they are being included; practitioners and Family Court judges appreciate the attention and the coming changes.

Bill also discussed ILS' plan to create an ILS Regional Support Center in the Eighth Judicial District. ILS has answered a lot of questions about the purpose of the regional centers, which is to provide support in improving quality, consistency, and efficiency. ILS has emphasized that the regional center is not intended to duplicate efforts or to criticize counties. The County Executive in Erie County is proud to host the first regional center. Judge DiTullio has facilitated conversation between the County Executive and ILS. ILS has met with the public defense leaders in Erie County. The regional center will be of great help to rural counties outside of Buffalo. There are already many experienced leaders in the area who can help share knowledge with other providers. The regional center will aim to collect data from every provider. Bill said that he expects a piece of the \$50 million in Local Aid for statewide *Hurrell-Harring* expansion to be transferred to the State Operations budget to build the regional center.

A motion was made and seconded to approve the ILS budget request for FY 2019-2020. The budget request was unanimously approved.

IV. Report to the Board on Status of Statewide HH Implementation

Joanne Macri reported to the Board on the status of statewide *Hurrell-Harring* implementation. The statewide implementation team consists of five lawyers, one researcher, one paralegal and one analyst. The team's first objective was to consult with counties about the settlement agreement, the legislation, and the ILS plan. The team worked with the providers to create priorities for each county. The goals for the counties include having a lawyer at every arraignment and achieving caseload standards by 2023.

The team has worked to establish the baseline in terms of quality and quantity of representation. They explored questions such as: what does counsel at first appearance (CAFA) look like in certain counties? How does CAFA function? How does the assigned counsel panel function? What resources are assigned counsel given? What are they reimbursed for? How will data be gathered to show improvement?

The team is working directly with each county to develop the first year of a five-year plan. The counties have been incredibly receptive, which is key to effective implementation. ILS has also received support from the New York State Association of Counties (NYSAC).

The team has had in-person meetings with all the counties and providers. They are continuing to hold meetings with the Board of Supervisors, assigned counsel committees, and other organizations. The ILS team is gaining a more precise picture of how assigned counsel works across the State. They are involved in the contract negotiations, interviewing providers

with the counties, and assisting in budget development. The team is encouraged by the progress as some counties are creating their own institutional provider offices, creating structured assigned counsel programs (12 new assigned counsel programs), and switching part-time defenders to full-time defenders. Every county is also budgeting for training, social workers, and other service providers. Every county has plans to add a data officer position in the first or second year of implementation to help facilitate and streamline data collection.

A board member asked about the contracts the counties will enter. Joanne explained the first year of the contract is a binding contract while plans for future years will be finalized annually. Joanne also noted that ILS is working with NYSDA and CDANY to recruit new attorneys. They will be hosting a job fair at SUNY Buffalo on October 19 for law students interested in public defense. There are plans for future job fairs in New York City and Albany.

V. Report to the Board on Status of Parental Representation

Angela Burton brought the Board up to date on developments related to parental representation. A new staff attorney will join ILS to assist Angela on issues related to parental representation. ILS has also convened a Parental Representation Advisory Group which brings together Family Court representation providers to discuss issues related to practice. The group has engaged in dynamic conversation and has a diverse membership.

Externally, the Chief Judge's Commission on Parental Legal Representation is up and running and has already convened meetings. They have held the second public hearing this past week. The Commission is led by Justice Karen Peters and ably supported by Jan Fink and Shane Hegarty from the Office of Court Administration. The Commission has heard from two guests from North Carolina and Washington. The speakers have shared how they developed a statewide office of parental representation. The information was helpful and eye-opening. Angela stated that the Commission has already received 70 written submissions from providers, assigned counsel, clients, and national organizations. Some of the issues addressed include early access to counsel in child protective proceedings, funding (rate increases for attorneys), and the need for clerical support. Angela stated that she was hopeful and encouraged by the progress and noted that the Commission's report is due at the end of the year.

VI. Monthly Call with *Hurrell-Harring* Parties

Bill reported on the monthly call held with the *Hurrell-Harring* parties in September. He stated that the HH Team is preparing significant reports on caseload relief and counsel at arraignment implementation which are due at the end of October.

VII. Report on Raise the Age Task Force meeting

Bill attended the meeting of the Raise the Age Implementation Task Force in September. He noted that ILS has an important role to play in the process as the youth that are charged need capable defense attorneys. The Governor's Office and the judicial system have provided tremendous access and cooperation.

One issue that arose is that the Youth Part in the Seventh Judicial District is only open on Monday to Friday, from 9 am to 5 pm. If a youth is arrested outside of those hours, their first court appearance is before an accessible magistrate. For the rest of the State, this is done in the county of arrest. For a portion of the Seventh Judicial District, the arrestee must be brought to Monroe County for an off-hour arraignment. ILS has argued that this is not compliant with the statute. The Seventh Judicial District said that it was a temporary solution, and it will not be replicated anywhere else in the State. ILS is continuing to monitor the situation.

VIII. Report on ILS Criminal Defense Advisory Committee

Bill reported on the second ILS Criminal Defense Advisory Committee meeting. Participants discussed what their vision is of what reform will look like in the future. The afternoon was devoted to the topic of assigned counsel. Bill noted that there are still numerous instances where individuals are represented by the assigned counsel plans in New York City. There was discussion about the 18-B program in New York City and changes that needed to be made. Bill stated that at the meeting, participants saw that both upstate and downstate people were struggling with the same issues.

Bill also acknowledged Susan Bryant, the acting director of the New York State Defenders Association. Susan testified at the State budget hearing and has done a fantastic job. She will soon be returning to her position of Deputy Director at NYSDA, and Bill said that ILS was grateful for her work.

IX. Next Meeting of the Board – November 30, 2018

The next Board meeting will be on Friday, November 30 at 11 a.m. A motion to adjourn the meeting was made and seconded. The meeting was adjourned at 12:38 pm.



NEW YORK STATE UNIFIED COURT SYSTEM
COMMISSION ON PARENTAL LEGAL REPRESENTATION

25 BEAVER STREET, #1170, NEW YORK, NY 10004 • E-MAIL: PARENTREPRESENT@NYCOURTS.GOV
HON. KAREN K. PETERS, CHAIR • JANET R. FINK, COUNSEL

AGENDA: NOVEMBER 19, 2018, 11 AM – 1 PM

Proskauer Rose LLP, 11 Times Square (8th Ave., 41 St.), NY, NY 10036

[If not attending in person, use Skype for Business link below or on meeting invitation:

→ [Join Skype Meeting](#) or participate by phone as follows: Toll number: +1 (719) 325-2776, TOLL-FREE #: 866 715 6499; access code: 6057805597]

- **Minutes of Oct. 17, 2018 meeting**
- **Date/time of next meeting: Dec 12th meeting to be rescheduled**
- **GUEST SPEAKERS: *Hurrell-Harrig* Implementation**
Joanne Macri, Esq. and Patricia Warth, Esq.,
NYS Office of Indigent Legal Services
- **SURVEYS: Updates**
 - Attorney survey
 - Client survey
 - Judges' survey
- **FAMILY COURT DATA: preliminary data for 2018 year to date:**
Neglect and abuse (original and supplemental) cases filed 2018 YTD:
 1. The total number of dockets with first appearances **36,335**
 2. # of dockets with first appearances or issue joined appearances where respondent is present with an attorney (attorney is assigned to the respondent and present in attendance) **20,203**
 3. # of dockets with first appearances or issue joined where respondent present without an attorney (attorney is assigned to the respondent and NOT present in attendance) **5,385**
 4. # of dockets with a removal date (child removed outcome) **8,253**
 5. # of dockets where respondent is present with an attorney (assigned and present in attendance) at initial removal (earliest appearance where there is an outcome of child removed) **4,980**
 6. # of dockets where respondent is present in attendance without an attorney present at earliest appearance with an outcome of child removed **1,326**
- **PRELIM. RECOMMENDATIONS: see summaries of recommendations (Angela Burton)**
 - Funding and caseloads
 - Timely access to counsel
 - Structural Issues
 - State Oversight
 - Model and Scope of Representation
 - Washington and North Carolina Presentations

Office of Court Administration
Commission on Parental Legal Representation
Judicial Survey (2018)

Chief Judge Janet DiFiore established the NYS Office of Court Administration's Commission on Parental Legal Representation in February 2018 "to examine the current state of mandated Family Court representation and determine how best to ensure the future delivery of quality, cost-effective parental representation." Information about the Commission's work and its membership can be found here: http://ww2.nycourts.gov/sites/default/files/document/files/2018-07/PR18_13.pdf.

This survey is one of several methods the Commission is using to collect information about the delivery of representation under Family Court Act sec. 262 in the State's 62 counties, and to assess areas needing improvement. We appreciate your taking the time to assist in this effort. The survey should take between 10 and 15 minutes to complete, depending on the information you provide. Question 1 asks for your identifying information. If your answer to Question 2 is "I have never presided over child protective cases," after clicking on "Next" you will be automatically skipped past those questions pertaining to child protective cases, to questions that ask about financial eligibility determinations in your court. The final question solicits your suggestions for improving the quality of parental representation generally.

Your response to the survey is requested by December 10, 2018. Thank you in advance for your assistance with this important initiative.

1. Please provide your name and county below.

Name:

County:

2. Do you now, or have you ever presided over child protective (including Termination of Parental Rights) cases?

- I have never presided over child protective cases.
- I do not currently, but I have presided over child protective cases in the past.
- I currently preside over child protective cases.

3. Child protective cases are (or were) what percentage of your overall docket?

- | | |
|-------------------------------------|--------------------------------|
| <input type="radio"/> Less than 10% | <input type="radio"/> 51- 75% |
| <input type="radio"/> 10 - 20% | <input type="radio"/> Over 75% |
| <input type="radio"/> 21-50% | <input type="radio"/> 100% |

4. In child protective cases, does your county have a system (e.g., rotation, attorney of the day, etc.) for assigning parental representation attorneys:

	Yes	No
Before court action?	<input type="radio"/>	<input type="radio"/>
At a pre-petition imminent risk ("removal") hearing pursuant to FCA 1022?	<input type="radio"/>	<input type="radio"/>
At an imminent risk ("removal") hearing pursuant to FCA 1027?	<input type="radio"/>	<input type="radio"/>
At a first appearance where the agency (ACS/DSS) does not seek removal?	<input type="radio"/>	<input type="radio"/>

Please explain your system for assigning counsel in child protective cases. (Optional)

5. In child protective cases, are parental representation attorneys (panel and/or institutional provider staff) assigned to a particular part, courtroom, or judge?

- Yes
- No

Additional comments. (Optional)

6. How often do you conduct FCA 1022/1027 imminent risk ("emergency removal") hearings in the absence of counsel for an assigned counsel eligible respondent?

- Never
- Rarely
- Sometimes
- Often

Additional comments. (Optional)

7. In child protective cases, how often do respondents appear before you who are NOT eligible for assigned counsel?

- Never
- Rarely
- Sometimes
- Often

Additional comments. (Optional)

8. In child protective cases, how often do respondents who are NOT eligible for assigned counsel appear before you without counsel?

- Never
- Rarely
- Sometimes
- Often

Additional comments. (Optional)

9. If a person who is NOT financially eligible for assigned counsel appears for an FCA 1022/1027 hearing without counsel, do you: (Choose one)

- Appoint an assigned counsel attorney to represent the respondent at the hearing
- Adjourn the hearing to permit the respondent to retain counsel
- Conduct the hearing without a lawyer for the respondent
- Other (please explain)

10. In child protective cases, to the extent that you know or have an impression based on your observations, how often do parental representation attorneys perform the following:

	Never	Rarely	Sometimes	Often	I don't know
Meet with their clients sufficiently in advance of court appearances?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exercise clients' right to demand discovery?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
File written motions to further clients' goals (e.g., increase frequency/decrease supervision level of parenting time, compel compliance by DSS with service orders, etc.)?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Make verbal motions to further their client's goals?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Make legal arguments to support their motions?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Convey a clear legal and factual theory of the case?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Make opening and closing statements?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Demonstrate mastery of the facts of their case?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Properly lay the foundation for admission of exhibits into evidence?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Negotiate with other parties to achieve their clients' goals?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Call witnesses to testify?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Properly prepare clients to testify?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Conduct effective direct examinations?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Conduct effective cross examinations?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Make appropriate objections?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

	Never	Rarely	Sometimes	Often	I don't know
Provide meaningful information to the court about clients' strengths and resources?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
File ex parte motions under County Law 722-c to obtain funding for non-attorney professional services?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Advise clients of the right to appeal?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
File interlocutory appeals to further clients' goals?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Preserve (on the record) issues for appeal?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare and submit proposed orders and/or findings for court signature after a hearing?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Treat their clients with dignity and respect?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Additional comments. (Optional)

11. In child protective cases, how often are parental representation attorneys sufficiently prepared for:

	Never	Rarely	Sometimes	Often
FCA 1022/1027 imminent risk ("emergency removal") hearings?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Fact-finding hearings?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Dispositional hearings?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Permanency hearings?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Termination of Parental Rights hearings?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Additional comments. (Optional)

12. In child protective cases, how often do assigned counsel attorneys send substitute counsel for appearances?

- Never
- Rarely
- Sometimes
- Often

13. How satisfied are you with the overall competency of the parental representation attorneys who represent clients in child protective cases?

- Dissatisfied
- Somewhat dissatisfied
- Very dissatisfied
- Satisfied
- Somewhat satisfied
- Very satisfied

Additional comments. (Optional)

14. In child protective cases, do you think that non-attorney staff (social workers, resource coordinators, investigators, etc.) that work as part of the parental representation team (institutional providers as well as panel attorneys) are, or could be, helpful in improving the quality of representation for respondents?

- Yes
- No

Additional comments. (Optional)

15. In child protective cases, do you think there should be a provisional presumption of financial eligibility (rebuttable after the first appearance)?

- Yes
- No

Additional comments. (Optional)

16. In child protective cases, when do you think is the best time for adult assigned counsel eligible litigants to have access to a lawyer? (Choose one)

- Once a CPS/child protective investigation has started At the individual's first appearance in court
- Immediately upon removal of a child from the individual's custody Other
- Sufficiently prior to an FCA 1022/1027 hearing to ensure counsel enough time to prepare for the hearing

Additional comments. (Optional)

17. Who does the initial screening to determine whether a Family Court litigant financially qualifies for assigned counsel?

- Judge determines Individual panel attorney
- Non-judicial court employee (e.g., court clerk) Other
- Public Defender or Conflict Defender

Additional comments. (Optional)

18. What criteria are used to determine whether a litigant is financially eligible for assigned counsel?

19. If the Federal poverty guidelines are used, what percentage is applied to determine eligibility for assigned counsel? (e.g., 125%, 250%, etc.)

20. In general, about how long does it take between the determination that a litigant is eligible for assigned counsel and notification to the attorney that he or she has been assigned to represent the litigant?

- Same day
- Less than one week
- More than one week
- I don't know
-

21. Please answer the following questions regarding the process for determining a Family Court litigant's financial eligibility for assigned counsel.

	Yes	No	Don't know
Are applicants given a written explanation of the criteria and procedures for determining financial eligibility before they apply?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Is counsel provisionally appointed to represent the applicant pending the determination of eligibility?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Is the cost of retaining a private attorney considered when determining eligibility?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Are expenses and other financial obligations considered when determining eligibility? (E.g., rent/mortgage payments, utility bills, credit card debt, medical bills, child support payments, basic living costs, etc.)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Are applicants who are found ineligible informed of the basis for the denial of assigned counsel?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Is there a standard appeal or review process available to litigants to challenge an adverse eligibility determination?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

22. In cases other than child protective cases, when do you think is the best time for adult assigned counsel eligible litigants to have access to a lawyer? (Choose one)

- Before a petition is filed with the court
 After the litigant's first appearance before a judge
 After a petition is filed, but before a litigant first appears before a judge
 It depends
 In court at the litigant's first appearance before a judge

Additional comments. (Optional)

23. What are your top recommendations for enhancing the quality of representation for indigent litigants in family court cases?

1.

2.

3.

4.



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80 S. Swan Street
Room 1147
ALBANY, NEW YORK 12210
(518) 486-2028

William J. Leahy
Director

Joseph F. Wierschem
Counsel

Andrew M. Cuomo
Governor

July 10, 2018

Via E-mail

Adam W. Silverman
Assistant Counsel to the Governor
Office of the Governor
State Capitol
Albany, NY 12224

Daniel Greenberg
Gary Stein
Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022

Philip Desgranges
Hannah Thibideau
Christopher Dunn
New York Civil Liberties Union
125 Broad St., 19th Floor
New York, NY 10042

Kristie Blase
CKR Law
1330 Avenue of the Americas, 14th Floor
New York, NY 10019

Re: *Hurrell-Harring* Settlement Implementation

Dear *Hurrell-Harring* Parties:

As we have done previously, the New York State Office of Indigent Legal Services (ILS) is sending this letter with descriptive narratives about the progress of *Hurrell-Harring* Settlement implementation. These narratives about on-the-ground progress are gleaned from our own observations as well as information reported to us from people who live in and are familiar with the local community. We share them with you as a means of effectively conveying the progress being made in providing quality representation and fostering a culture of collaboration within and between the *Hurrell-Harring* counties.

In this letter, we focus on the assigned counsel programs (ACPs) and conflict providers, starting with the Second Annual ACP Summit which occurred on May 10, 2018, in Albany, New York. Co-sponsored by ILS and the Onondaga County Assigned Counsel Program, the Summit included the assigned counsel program leaders of the five *Hurrell-Harring* counties, as well as Bob Lonski and Claudia Schultz, former leaders of the Erie County Assigned Counsel Program, and Mardi Crawford, from the New York State Defenders Association. Bill Leahy welcomed participants, emphasizing the role ACPs play in ensuring quality representation for all defendants, and reminding everyone that true reform is not possible unless there is sufficient attention paid to building ACP infrastructures and elevating their roles in the communities they serve. Summit topics included:

- Changing Practice and Culture and Elevating Expectations
- From Triage to Quality: Representation under ILS Caseload Standards
- Implementing Attorney Evaluations/Recertification Systems
- Taking a Leadership Role and Navigating Pushback

During this year's Summit, the ACP leaders presented as more seasoned than last year, sharing stories about the barriers to reform they have encountered and the various strategies they have used to overcome them. Though Summit participants celebrated the significant progress they have made in the past year, most of the discussions focused on building on this progress to achieve ongoing transformation. Participants also discussed ideas for elevating community understanding of public criminal defense as a vital government service, and thus the need for public defense leaders to have a significant role in the community.

During one of the discussions, Bob Lonski reminded the ACP leaders that transformation takes time, commitment, and persistence. Throughout the day, it was evident that while the ACP leaders are pleased with what has been accomplished thus far, they recognize the progress yet to be made. All the ACP leaders possess the motivation and persistence needed to continue the hard work involved in transforming public defense systems.

The ACP leaders agreed to continue the discussions started during the Summit through conference calls and ongoing in-person meetings. They have already scheduled a conference call for July 12, 2018 to discuss the Onondaga ACP's experience in implementing its attorney recertification protocol.

In terms of ongoing reform, and as was described in ILS' April 30, 2018 report *Assessment of Hurrell-Harring Provider Caseloads for 2017*, Settlement implementation requires that each ACP develop a strong infrastructure that actively fosters quality representation. Development of training and mentoring programs has been a critical part of this infrastructure. In most of the *Hurrell-Harring* counties, the training and mentoring programs have been implemented only recently. Yet, in a short amount of time, the ACPs are already receiving positive feedback and seeing results. Below, is a brief illustration of this for each of the *Hurrell-Harring* counties.

Onondaga County

Like the other *Hurrell-Harring* ACPs, the Onondaga County ACP's leadership recognizes that while skills-based CLE programs are more time-consuming, expensive, and challenging than "sit and listen" CLE programs, they are critical to skill and expertise development and confidence building. The ACP leadership regularly encourages attorneys to attend skills-based trainings through its weekly *ACP Defender* email newsletter and by affirmatively encouraging individual attorneys to attend such programs, particularly attorneys who need more skill development or who lack confidence. Recently, the ACP urged a long-time panel attorney who lacks trial experience to attend the Dennis R. Murphy Trial Advocacy Training Program, hosted by the Legal Aid Society in New York City. The ACP advised that this program would help the attorney prepare for a trial in which she will be serving as the second-chair attorney. The attorney finally agreed to go, and during the training sent the ACP this email in response to an update they had sent her:

Thanks for the update. BTW this training in L.I.C. is great. They really have us working, but I'm getting a lot out of it. I think I'll be more helpful with [the] trial that I am second chairing on 7/16. You were right, it is helping with my confidence :-)

Ontario County

In Ontario County, *Hurrell-Harring* funding was used to send one of the more experienced ACP panel attorneys and Assistant Conflict Defender Carrie Bleakley, also a seasoned trial attorney, to a multi-day skill-based training on jury selection sponsored by the National Association of Criminal Defense Lawyers. Upon returning from the training, both the panel attorney and Ms. Bleakley reported that the skills they learned were invaluable. The training helped both develop strategies for confronting issues that are relevant in every trial, such as identifying potential jurors who cannot follow the instructions to convict only upon proof beyond a reasonable doubt. The training also helped in developing strategies for more sensitive case-related issues, such as identifying jurors who harbor biases against defendants because of their race or sexual orientation. Ms. Bleakley said these strategies were invaluable in a recent trial involving a homosexual defendant who was accused of having sexual contact with a 14-year old boy. Though the defendant was found guilty, the verdict occurred only after the jurors deliberated for 2 days.

During the monthly ACP panel attorney meeting following the conference, Ms. Bleakley shared with panel attorneys the strategies she had learned. She also described the training as “eye opening,” and motivation to reconsider and completely revamp her previous strategies for jury selection. In so doing, Ms. Bleakley not only shared substantive information with panel attorneys, but she also compellingly conveyed that these types of skill trainings can be invaluable even for seasoned attorneys.

Schuyler County

For the past several years, the Tompkins County ACP has used ILS Distribution funding to sponsor a series of CLEs for panel attorneys. After regionalizing with Schuyler County, the ACP received additional funding for training, which has allowed the program to bolster these CLE trainings, make them available to attorneys on the Schuyler panel, and offer scholarships to Schuyler attorneys for skill-based trainings. The ACP has used this funding to, among other things, send Schuyler panel attorneys to the week-long Trial Academy sponsored by the Young Lawyer’s Section of the New York State Bar Association and held at Cornell Law School in May 2018.

More recently, on June 21, 2018, the regional Schuyler/Tompkins ACP used *Hurrell-Harring* training funding to conduct a half day training entitled “Fighting for Fair Bail.” Josh Norkin, head of the Legal Aid Society’s Decarceration Project, and Lance Salisbury, ACP Supervising Attorney, were the speakers. About 40 people attended, including: case workers from O.A.R., a non-profit organization with case workers from Schuyler and Tompkins counties who can be used to assist with collecting information needed for zealous bail advocacy; Laura Fiorenza from the Onondaga ACP and about three other Onondaga ACP attorneys; Wes Roe, the Schuyler Public Defender, and one of his staff attorneys; and attorneys from Cortland and Wayne counties. Josh Norkin provided the legal overview and framework for zealous bail advocacy, including a discussion of the various legal challenges to be made when an arraignment court sets bail that a client cannot make as well as a discussion of the four forms of bail that are seldom used but most accessible to low-income clients (i.e., partially secured bond, partially secured surety bond, unsecured bond, and unsecured surety bond). Lance Salisbury had, in the months preceding the CLE, applied about six times for these seldom used forms of bail. He had some successes and, even where denied, some collateral benefits. Thus, he had concrete practical tips for attorneys who practice in upstate counties. The ACP followed-up the CLE by emailing all the Schuyler and Tompkins panel attorneys advocacy tools to assist in fighting for the pre-trial release of their clients.

Suffolk County

The Suffolk County ACP has also urged panel attorneys to attend skills-based trainings, sending several panel attorneys to the Trial Practicum sponsored by the Suffolk County Bar Association and conducted over a series of evenings between February and May, 2018. More recently, the ACP sent an attorney to the New York State Defender (NYSDA) week-long basic trial skills training in Saratoga, New York. After the training, this attorney sent the ACP the following email conveying her gratitude for the opportunity:

Thank you for sponsoring me to go to the NYSDA Trial CLE at Skidmore College- June 17th to June 22nd. I learned invaluable trial techniques and strategies that will benefit both my criminal and family court panel clients. The program was extremely intense. Our days began at around 8:00 am and often ended after 8:00 pm. I was given an opportunity to practice trial skills several times a day. I was given immediate feedback and tips from the legal and communications aspect. The program had seasoned attorneys as well as actors (communication coaches) to advise us. Travel to the program and back was a blessing, as well. You both were very responsive to me, and I appreciate it. Thank you once again.

Washington County

In Washington County, the ACP recently implemented its Mentor Program, with Terrence Kindlon, a highly-regarded and seasoned trial attorney from Albany as mentor. ACP Supervising Attorney, Tom Cioffi, connected Mr. Kindlon to an ACP attorney who had a felony DWI trial scheduled. Mr. Kindlon and his wife, Laurie Shanks (an Albany Law School professor and nationally-recognized trainer) met with this attorney to help him prepare for trial, which was conducted June 26-28, 2018. The trial ended in a not guilty verdict on all counts. During the trial, while the jury was deliberating, the attorney sent the following email to ILS:

The jury just got charged on a felony trial in Washington County and I am in the awkward stage of waiting for verdict. I wanted to personally thank you for all that you do and have done. It is my understanding that the mentor program was your brainchild and I was lucky enough to work with Terry Kindlon and Laurie Shanks in preparation for this trial. I cannot begin to articulate the degree to which they helped. I learned more in a few hours than in my last three trials combined. I think the mentor program is a wonderful addition and Terry and Laurie are absolutely amazing.

As a post-script, this attorney has recently accepted a position with the Warren County Public Defender Office, and will be starting there soon. Though his departure will be a loss to the Washington ACP, because of his experience working in a *Hurrell-Harring* Settlement county, he will bring to the Warren County his skills, enthusiasm, and a keen sense of what can be accomplished through the Settlement initiatives.

We look forward to discussing with you these and other indications of *Hurrell-Harring* Settlement implementation during our July 11, 2018 phone conference.

Sincerely,

Bill Leahy

Joe Wierschem
Patricia Warth



STATE OF NEW YORK
OFFICE OF INDIGENT LEGAL SERVICES

80 S. Swan Street
Room 1147
ALBANY, NEW YORK 12210
(518) 486-2028

William J. Leahy
Director

Joseph F. Wierschem
Counsel

Andrew M. Cuomo
Governor

September 11, 2018

Via E-mail

Adam W. Silverman
Assistant Counsel to the Governor
Office of the Governor
State Capitol
Albany, NY 12224

Philip Desgranges
Christopher Dunn
New York Civil Liberties Union
125 Broad St., 19th Floor
New York, NY 10042

Daniel Greenberg
Gary Stein
Hannah Thibideau
Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022

Kristie Blase
CKR Law
1330 Avenue of the Americas, 14th Floor
New York, NY 10019

Re: *Hurrell-Harring* Settlement Implementation

Dear *Hurrell-Harring* Parties:

As we have done previously, the New York State Office of Indigent Legal Services (ILS) is sending this letter with narratives about the progress of *Hurrell-Harring* Settlement implementation. These illustrations of on-the-ground progress are gleaned from our own observations as well as information reported to us from people who live in and are familiar with the local community. We share them with you as a means of effectively conveying the progress being made in improving the quality of public criminal defense.

The narratives in this letter highlight how use of the *Hurrell-Harring* Settlement's caseload relief funding has not just reduced caseloads, but has had other positive benefits. With reduced caseloads and a stronger staffing structure, providers have more time to, among other things: become involved in community initiatives that impact their clients; attend high-caliber trainings; network with other providers; and implement innovative programs designed to improve the quality of representation and facilitate better outcomes for clients. These are described below.

Caseload Relief Allows Public Defense Leaders More Time to Become Involved in Community Initiatives that Impact Clients.

During a recent meeting with ILS, Leanne Lapp, the Ontario County Public Defender, explained how implementation of ILS caseload standards has given her the time needed to work on community initiatives that impact the Public Defender Office's clients. As an example, she told us of a recent collaboration with other county officials and community-based organizations to work on a grant submission to the federal Substance Abuse and Mental Health Services Administration (SAMHSA) for

funding to enhance the screening, case management, support, and post-recovery services that the County's diversion courts provide. This collaboration included the Ontario County District Attorney, Ontario County's grants manager, court staff, as well as community-based organizations such as Catholic Charities and Finger Lakes Area Counseling and Recovery Agency. Ms. Lapp played an active role in designing and writing the grant proposal. Recently, Ontario County learned that SAMHSA has awarded the county a total of \$1.89 million over five years, with \$367,023 available the first year for increased case management and peer support. An article about this award is available here: <https://fingerlakes1.com/2018/08/26/ontario-county-drug-court-gets-financial-boost-2/>

Ms. Lapp noted that prior to caseload standard implementation, she would not have been able to participate in this collaboration. She believes that there are long-term benefits to having the Public Defender Office at the table for this initiative in addition to the enhanced support services for Public Defender Office clients. For example, she could meet, and thus have "face time," with several key players in the community, which will help with future initiatives. She was also able to ensure that the voices of Public Defender Office clients and staff attorneys were heard in this initiative. She is optimistic that there will be additional opportunities like this in the future.

Similarly, the Onondaga County Assigned Counsel Program (Onondaga ACP) has been able to devote the time needed to participate in the Onondaga County Raise the Age Task Force, which has been meeting and collaborating to discuss implementation of the 2017 Raise the Age legislation, to go into effect October 1, 2018. At the ACP's urging, the County is planning on having young people charged with felony offenses and initially prosecuted in the criminal court's Youth Part represented by attorneys with the training and credentials needed to handle felony cases in criminal court and Juvenile Delinquency cases in Family Court. The goal is to ensure continuity of representation between criminal and Family Court such that every young person under the age of 18 arrested and prosecuted for a felony offense is represented by the same attorney, even if the case is ultimately transferred to Family Court. The ACP's participation has also prevented implementation of ill-advised practices, such as allowing young people charged with a felony offense to be interviewed by Probation without consultation with or access to defense counsel. As with Ontario County, Onondaga ACP's pre-Settlement staffing pattern would not have allowed the program to actively participate in this important Task Force; Settlement funding has allowed the program to significantly bolster its staffing pattern, making these types of collaborations possible.

Caseload Relief Allows for Enhanced Access to Regional, State-wide, and National Training Opportunities, Which Also Creates Opportunities for Defense Attorneys to Network with and Learn from Attorneys from Other Jurisdictions.

In Schuyler County, caseload relief funding has allowed the Schuyler County Public Defender Office to hire an additional full-time attorney. Prior to this, the Schuyler County Public Defender Office's staffing pattern of only two full-time and one part-time attorney (who works evenings) limited opportunities to attend trainings and Continuing Legal Education (CLE) programs outside the county because attendance at such programs would leave the Office without necessary coverage. With an additional attorney, the Schuyler Public Defender Office attorneys are now able to attend more out-of-county trainings. Since May 2018, when the new attorney began, Schuyler Public Defender Office attorneys have attended several out-of-county trainings, including the following:

- June 1, 2018 2nd Annual Master Class in DWI Defense: Drug Editions (co-sponsored by the New York State Defender Association and the Ontario PD Office and held in Ontario County). The new attorney, Valerie Gardner, attended.

- June 22, 2018 Fighting for Fair Bail CLE program (sponsored by the Regional Schuyler/Tompkins County ACP and held in Ithaca, NY). Public Defender Wes Roe and staff attorney Mark Raniewicz attended.
- July 23-24, 2018 New York State Defender Association (NYSDA) Annual Meeting and Conference, held in Saratoga Springs, NY. Wes Roe and Mark Raniewicz attended.

Notably, attending these regional and state-wide programs has allowed the Schuyler Public Defender Office attorneys to network and consult with attorneys from other counties, often in ways that directly benefit clients. For example, at the NYSDA Annual Conference in July 2018, Wes Roe connected with Nancy Ginsburg, Director of The Legal Aid Society's Adolescent Intervention and Diversion Project, and discussed his 16-year-old client who is charged with an arson offense. She agreed to provide the Schuyler Public Defender Office with expert and technical assistance on the case.

Leanne Lapp, the Ontario County Public Defender, notes similar advantages to caseload standard implementation. During a meeting with ILS, Ms. Lapp reported that having manageable caseloads means that Ontario Public Defender Office attorneys have the time needed to attend high-caliber skills-based trainings. This was most evident in June 2018, when Ms. Lapp sent two staff attorneys to the National Criminal Defense College in Macon, GA (commonly known as "Macon"). The premier hands-on trial trainer designed just for criminal defense lawyers, Macon is a challenging and intense two-week program. Both attorneys returned from the program excited about what they had learned and eager to put their new skills into practice. Having two attorneys attend this program would not have been possible prior to caseload standard implementation, because attorney workloads would have made it impossible to spare two attorneys for two weeks.

This is not the only training opportunity Ontario Public Defender Office staff attorneys recently have been able to take advantage of as a result of caseload relief funding. Attorneys were also able to attend the Fighting for Fair Bail CLE in Tompkins County on June 22, 2018; the training on suppression issues sponsored by the New York State Association of Criminal Defense Attorneys in New York City; and the New York State Defenders Association Annual two-day conference and CLE.

As with the Schuyler Public Defender Office, Ms. Lapp notes that these trainings are not just opportunities for knowledge and skill development for attorneys, but also opportunities to network with attorneys from other jurisdictions and to build important connections that promote the delivery of quality representation. For example, a few years ago, she sent a staff attorney to a DWI skills training sponsored by the National College for DUI Defense (NCDD). He returned very excited about the program, and stated that NCDD would be interested in delivering the program in New York. Because of this connection, the Ontario Public Defender Office has co-sponsored (with the NCDD and the New York State Defenders Association) two day-long CLE programs on DWI defense, the second of which was delivered on June 1, 2018. Both programs attracted just over 100 attorneys, including, as noted above, Ms. Gardner, Schuyler County Public Defender Office's new staff attorney.

Caseload Relief Allows for Implementation of Innovative Programs that Enhance the Quality of Representation and Assist Clients.

Caseload relief funding has also been used to implement creative initiatives. In a previous Settlement highlight letter, for example, we described how the Suffolk County Legal Aid Society has used caseload relief funding to not just hire new attorneys, but to ensure that these attorneys are acculturated to delivering holistic defense services. In a similar effort to encourage attorneys to view the representation they provide clients from a holistic perspective and to have assistance in identifying and ameliorating

the life-long consequences (often referred to as “collateral consequences”) of a criminal conviction, the Onondaga ACP is using caseload relief funding to establish a “Re-Entry Program” in collaboration with the Legal Services of Central New York (LSCNY). This Re-Entry Program: provides direct services to ACP current and former clients who need legal assistance in overcoming the barriers to housing, employment, and education erected by their conviction; and provides ACP attorneys with expert advice on the collateral consequences of a conviction and strategies for ameliorating or avoiding altogether these consequences. The direct client service component of the project also promotes LSCNY’s expertise in collateral consequences, which also allows them to be a resource for ACP attorneys who seek “advisory letters” on client-specific collateral consequences in their cases. Such advisory letters can be effective in plea and sentencing advocacy.

This project was announced to panel attorneys during an August 15, 2018 panel attorney quarterly meeting, and the ACP has promoted this program in subsequent *ACP Defender* newsletters. By August 18, 2018, a few days after the program was first announced, ACP panel attorneys had already reached out to LSCNY for their expert assistance. One case involved a client charged with Endangering the Welfare of a Child who was attending classes with the hopes of working in long term care. The attorney sought advice on the benefits of an adjournment in contemplation of dismissal with the condition that the client participate in parenting classes versus a plea to disorderly conduct with a conditional discharge as a sentence (the condition being participation in parenting classes). The other attorney contacted LSCNY about three pending cases, one in which the client was charged with welfare fraud and the other involving sex offense charges. LSCNY staff responded to the first attorney right away, and arranged a meeting with the second attorney for a more comprehensive assessment of the facts of the cases and the personal circumstances of the clients.

In its 2006 seminal report, *The Final Report to the Chief Judge of the State of New York*, the Commission on the Future of Indigent Defense Services (commonly known as the Kaye Commission), described New York’s public criminal defense system as “a haphazard, patchwork composite of multiple plans... [resulting in] a fractured, inefficient and broken system.”¹ As described in the Kaye Commission’s report, public defense providers often worked on their crushing caseloads in isolation, lacking the time and resources needed to, among other things, collaborate with other criminal defense providers. Public defense providers also lacked the time to network with other community stakeholders, and often were not included in community initiatives that impact their clients. In many communities, public defense providers felt isolated and invisible.

With reasonable caseloads, the *Hurrell-Harring* providers have time to network and to participate in community initiatives. Ideally, this will allow them to establish themselves as important community stakeholders to be included in initiatives that impact low-income people at risk for, or with a history of, being arrested. Additionally, defense attorneys now have time and opportunities to meet defenders from other jurisdictions and to brainstorm on common issues they face. Doing so will enable defense providers to feel less isolated, ultimately promoting a less fractured system in which providers across the State can collaborate more often and more effectively on individual cases and on addressing systemic barriers to justice for low-income people.

¹ The Commission on the Future of Indigent Defense Services, *The Final Report to the Chief Judge of the State of New York*, at 15 (quoting the Spangenberg Report).

We look forward to discussing with you these and other indications of *Hurrell-Harring* Settlement implementation during our September 12, 2018 phone conference.

Sincerely,

Bill Leahy
Joe Wierschem
Patricia Warth