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To: ils.sm.publichearings

Subject: ILS Public Hearing on Eligibility for Assignment of Counsel

To Whom it Concerns,

I would appreciate the opportunity to provide oral testimony at the July 16, 2015 Public Hearing to be held at the Albany County Courthouse. My testimony would include, generally, the information provided below.

For some 27 years from September 1977 through February 2005, I was the Chief Public Defender of Greene County. In that capacity I was the de facto person making virtually all decisions with regard to a person's eligibility to receive assigned counsel. While every decision was technically subject to a final determination by the Judge presiding over the case, the reality was that rarely were these decisions ever reviewed. As a result, I was uniquely situated to develop and apply flexible eligibility criteria.

This "financial intake" procedure was in place when I became the Public Defender in 1977. This involved a two page intake sheet completed by potential clients with the assistance of the Public Defender's part time investigator. This occurred either at our office for walk-ins or at the County Jail which was visited by the investigator whenever there were new inmates at the jail. This task fell to the Public Defender's Office in the absence of a countywide agency or person to perform the intake. The town and village courts were not equipped to perform the intake and if necessary, the verification process. In those few cases that originated in the County Court, the County Court Judge would make an inquiry. Since the vast majority of those cases (that commenced with the opening of a sealed indictment) involved crimes alleged to have occurred in one of the two state prisons in the county, every state inmate was assigned a Public Defender, at least at arraignment, which assignment usually lasted the life of the case.

In cases where the accused appeared to have sufficient resources to retain counsel but were still applying for Public Defender services, we would provide the Court with their financial background the Court would render its own decision.

This "system", while perhaps not technically the way the law is set up, did provide a fairly uniform basis for eligibility determinations. Income levels were very loosely based on the Federal poverty guidelines for households. In the vast majority of cases, the financial eligibility of an accused for assignment of counsel was fairly obvious. Where a person was receiving Social Service benefits as their sole means of support, clearly they could not afford to retain counsel. Persons who were chronically unemployed were in a similar situation. Ownership of a home and/or a car did not automatically disqualify a person

for assignment of counsel, especially since the indebtedness upon the home or car was taken into account.

Since the Public Defender's job was a part time position and I had an active private law practice which included criminal defense, I had a sense of the real cost to retain private counsel. That is a factor that the town and village judges, the vast majority whom are not lawyers, would never have.

An added benefit to this "system" was the early involvement by the Public Defender's Office in representing a person accused of a crime, especially when that person was incarcerated. The Public Defender's investigator would see them the next morning. If it was clear that the accused was eligible for assignment of counsel, the investigator would conduct a factual investigation as well. By that afternoon, the Public Defender assigned to the case would be notified. We did not have to wait for a formal assignment to enter the case.

Eligibility determinations need to be made as soon as possible so that counsel can appear at the earliest possible moment on behalf of the accused. This is especially true in felony cases where a Preliminary Hearing may have to be conducted. It is also true in cases where minimal bail has been set but the defendant has not been able to post it. In Greene County there is no supervised pre-trial release program in place as there is in other counties.

Eligibility standards must be sufficiently flexible to allow for discretion in that determination. A strictly income/asset based formula that does not take into account a wide range of other factors cannot work. Some examples:

- Moderate income but multiple dependents
- Parent/Spouse not willing to pay for retained counsel
- Moderate income with serious felony charges
- Non-liquid assets (home with mortgage)

Parental support obligations under the Social Services Law needs to be reviewed since the unemancipated minor child is the client, not the parent. This may be true with regard to spousal support obligations.

I believe that my extensive experience may prove valuable to ILS as it develops the criteria and the procedures for eligibility determinations.

Very truly yours,

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