

INDIGENT LEGAL SERVICES BOARD

AGENDA

September 27, 2011

Association of the Bar of the City of New York

I. Opening Remarks by the Chief Judge

II. Briefing on ILS Outreach and Meetings

- Report on County/District Visits, Public Defender and OCA City Court Surveys, Remarks at NYSDA Annual Meeting and Meetings with Legislators

III. Other Activities of the Office

- Staffing Update
- Distribution of Funds to the Counties for Quality Improvement

IV. Allocation of Funds Appropriated for Fiscal Year 2011-2012

- Statutory Distribution
- All County Distribution
- RFPs for Counsel at Arraignment and Regional Immigration Advisory Centers

V. Appropriation Request for Fiscal Year 2012-2013

- \$83 million Appropriation for ILSF Monies to Counties for Improving Quality of Services Statewide
- \$1.8 million to Annualize ILS Staffing
- Total Appropriation Request of \$84.8 million

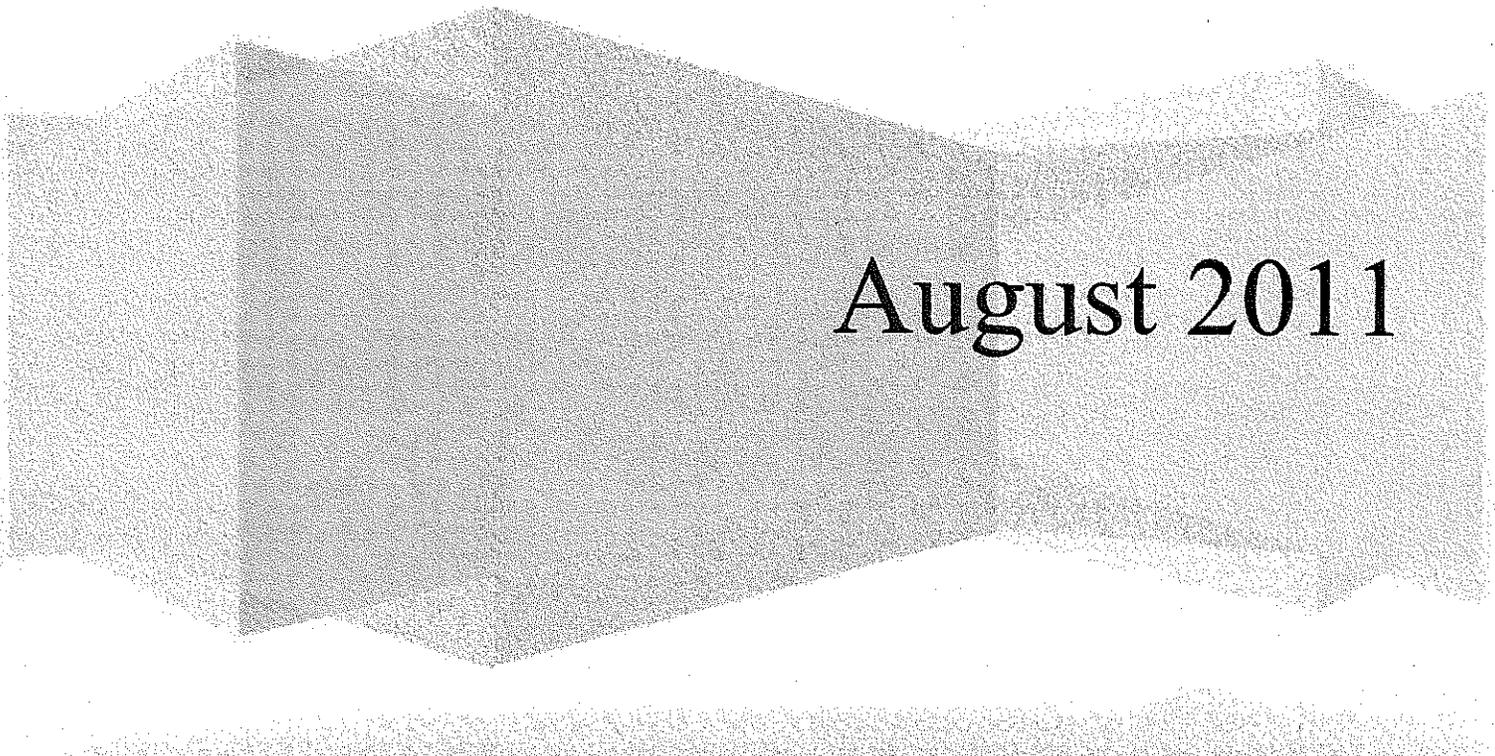
VI. Remaining Board Meeting for 2011

- November 9

VII. Concluding Remarks

NYS OFFICE OF COURT ADMINISTRATION
NYS OFFICE OF INDIGENT LEGAL SERVICES

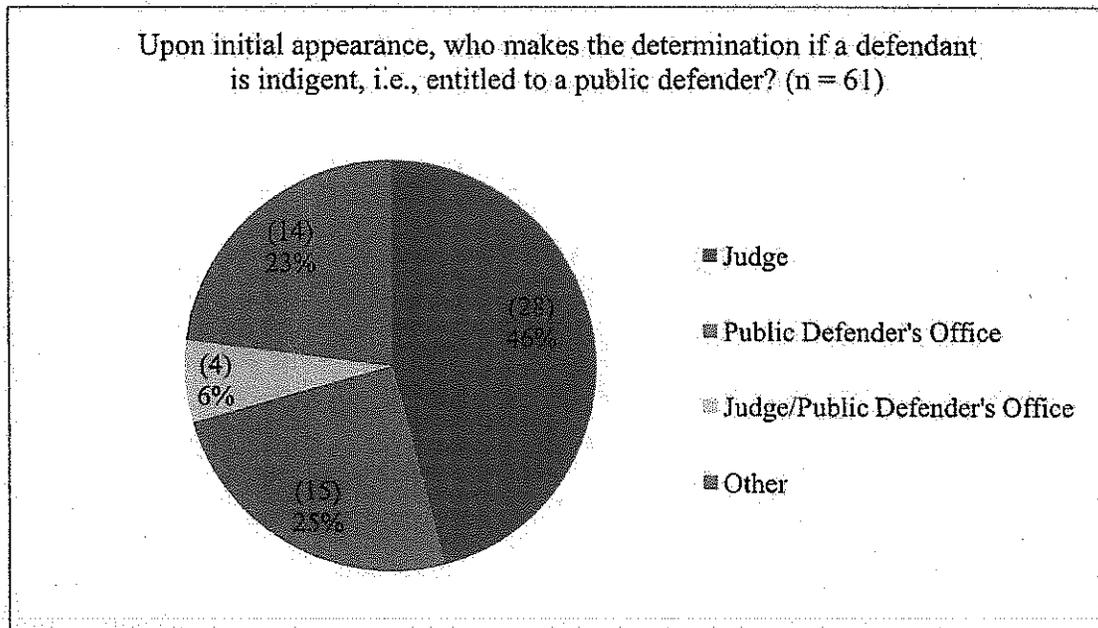
**Summary of
City Court Survey:
Representation at Initial Appearance**



August 2011

Summary: City Court Survey on Indigent Legal Services

NOTE: (61) City Courts participated in the survey

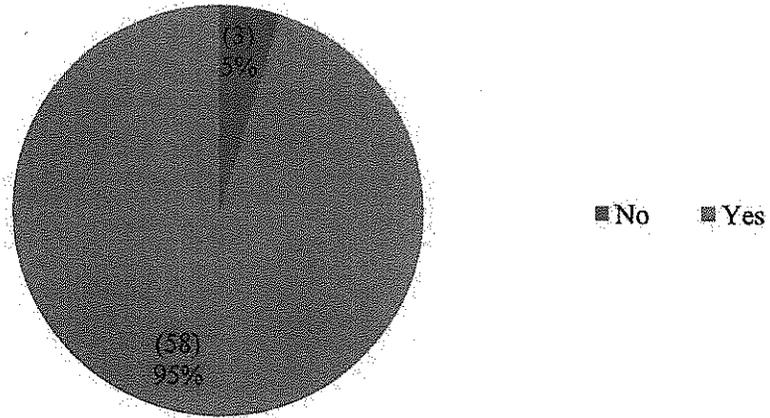


Other responses:

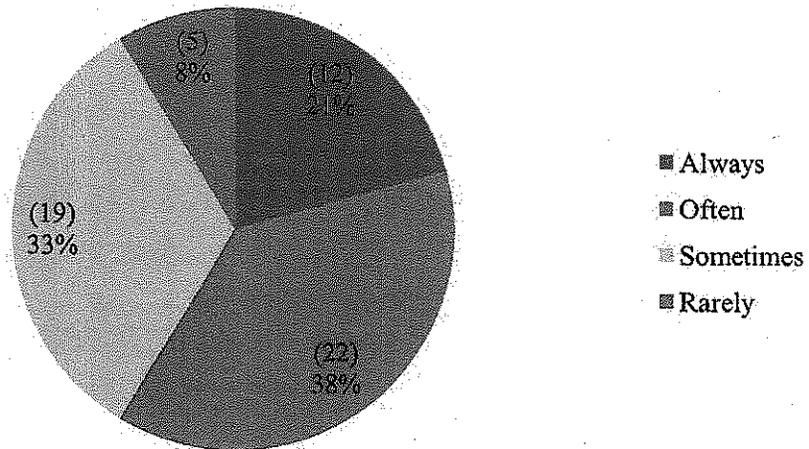
1	Ithaca	Judge; Assigned Counsel Program after completion of affidavit
2	Binghamton	Judge; At arraignment the Judge will make a provisional determination and assign the Public Defender. The Public Defender will then assess if the defendant is eligible or not
3	Yonkers	Clerk makes determination after reviewing financial disclosure form completed by defendant
4	Dunkirk	Deft. requests the public defender. Application for services given by judge. Case is adjourned. PD interviewer speaks with that day.
5	Saratoga Springs	Judge; Determination is made only for arraignment purposes-then they complete application
6	Rye	Judge; Financial form given to defendant and interviewed by counsel who makes recommendation to Judge
7	Tonawanda	If deft says they are indigent they are given # to call for Assigned Cns. They make the final determination.
8	Ogdensburg	Public Defender's Office; In most cases, the public defender is making the determination, however, on felony arraignments the judge will make a determination and court assign the public defender to represent
9	Newburgh	Judge; Judge makes initial determination, then sent to Legal Aid
10	Batavia	Judge will assign Public Defender, defendant must then qualify
11	Mechanicville	No one - application is given to Public Defender for review at office
12	New Rochelle	Judge on misd; Legal Aid Society on felonies
13	Cortland	Judge; The judge will assign on arraignment when deft is clearly indigent. The judge also considers the seriousness of the charges
14	Johnstown	Judge; Utilizing Financial Application

Summary: City Court Survey on Indigent Legal Services

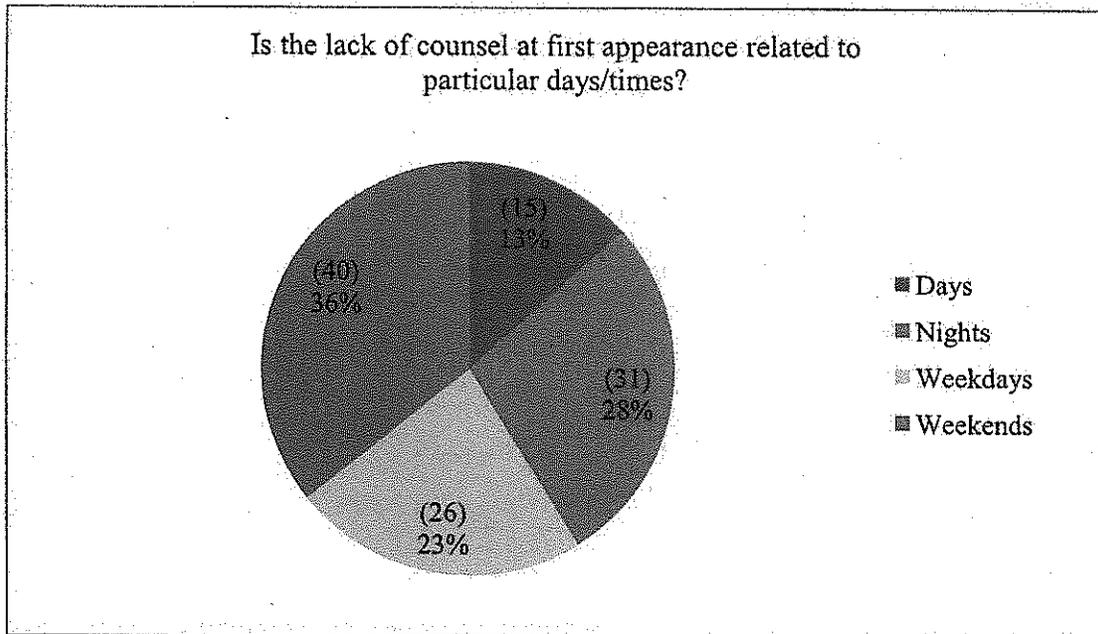
Do indigent defendants ever appear before your court unrepresented by counsel at first appearance/arraignment? (n = 61)



If 'yes,' how frequently does this occur? (n = 58)



Summary: City Court Survey on Indigent Legal Services



Notes and other responses from this section:

Canandaigua	after hours; Weekends; Nights
Dunkirk	Public defender has application, interview and file prep before their first appearance with defendant. Cases are adjourned for public defender appearance.
Fulton	No, we have an assigned counsel program not legal aid.
Ithaca	Availability of counsel.; Weekends; Nights
Jamestown	After 12 pm on weekdays; Weekends
Little Falls	There are no attorney's available.
Middletown	They must be screened by Legal Aid before the Judge can appoint 18B and the screening is done after the defendant contacts the Legal Aid office.
Oneida	outside of regular scheduled court sessions
Oneonta	At arraignment, the application is reviewed by the Judge. If eligible, the court will adjourn the matter for the defendant to discuss with counsel. The defendant will then return to court with representation.
Oswego	Typically we do not have an attorney present at arraignment and an attorney is assigned at the first appearance.
Port Jervis	Initial arraignment, before intake interview with Public Defender's Office
Rensselaer	Public Defenders are only scheduled here Wednesday mornings; Weekdays; Weekends; Nights
Rochester	No specific time frame
Rye	Holidays; Weekends; Nights
Salamanca	Lack of counsel in a small county; police are not willing to hold prisoners until both judge and counsel arrive. On court days, (Wed & Fri), if public defender is present in court, he/she will appear with prisoner if that person may have had the public defender previously
Sherrill	Public Defender only is present once or twice monthly; Court held weekly.
Troy	We do not have a Public Defender or DA scheduled here on Wednesdays; Weekends
Utica	Holidays; Weekends

Summary: City Court Survey on Indigent Legal Services

Questions and/or concerns:

Auburn	We have an Assigned Counsel Program in our County.
Binghamton	It is hit or miss with the public defender being in the courtroom at the time of arraignment. Sometimes they are available and other times they are not. On occasion when the public defender is not available and the judges do arraignments, they will usually enter a not guilty plea on behalf of the defendant and provisionally assign the public defender, adjourning the case to a later date for defendant to appear with counsel. Further, we do not always have a district attorney present at arraignments.
Corning	We only have a representative from the Public Defender's office here on Tuesday and Thursdays in the morning. We hold court Monday through Friday and the Judge does arraignments in the evening and on weekends.
Cortland	Hon Thomas A. Meldrim, City Court Judge, states Given the circumstances in this County, it would not be possible or even practical for assigned counsel to appear with a defendant at the time of arraignment.
Dunkirk	Our public defender is located in the county office which is over 20 miles away.
Geneva	I don't believe we have any issues here with unrepresented defendants our Judges are very good at making sure that everyone who wants and Attorney and is entitled to one receives one.
Glen Cove	Every defendant brought before Glen Cove City Court is represented by counsel (private or an 18b appointed by the Judge).
Glens Falls	#6 It occurs unless an attorney from the Public Defender's Office is present for another reason.
Gloversville	In regard to question #6) This occurs at almost every criminal arraignment unless the arraignment occurs at a time when the Public Defender is present for other cases.
Hudson	Since we have only two part time judges, sometimes people are arraigned on weekends and nighttime and a public attorney is not available. The Judge will always advise of their rights to have an attorney present for arraignment.
Ithaca	Tompkins County has an Assigned Counsel Program comprised of area attorneys who accept assigned cases upon request. If an indigent defendant has a first appearance scheduled and has been represented by counsel recently, the Judge will appoint counsel and request that counsel be present at the initial arraignment. If not previously represented, at the first appearance, the Court will provide an assigned counsel affidavit to the defendant to fill out to determine if he/she is eligible for assigned counsel, and given a return date/time by the Court. The Assigned Counsel Program determines eligibility. Defendants are then advised if they are eligible and the name and contact information of that attorney. The assigned attorney appears with them at the next court appearance.
Johnstown	A representative from the Public Defender's Office is present in Court during the Court's regularly scheduled Court sessions.
Little Falls	We have a very small number of attorney's available to handle assigned cases. A defendant may be arraigned without counsel present, but are normally notified of the attorney assigned to their case prior to their next court appearance.
Long Beach	WE ALWAYS SUPPLY AN 18B ATTORNEY TO DEFENDANTS WHO ARE UNABLE TO AFFORD THEIR OWN ATTORNEY AND WISH TO HAVE AN ATTORNEY ASSIGNED TO THEM. ON RARE OCCURENCES, DEFENDANTS CHOOSE TO PROCEED WITHOUT AN ATTORNEY.
Mechanicville	In Saratoga County, when the person appears for arraignment, the Judge provides an application for Public Defender services which the defendant then mails or delivers to the Public Defender's Office for their review and approval/denial

Summary: City Court Survey on Indigent Legal Services

New Rochelle	If the defendant is in custody they are always represented. Most often if the defendant is not mandatorily entitled to free rep.; the Judge will request on of the attorneys to stand in for arraignment purposes only.
Newburgh	Court listed above, should be Newburgh. Lack of counsel is primarily on the weekends, it may also happen for late arraignments.
Niagara Falls	Indigent defendants will appear before the court unrepresented by counsel at first appearance in most case because they want to represent themselves.
Oneida	As part-time city court judges are called at all hours of the night and day for arraignments- there are no holding cells in the local police department or county jail- and arraignment on warrants are required upon arrest, the judge has no choice for initial arraignments without counsel.
Peekskill	Judge must first determine if a defendant is indigent. Then clerk uses a rotation process to identify appropriate 18b atty. Defendant is instructed to call court the following day for atty name and phone.
Plattsburgh	The attorney is assigned at arraignment and the matter is adjourned to a future date. Bail/PTR or ROR is set at arraignment.
Rochester	The Monroe County Public Defender's office is present at every arraignment part the Rochester City Court holds. Typically, the only indigent defendants that are not represented at arraignment are cases where the public defender's office has a conflict in representing the defendant. It those instances, the case is adjourned for the defendant to appear either with assigned counsel or with an attorney from the Monroe County Conflict Defenders office.
Rome	Rome City Court does have an attorney from the Public Defender's office present at most scheduled arraignment times. The difficulties present themselves most for evening and weekend arraignments.
Syracuse	AM arraignments - In-custody - about 15% of defendants do not have atty present at arraignment. For those who do not, an atty is assigned and contacted by the court and defendant is given a quick return date so he/she may appear with counsel. Our Assigned Counsel program is not able to interview all in-custody defendants prior to arraignments. Defendants arraigned on BWs do not have counsel present but their previously assigned atty is contacted after court. PM- arraignments - due to small number, a representative from Assigned Counsel is able to meet with each of the defendants to be arraigned and are present with them in court. Out of custody - Do not have an attorney present at arraignment unless one has been retained. Again, attorney is assigned and then contacted after court.
Troy	In Response to Question #5, If a defendant appears before the Judge for Arraignment and indicates he would like to hire private counsel, then the Judge will inform him to return on his next court date (with or without an Attorney) If the defendant then informs the Judge he cannot afford private counsel, then the Judge will Provide the defendant with a Public Defender form to be completed and reviewed during that appearance date. If the Defendant is being arraigned from the holding cell and they had completed a PD form and meet the requirement, sometimes Public Defender is present in the courtroom, they will stand with the defendant to complete the arraignment process.

To: Members of the Indigent Legal Services Board
From: William J. Leahy, Director
Re: Allocation of State Fiscal Year 2011-2012 Appropriation
Date: September 22, 2011

In recent years, the Indigent Legal Services Fund has been subjected to gubernatorial "sweeps" of unexpended funds. Most recently, a total of approximately \$33 million was swept from the ILSF into the state's General Fund during February and March, 2011.

In order to ensure that none of our \$77 million appropriation for distribution to counties is swept away, and to ensure that all of it is expended to improve the quality of representation in fulfillment of our statutory mandate, it would be prudent for the Board to state explicitly how it intends to distribute the entire appropriation. Based upon my numerous conversations over the past few months with Chief Defender and county leaders, with legislative and gubernatorial staff and with the Chair of the Board, I propose that there be four components to the total \$77 million distribution of FY 2011-2012 funds, as follows:

- 1) \$62,084,022 in the March, 2012 statutory distribution (75% of 2010 distribution for all counties outside of NYC, and \$40 million for NYC) mandated by sections 98-b (3) (b) and (c) of the state Finance Law;
- 2) \$8,126,902 in a formulaic non-competitive distribution of funds under Executive Law Article 30 section 832 (3) (f) for which all counties, including the City of New York, will be restored to the level of state funding they received in 2010. This distribution mirrors the \$4.4 million distribution (from prior year funds carried forward) approved by this Board in March and June, 2011, in that it requires each county government to consult with its indigent defense leaders, including Family Court, to craft a request for funding; and further requires that the funding be utilized to improve the quality of representation under County Law 18-B. This funding is essential to maintaining the progress we have made over the past six months by promoting and implementing county/chief defender/ILS partnerships on projects which are designed to improve the quality of representation. This will be a three year allocation of funds, in the total amount of \$24,380,706 over the period.
- 3) \$4,000,000 in grants to provide counsel at a defendant's first court appearance in upstate City Courts and Town and Village Courts. This funding is specifically designed to achieve substantial progress in remedying a serious flaw in the provision of counsel in New York State - the absence of an advocate when a person is brought into court for the commencement of prosecution, and subjected to possible loss of his or her pre-trial liberty. This will be a three year grant, with total funding of \$12,000,000 over the period. Development of a Request for Proposals for these grants was authorized by the Board at its June, 2011 meeting, and that development is underway.
- 4) \$2,789,076 in grants to establish regional Immigration Resource Centers in strategic locations throughout New York State. The aim of this initiative is to ensure that every lawyer assigned to represent a person charged with a crime anywhere in the state will have access to training, advice and support sufficient to permit her to provide representation which complies in every respect with the standard established in *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010). This will be a three-year grant, with total funding of \$8,367,228 over the period. Development of this RFP was authorized by the Board at its June, 2011 meeting, and that development is underway.

Together, these four sets of expenditures - one required by statute, one a Board allocation of funding, and two grants to bring New York closer to compliance with fundamental fairness and established legal requirements - will expend the entire current fiscal year appropriation of \$77,000,000.