

Dear Board members, colleagues, city and county partners,

Two days ago, on May 8, the Sixth Amendment Center issued a widely distributed report entitled “New York caseload standards announced and their importance to statewide reform explained”. In that report, which is attached, 6AC Executive Director David Carroll refers to the caseload determinations that this Office submitted in fulfillment of its responsibilities under the Hurrell-Harring Settlement Agreement on December 8, 2016. These caseload determinations are fully set forth in the second attachment, “A Determination of Caseload Standards pursuant to § IV of the Hurrell-Harring v. The State of New York Settlement”. As explained in that report, there are seven criminal Case Types (compared to only three in the outdated and frequently criticized National Advisory Commission (NAC) standards that were issued without study in 1973). As further explained, these standards apply to all providers of mandated criminal defense representation in the five lawsuit counties, whether they be salaried institutional defenders or assigned private counsel; and these new standards are significantly more generous in their allocation of time for all providers of mandated representation in the five counties to provide an appropriate and ethical quality of representation to each and every client. For example, whereas the NAC standard set an average maximum number of felony assignments in an institutional defender office at 150, the ILS standard reduces that number to 50 for violent felonies and 100 for non-violent felonies (see chart on page 14). In other words, if an office has equal numbers of violent and non-violent felonies, the maximum average number of annual assignments would be 75; or half the NAC standard. In a similar manner, the number of allowable misdemeanor assignments (including violations) is reduced from 400 to 300, and the number of appellate assignments from verdicts (as opposed to appeals of guilty pleas or sentences) is reduced from 25 to 12.

As described at page 15 of the Caseload Standards Report, we estimated the annual cost of implementing these new standards in the five counties of Onondaga, Ontario, Schuyler, Suffolk and Washington to be \$19,009,712. We are very pleased, and grateful to Governor Cuomo, the Assembly and the Senate, that the appropriation dedicated to the implementation of these standards in the recently enacted budget is \$19,010,000. In combination with the funding for Quality Improvement Initiatives (\$2 million) and Counsel at Arraignment (\$2.8 million), this budget proves the State of New York’s commitment to full implementation of the historic Hurrell-Harring settlement.

As for the rest of the State, the enactment of Executive Law section 832 (4) giving this Office the responsibility to submit statewide plans for counsel at arraignment, caseload relief and quality improvement initiatives for each provider of mandated criminal defense representation in every county and the city of New York by December 1, 2017 is very exciting, even if it may appear daunting in its timeline. For the providers, the counties and the city, the amendment of County Law section 722-e is of utmost significance: “Provided, however, that any such additional expenses incurred for the provision of counsel and services as a result of the implementation of a plan established pursuant to subdivision four of section eight hundred thirty-two of the executive law, shall be reimbursed by the state to the county or city providing such services....The state shall appropriate funds sufficient to provide for the reimbursement required by this section.”

The bottom line is that, by April 1, 2023, every provider, every county and the City of New York will be providing a high and consistent and constitutionally compliant level of representation to every client who stands charged with a criminal offense. As we say at the bottom of the first page of our Caseload Standards report, finally the State of New York will be able to affirmatively answer the compelling and

prescient question posed by Anthony Lewis in Gideon's Trumpet. And as Governor Cuomo's First Assistant Counsel Sandi Toll said at our meeting at NYSBA on May 2, these reforms "will now serve as the standard for the rest of the nation to follow. It is truly impossible to quantify how momentous this is. This is truly transformational change."

The video of the May 2 event is now up on our web page, thanks to the fine work of Peter Avery. Two more positions in our Statewide Implementation Unit have been posted on the state jobs web site, linked on ours, and two more should be posted next week. We will soon be following up with distribution of the Needs Assessment Survey that Joe Wierschem described at the meeting.

In short, we are underway. Working together, we are going to make this historic reform work as it is intended to work; for the benefit of the clients whom we serve, the judicial system in which we operate, and the society in which we live.

Our best to all,

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