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Governor

STATE OF NEW YORK
OFFICE OF INDIGENT LEGAL SERVICES

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

October 18, 2016

Cillian M. Flavin
Budget Examiner, Public Protection Unit
Division of the Budget
State Capitol Room 127-M
Albany, New York 12224

Re: Office of Indigent Legal Services Budget Request for FY 2017-2018

Dear Cillian,

Enclosed please find the Office of Indigent Legal Services (ILS) budget request for FY 2017-2018. We request an appropriation of \$139,600,000; consisting of \$6,400,000 for State Operations and \$133,200,000 for Aid to Localities. Please note that this budget request was approved by the Indigent Legal Services Board at its meeting on September 23, 2016.

The State of New York has a constitutional obligation to provide effective representation to people who have been charged with a crime or threatened with the loss of their children, and who cannot afford to pay for a lawyer to represent them. See, e.g., *Gideon v. Wainwright*, 372 U.S. 335 (1963), *People v. Witek*, 15 NY 2nd 392 (1965), and *In re Ella B.*, 30 NY 2nd 352 (1972). That obligation has not been met. In the words of even the dissenting judges in *Hurrell-Harring v. State of New York*, 15 NY 3d 8 (2010), "[l]egal services for the indigent have routinely been underfunded, and appointed counsel are all too often overworked and confronted with excessive caseloads[.]" *Id.*, 15 NY 3d at 33 (Pigott, J.).

What was true in 2010 remains true today. Remediation of such fundamental defects as the failure to provide counsel at arraignment, vastly excessive public defender caseloads, and the pervasive lack of adequate support services, training and supervision requires a much more vigorous budgetary response than has characterized the state's annual appropriations since the commencement of our operations in 2011. This appropriation request seeks the minimum amount that will enable New York to begin to comply with its undoubted constitutional obligation, by providing a consistent and acceptable level of legal representation to its residents.

The October 21, 2014 settlement of the *Hurrell – Harring* lawsuit, which became fully effective and court-approved on March 11, 2015 and which we have the responsibility of implementing, has initiated a series of state-funded improvements in five of the 57 counties outside New York City. This budget request sustains the funding levels provided in the current budget to continue and make permanent those improvements within the five lawsuit counties; and also sustains the

"The right... to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours."

Gideon v. Wainwright, 372 U.S. 335, 344 (1963)

current funding levels for all localities. Furthermore, it seeks additional funding to begin the process of accomplishing similar improvements in the quality of mandated representation in all of New York's counties.

State Operations: \$6,400,000 (increase of \$3.2 million):

We request an appropriation of \$6.4 million in State Operations for FY 2017-2018 to accomplish the following necessary and vital goals:

- \$400,000 in new funding to assure the continued effective operation of our office as it assumes steadily increasing responsibilities. First, it would fund three new positions (\$300,000); an assistant grants manager, an administrative officer, and a secretary. The need for and duties of these positions are described in detail in Attachment A, **FY 2017-18 ILS Staff Positions**. Second, it would fund much needed and hard-earned salary relief for the eight employees who have served this Office with great distinction for at least four years as of the beginning of the coming fiscal year (\$100,000). These eight positions are identified on Program page one, Personal Service.
- \$2 million in new funding to begin establishing our statewide network of **Regional Support Centers**, which we believe are essential for the delivery of uniform and efficient high quality representation in every county and region. Please see Attachment B, **State Funded and ILS Staffed Regional Support Centers: Vital Support for Quality Assurance, and an Essential Component of Statewide Reform**.
- \$800,000 in new funding to establish a **New York State Appellate Resource Center**. This Center, modeled after the New York Prosecutors Training Institute (NYPTI), will provide litigation assistance to assigned counsel and mandate relief to counties by providing for state-funded appellate representation in complex cases. It will also identify and seek to rectify wrongful convictions of innocent persons much more speedily than has been the case to date. Please see Attachment C, **Upstate New York Appellate Resource Center: A Proposal to Ensure Equal Justice and Reduce the Risk of Wrongful Convictions**.

Aid to Localities: \$133,200,000 (increase of \$37 million):

We request an appropriation of \$133.2 million in Aid to Localities, an increase of \$37 million over the current appropriation of \$96.2 million, to accomplish the following necessary and vital goals:

- \$19 million to continue and enhance our remediation of the twin defects of excessive caseloads, and inadequate support services, supervision and oversight that continue to plague providers of mandated representation in virtually all upstate counties. Please note that our annual report on the fiscal impact of these defects, entitled **Estimate of the Cost of Compliance with Maximum National Caseload Standards in Upstate New York – 2015 Update**, will soon be published and will document the extent of this need.

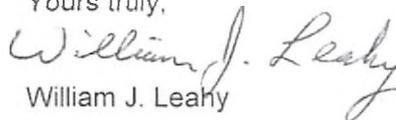
"The right... to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours."

- \$8 million to extend the scope of Counsel at First Appearance (CAFA) from the 25 upstate counties currently participating under our first RFP, to our goal of participation by all 57 counties in our second RFP which is awaiting release.
- \$6 million to reimburse counties for any additional cases and costs that they may incur during FY 2017-2018 as a result of judges following the guidance provided by this Office in its **Criteria and Procedures for Determining Assigned Counsel Eligibility**, which were issued pursuant to our responsibility to implement the Settlement Agreement in the *Hurrell-Harring* case .
- \$3 million to fund three RFPs that will i) address major deficiencies in the operation and oversight provided by Assigned Counsel Programs; ii) sustain the Model Upstate Parental Representation office RFP, which is soon to be released; and iii) create a Wrongful Conviction Prevention Center.
- \$1 million in additional funding, to be specifically dedicated to the implementation of Section V of the *Hurrell-Harring* Settlement Agreement. **Initiatives to Improve the Quality of Indigent Defense.**

Each of the above requests represents an important component of our ongoing effort to improve the quality of mandated representation, as we are directed to do by Executive Law § 832. Furthermore, each is essential to curing New York's longstanding noncompliance with its obligation to provide the effective assistance of counsel to persons who cannot afford to hire a lawyer, in cases where representation is mandated by our Constitution and our laws.

Thank you for your careful consideration of our budget request. We look forward to discussing it with you and your colleagues. Please feel free to call ILS Counsel Joe Wierschem or me with any questions.

Yours truly,



William J. Leahy

cc: Bill Mulrow, Secretary
Robert Mujica, Director
Alphonso David, Counsel

**ALL FUNDS BUDGET REQUEST FY 2017-2018
STATEMENT OF THE COMMISSIONER OR AGENCY HEAD**

AGENCY: OFFICE OF INDIGENT LEGAL SERVICES

The New York State Office of Indigent Legal Services (Office), created by enactment in June, 2010, commenced operations on February 22, 2011. The mission of the agency, set out in Executive Law § 832 (1), is "to monitor, study and make efforts to improve the quality of services provided pursuant to article eighteen-B of the county law." The creation of this agency, and the Indigent Legal Services Board (Board) to which it reports (§ 833), constituted the first concerted action by the State of New York since 1965 to address persistent and highly publicized concerns about the quality of the representation that the State now provides to persons in criminal and family court matters who are entitled to the assistance of counsel, yet cannot afford to hire an attorney.

BUDGET AND STAFF HIGHLIGHTS

The Office has promoted consultation between city and county governments and their indigent legal services providers, by requiring meaningful consultation between them as a precondition to the distribution of monies from the Indigent Legal Services Fund. Through this collaborative and quality-enhancing approach, virtually every county and New York City entered into contracts with the Office in 2011 for \$4.4 million worth of improvements in the quality of representation (Distribution #1). In 2012, we entered into agreements with most localities for a total of \$8.1 million annually over a three year contractual period (Distribution #2) for the same purpose. In 2013, we announced a new three year distribution of \$7.4 million annually (Distribution #3), followed by the announcement for Distribution #4 funding 2014. On September 26, 2014, the Board authorized the release of Distribution #5 quality improvement funding. Through these distributions, every locality may receive funding from the state that equals the amount they received in 2010. Distribution #6 was announced in late 2015. At its most recent meeting on September 23, 2016, the Board approved the release of Distribution # 7 in the amount of just under \$7.4 million.

On November 30, 2012 we issued our first competitive RFP to the counties to provide Counsel at First Appearance. We then entered into contracts with 25 counties for a total of \$12 million over a three-year period for that purpose. On August 22, 2013, we issued an RFP for Upstate Quality Improvement and Caseload Reduction, to which 47 of the 57 upstate counties successfully responded. Our third RFP, for the development of Regional Immigration Assistance Centers, in the amount of \$8.4 million over a three-year period, was released on September 23, 2014. The statewide network of six such centers is now in place, making New York the first state in the nation to have established such a comprehensive statewide program to ensure compliance with the mandate of the United States Supreme court in *Padilla v. Kentucky*, 559 U.S. 356 (2010). We are currently preparing for release an RFP for a Model Upstate Parental Representation Office that will be modeled after the successful offices that have been established in New York City during the past ten years. Also in development for release in 2016

is our successor RFP for Counsel at First Appearance, which we hope will draw proposals from all eligible upstate counties.

On March 11, 2015, a Settlement Agreement among the State of New York, the five county defendants and a plaintiff class represented by the New York Civil Liberties Union in *Hurrell-Harring v. The State of New York* was approved by the Albany County Supreme Court. The agreement vests ILS with the responsibility of implementing the terms of the settlement, which focuses on four issues: Counsel at Arraignment (Section III); Reduction of Caseloads (Section IV); Improving the Quality of Representation (Section V); and Eligibility Standards for the Assignment of counsel (Section VI). In close cooperation with the above-named parties, and with appropriate funding provided by the State, ILS has been implementing each of the four settlement provisions in each of the five lawsuit counties.

Every year, beginning in 2013, ILS publishes an estimate, based upon case and spending data from every one of the over 130 providers of mandated representation in the 57 counties outside of New York City, of the current cost of bringing these providers into compliance with maximum national caseload limits. (Please note that the existing national caseload limit of 400 weighted cases was established in 1973, and has been subjected to robust criticism as being based on guesswork, and also outmoded. For our annual Cost Estimates, the ILS Board adopted a 367 weighted caseload standard which factors in the need for attorney supervision. Please note also that as part of our lawsuit implementation responsibility, we are currently engaged in a contracted study with the Rand Corporation to develop binding caseload standards in both trial and appellate cases. Under the agreement as amended, we are to issue these caseload/workload standards by December 1, 2016).

Our *Estimate of the Cost of Compliance with Maximum National Caseload Limits in Upstate New York – 2014 Update*, which was released in November, 2015 and may be found on our website at www.ils.ny.gov. Our Estimate for calendar 2015 is nearing completion and will be published very soon.

NEW YORK STATE
DIVISION OF THE BUDGET
ALL FUNDS BUDGET REQUEST FY 2017-2018
AGENCY SUMMARY- OFFICE OF INDIGENT LEGAL SERVICES
RECAPITULATION OF CURRENT YEAR ADJUSTED APPROPRIATIONS
AND REQUESTED CHANGES FOR THE NEXT FISCAL YEAR

Appropriation Category/Fund Type (A)	Adjusted Appropriations 2016-2017 (B)	Requested Change (C)	Total Request (Column B + C) 2016-2017 (D)
STATE OPERATIONS General Fund Special Revenue – Federal Special Revenue – Other Enterprise Internal Service Fiduciary	3,200,000	+3,200,000	6,400,000
SUBTOTAL	3,200,000	+3,200,000	6,400,000
AID TO LOCALITIES General Fund Special Revenue Fund – Federal Special Revenue Fund – Other Enterprise Fiduciary	96,200,000	+37,000,000	133,200,000
SUBTOTAL	96,200,000	+37,000,000	133,200,000
CAPITAL PROJECTS Capital Projects Funds Special Revenue – Other Internal Service Fiduciary Enterprise	-0-	-0-	-0-
SUBTOTAL	-0-	-0-	-0-
DEBT SERVICE			
AGENCY TOTAL	99,400,000	+40,200,000	139,600,000

NEW YORK STATE
 DIVISION OF THE BUDGET
 ALL FUNDS BUDGET REQUEST FY 2017-2018
 OFFICE OF INDIGENT LEGAL SERVICES
 REAPPROPRIATIONS OF CURRENT APPROPRIATIONS IN FORCE

Column A	Column B	Column C	Column D	Column E	Column F	Column G
<p><u>Aid to Localities</u></p> <p>FY 2010-11</p> <p>Special Revenue Funds - Other</p> <p>ILSF</p>	<p>Appropriation: Ch. 50, Laws of 2010.</p> <p>Reappropriation: Ch. 53 of Laws of 2011.</p> <p>Reappropriation: Ch. 50 of Laws of 2012.</p> <p>Reappropriation: Ch. 50 of Laws of 2013.</p> <p>Reappropriation: Ch. 50 of Laws of 2014</p> <p>Reappropriation: Ch. 53 of Laws of 2015</p> <p>Reappropriation: Chapter 53 of Laws of 2016</p>	<p>Office of Indigent Legal Services</p> <p>Aid to Localities</p> <p>Consists of statutory payment (90% of 2010 amount to non-NYC counties and \$40 million to NYC) and Distribution #1</p>	<p>\$77,000,000</p>	<p>\$7,800,000</p> <p>Consists of remainder of undisbursed funds per May, 2011 Board distribution and \$6,800,000 of unallocated funds (see column G).</p>	<p>Up to \$1,000,000 in FY 2017-18</p> <p>\$6,800,000 has not been allocated.</p>	<p>For the May, 2011 ILS Board distribution of \$4.4 million ("Distribution #1"): to date, 41 contracts of a total of 54 contracts have been paid out in full; claims for reimbursement in the amount of \$4.0 million have been submitted, leaving \$0.35 million of unclaimed funds.</p> <p>On 6.12.12, the ILS Board authorized use of \$6 million of unallocated funds, if such funds were available, to (1) add \$4,000,000 to the counsel at first appearance grant authorized by the ILS Board and (2) add \$2,000,000 to the grant authorized by ILS to alleviate excessive upstate caseloads.</p>

<p><u>Aid to Localities</u></p> <p>FY 2011-12</p> <p>Special Revenue Funds - Other</p> <p>ILSF</p>	<p>Appropriation: Ch. 53 of Laws of 2011.</p> <p>Reappropriation: Ch. 50 of Laws of 2012.</p> <p>Reappropriation: Ch. 50 of Laws of 2013.</p> <p>Reappropriation: Ch. 50 of Laws of 2014.</p> <p>Reappropriation: Ch. 53 of Laws of 2015</p> <p>Reappropriation: Chapter 53 of Laws of 2016</p>	<p>Office of Indigent Legal Services</p> <p>Aid to Localities</p> <p>Consists of statutory payment (75% of 2010 amount to non-NYC counties and \$40 million to NYC); Distribution #2 (year 1); Counsel at First Appearance competitive grant (year 1); and Regional Immigration Resource Centers grant (year 1).</p>	<p>\$77,000,000</p>
<p><u>Aid to Localities</u></p> <p>FY 2012-13</p> <p>Special Revenue Funds - Other</p> <p>ILSF</p>	<p>Appropriation: Ch. 50, Laws of 2012.</p> <p>Reappropriation: Ch. 50 of the Laws of 2013</p> <p>Reappropriation: Ch. 50 of Laws of 2014</p> <p>Reappropriation:</p>	<p>Office of Indigent Legal Services</p> <p>Aid to Localities</p> <p>Consists of statutory payments (50% to non-NYC counties and \$40 million to NYC);</p>	<p>\$81,000,000</p>

<p>\$7,000,000 Consists of remainder of undisbursed funds for 3 components: Distribution #2; counsel at first appearance grant and regional Immigration resource centers (see column G).</p>	<p>Up to \$7,000,000 in FY 2017-18; remainder in first and second out-years.</p>	<p>On 9.27.11, the ILS Board approved four components for the FY 2011-12 \$77 million Local Aid appropriation, as follows: (1) \$62,084,022 in the March, 2012 75% statutory distribution (funds were disbursed in their entirety in March, 2012); (2) \$8,126,902 in general distributions to restore counties/NYC to level of state funding in 2010 (Distribution #2) (three year contract with end date of May 31, 2015) (3) \$4,000,000 in grants to provide counsel at first court appearance in upstate counties (three year contract with end date of May 31, 2016; and (4) \$2,789,076 in grants establishing regional Immigration Resource Centers (three year contract with end date yet to be determined).</p>
<p>\$20,000,000 Consists of remainder of undisbursed funds for Distribution #3; Distribution #2; Counsel at First Appearance grant; immigration resource centers grant;</p>	<p>Up to \$20,000,000; remainder in first and second out-years.</p>	<p>On 9.28.12, ILS Board approved five components to the FY 2012-13 \$81 million Local Aid appropriation, as follows: (1) \$54,722,696 in the March, 2013 statutory distribution (50% of 2010 distribution for counties outside NYC; \$40 million for NYC); (2) \$15,488,288 in general distributions to restore counties (and NYC) to their level of state funding in 2010 (Distribution #2 – year 2 and Distribution #3); (3) \$4,000,000 in grants to provide counsel at first court appearance in upstate City Courts and Town and Village</p>

	Ch. 53 of Laws of 2015 Reappropriation: Chapter 53 of Laws of 2016	Distribution #3 (year 1) Distribution #2 (year 2); Counsel at First Appearance grant (year 2); Immigration Resource Centers grant (year 2) and Upstate Caseload Reduction grant (year 1).		and upstate caseload reduction grant (see column G).		Courts (year 2); (4) \$2,789,076 in grants establishing regional Immigration Centers throughout New York State (year 2); and (5) \$4,000,000 in grants to finance programs to alleviate excessive caseloads in excess of maximum national norms in counties outside New York City. Note that (2), (3), (4) and (5) are three year distributions and grants.
<u>Aid to Localities</u> FY 2013-14 Special Revenue Funds - Other ILSF	Appropriation: Ch. 50 of the Laws of 2013 Reappropriation: Ch. 50 of Laws of 2014 Reappropriation: Ch. 53 of Laws of 2015 Reappropriation: Chapter 53 of Laws of 2016	Office of Indigent Legal Services Aid to Localities Consists of 25% statutory payment/\$40 million to NYC; Distribution #4 (year 1); Distribution #3 (year 2) Distribution #2 (year 3); Counsel at First Appearance grant (year 3); immigration resource centers grant (year 3) and	\$81,000,000	\$35,000,000 Consists of remainder of funds for Distribution #4; Distribution #3; Distribution #2; Counsel at First Appearance grant; immigration resource centers grant; and upstate caseload reduction grant (see column G).	Up to \$35,000,000; remainder in first and second out-years.	On 9.27.13, ILS Board approved five components to the FY 2013-14 \$81 million Local Aid appropriation, as follows: (1) \$47,361,341 in the March, 2014 statutory distribution (25% of 2010 distribution for counties outside NYC); (2) \$22,849,544 in general distributions to restored counties (and NYC) to their level of state funding in 2010 (Distribution #2 – year 3; Distribution #3 – year 2; and Distribution #4 – year 1); (3) \$4,000,000 in grants to provide counsel at first court appearance in upstate City Courts and Town and Village Courts (year 3); (4) \$2,789,076 in grants establishing regional Immigration Centers throughout New York State (year 3); and (5) \$4,000,000 in grants to finance programs to alleviate excessive caseloads in excess of maximum national norms in counties outside New York City (year 2).

		upstate caseload reduction grant (year 2).				
<p><u>Aid to Localities</u></p> <p>FY 2014-15</p> <p>Special Revenue Funds - Other</p> <p>ILSF</p>	<p>Appropriation: Ch. 50 of the Laws of 2014</p> <p>Reappropriation: Ch. 53 of Laws of 2015</p> <p>Reappropriation: Chapter 53 of Laws of 2016</p>	<p>Office of Indigent Legal Services</p> <p>Aid to Localities</p> <p>Consists of \$40 million statutory payment to NYC; Distribution #5 (year 1) Distribution #4 (year 2); Distribution #3 (year 3) Counsel at First Appearance grant (year 1); upstate caseload reduction grant (year 3); and three small grants/pilot programs (year 1).</p>	\$81,000,000	\$40,000,000 Consists of remainder of funds for Distribution #5; Distribution #4; Distribution #3; Counsel at First Appearance grant; upstate caseload reduction grant and three small grants (see column G).	Up to \$40,000,000; remainder in first and second out-years.	On 9.26.14, ILS Board authorized allocation of FY 2014-15 \$81 million Local Aid appropriation, as follows: (1) \$40 million in March, 2015 statutory distribution (\$40 million for NYC); (2) \$30,210,924 in general distributions to restore counties (and NYC) to their level of state funding in 2010 (Distribution #3 – year 3; Distribution #4 – year 2; and Distribution #5 – year 1); (3) \$4,000,000 in grants to provide counsel at first court appearance in upstate City Courts and Town and Village Courts (year 1); (4) \$870,138/yr. for each of three small grants – year 1 for each); (5) 4,000,000 in grants to finance programs to alleviate excessive caseloads in excess of maximum national norms in counties outside New York City (year 3); and (6) \$80,000 and \$98,658, respectively, for two single source contracts (year 1 for each).
<p><u>Aid to Localities</u></p> <p>FY 2015-16</p> <p>Special Revenue Funds - Other</p>	<p>Appropriation: Ch. 53 of Laws of 2015</p> <p>Reappropriation:</p>	<p>Office of Indigent Legal Services</p> <p>Aid to Localities</p>	\$84,000,000	\$40,000,000 Consists of remainder of funds for Distribution #6;	Up to \$44,000,000	On 9.25.15, ILS Board authorized allocation of FY 2015-16 \$84 million Local Aid appropriation, as follows: (1) \$40 million in March, 2016 statutory distribution (\$40 million for NYC); (2) \$30,210,924 in general distributions to

<p>ILSF</p>	<p>Chapter 53 of Laws of 2016</p>	<p>Consists of \$40 million statutory payment to NYC; Distribution #6 (year 1) Distribution #5 (year 2) Distribution #4 (year 3); Counsel at First Appearance grant (year 2); Upstate caseload reduction grant (year 1); three small grants/pilot programs (year 2); and Hurrell-Harring funding (\$1 million CAFA "interim" funding & \$2 million Quality Improvement funding).</p>		<p>Distribution #5; Distribution #4; Counsel at First Appearance grant; Upstate caseload reduction grant; three small grants; and Hurrell-Harring funding (see column G).</p>		<p>restore counties (and NYC) to their level of state funding in 2010 (Distribution #4 – year 3; Distribution #5 – year 2; and Distribution #6 – year 1); (3) \$4,000,000 in grants to provide counsel at first court appearance in upstate City Courts and Town and Village Courts (year 2); (4) \$870,138/yr. for each of three small grants – year 2 for each); (5) 4,000,000 in grants to finance programs to alleviate excessive caseloads in excess of maximum national norms in counties outside New York City (year 1); (6) \$80,000 and \$98,658, respectively, for two single source contracts (year 2 for each); (7) \$3,000,000 to implement the Hurrell-Harring settlement (\$1,000,000 in "interim" funding for counsel at first appearance and \$2,000,000 for Quality improvements).</p>
<p>Aid to Localities FY 2016-17 Special Revenue Funds - Other ILSF</p>	<p>Appropriation: Ch. 53 of Laws of 2016</p>	<p>Consists of \$40 million statutory payment to NYC; Distribution #7 (year 1)</p>	<p>\$96,200,000</p>	<p>\$56,000,000 Consists of remainder of funds for Distribution #7; Distribution #6; Distribution #6;</p>	<p>Up to \$56,000,000;</p>	<p>On 9.23.16, ILS Board authorized allocation of FY 2016-17 \$96.2 million Local Aid appropriation, as follows: (1) \$40 million in March, 2017 statutory distribution (\$40 million to NYC); (2) \$30,210,924 in general distributions to restore counties (and NYC) to their level of state funding in 2010 (Distribution #5 –</p>

		<p>Distribution #6 (year 2) Distribution #5 (year 3); Counsel at First Appearance grant (year 3); Upstate caseload reduction grant (year 2); three small grants/pilot programs (year 3); and Hurrell-Harring funding (\$2 million Counsel at Arraignment funding; \$2 million Quality Improvement funding; \$800,000 continued RFP funding; and \$10.4 million Caseload Relief "tangible steps" funding).</p>		<p>Counsel at First Appearance grant; Upstate caseload reduction grant; three small grants; and Hurrell-Harring funding (see column G).</p>		<p>year 3 - \$15,488,228; Distribution #6 - year 2 - \$7,361,326; and Distribution #7 - year 1 - \$7,361,326; \$4,000,000 in grants to provide counsel at first court appearance in upstate City Courts and Town and Village Courts (year 3); (4) \$870,138/yr. for Family Court RFP pilot program - year 3; (5) redirected funding to supplement Counsel at Arraignment RFP (\$1,740,278); (6) 4,000,000 in grants to finance programs to alleviate excessive caseloads in excess of maximum national norms in counties outside New York City (year 2); (6) \$80,000 and \$98,658, respectively, for two single source contracts (year 3 for each); (7) \$15,200,000 to implement Hurrell-Harring settlement (\$2,000,000 in funding for counsel at first appearance and \$2,000,000 for Quality improvements; \$800,000 to ensure continued Counsel at Arraignment RFP funding; and \$10,400,000 for interim caseload relief funding.</p>
<p>State Operations FY 2016-17 Special Revenue Funds - Other</p>	<p>Appropriation: Ch. 50 of Laws of 2015 Reappropriation: Ch. 55 of Laws of 2016</p>	<p>Office of Indigent Legal Services</p>	<p>\$500,000</p>	<p>\$500,000</p>	<p>\$500,000 in FY 2017-18</p>	<p>Funds needed in FY 2017-18 to satisfy contractual obligations (\$500,000) under the terms of the Hurrell-Harring settlement, including a (1) <i>four-year single source contract</i> (approved by OSC) with the New York State Defender's Association (NYSDA) in the amount of \$193,500 (in</p>

ILSF				
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		<p>order to install and upgrade case management systems to track caseload/workload of all 18-b attorneys and collect data to assess quality and caseload standards; (2) <i>RFP for caseload standards</i> awarded to RAND corporation the spring of 2016 to develop caseload standards for each of the five lawsuit counties in accordance with the terms of the settlement; and (3) <i>approximately \$50,000 for a four-year single source contract with Onondaga County</i> for costs related to tracking the caseload/workload of all 18-attorneys in accordance with the terms of the HH settlement and to collect data to assess quality and caseload standards (total amount to be determined).</p>
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Attachment A

9.23.16

FY 2017-18 ILS Staff Positions

#1. 2nd Assistant Grants Manager (projected annual salary range: \$50,000 to \$60,000).

Our grants and distributions area is burgeoning, and we are in need of additional assistance to manage the contract and claims processes. With contracts for 6 outstanding distributions, three competitive grants and the Hurrell-Harring settlement, we are currently managing well over 300 active contracts, with another 100+ contracts to be developed in the next half year for the 7th ILS distribution and 2nd set of CAFA contracts.

Our current Assistant Grants Manager position is now solely and necessarily dedicated to reviewing and processing claims for reimbursement. We are in need of a second Assistant Grants Manager to assist the Grants Manager in preparing contract extensions, contract modifications and communicating with counties to keep them current on submitting their paperwork. The addition of this position would free up the Grants Manager to spend more time on developing RFPs and working with the counties, providers and the Office of General Services, Business Service Center and State Comptroller's Office, to ensure the most effective utilization of state funds. The Assistant Grants Manager would report to the Grants Manager.

#2. Secretary (projected annual salary range: \$40,000 to \$45,000).

Our Executive Assistant/Office Manager is in need of secretarial assistance to assist in managing the 19 person ILS office, which has grown by 8 persons in the past year alone. The Executive Assistance/Office Manager's responsibilities have grown considerably with the addition of this new staff and acting as liaison to the Statewide Financial System (SFS). SFS duties include travel expense reports, reconciling agency credit card purchases, approving transactions in Filenet, addressing questions from the Business Service Center (BSC) regarding invoices and vouchers, receiving accounts payable communications and acting as an approver of requisitions in SFS. Day-to-day responsibilities include scheduling and coordinating meetings and travel, providing logistics for conference meetings, coordinating between agencies in resolving administrative and operational problems, billing and bookkeeping, purchasing office supplies and equipment, processing correspondence, assisting the Director and Counsel in preparation of reports, and receiving and responding to telephone calls for ILS staff. A Secretarial position would assist the Executive Assistant/Office Manager in the performance of these duties and would report to the Executive Assistant/Office Manager.

#3. Administrative Officer (projected annual salary range: \$70,000 to \$80,000).

Under the direction of agency Counsel, the Administrative Officer would perform a wide variety of duties involving administrative tasks and operations of the agency, particularly as they relate to fiscal aspects of the agency's provision of funding to counties, vendors and indigent legal service providers. Specific responsibilities would include assisting agency Counsel in working with state and local agencies such as the Division of Budget, Office of General Services and State Comptroller's Office to identify problem areas, prepare documents, determine solutions, and obtain necessary authorizations for use of ILS funding in order to advance agency procurements and programs. The Administrative Officer would provide assistance to the Grants Manager in various fiscal aspects of managing contracts, review and

analyze reports and made recommendations, as requested, and perform other duties as assigned. Finally, the Administrative Officer would assist agency Counsel in the performances of duties related to agency ethics trainings, personnel processes and Freedom of Information (FOIL) requests. The Administrative Officer would report to agency Counsel.

Attachment B



Andrew M. Cuomo
Governor

STATE OF NEW YORK OFFICE OF INDIGENT LEGAL SERVICES

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

State Funded and ILS Staffed Regional Support Centers:

Vital Support for Quality Assurance, and An Essential Component of Statewide Reform

After five years of observing, inquiring, reading, listening, consulting, funding and assessing the quality of the representation provided under New York's delivery of legally mandated representation to people who cannot afford to retain counsel, and after a year and a half of implementing the *Hurrell-Harring* settlement in the five lawsuit counties, it is unmistakably clear that the creation of Regional Support Centers throughout the state is an extremely important initiative that must be funded and implemented now to improve the quality and the consistency of legally mandated representation throughout the State of New York.

This need for the establishment of state-funded Regional Support Centers to help all localities improve the quality and the efficiency of indigent defense and parent representation has been apparent nearly from the outset of our operations:

The current county-based system cannot long survive if it is not supplemented by Regional Resource Centers, operating as integral parts of the Office, to assist counties in each region. These resources can include not only the already-planned Regional Immigration Assistance Centers, but also such areas as investigation, social services, litigation training, forensic assistance, appellate representation, certification of counsel, and others: many of which have been identified in the 2012 *Report on Sharing Resources* of the New York State Bar Association Committee to Ensure the Quality of Mandated Representation.

First Annual Report of the Indigent Legal Services Board, at 13-14 (November, 2012).

The failure of New York's primarily county-funded systems to provide the effective assistance of counsel that the Constitution requires has been repeatedly documented both in state reports ("The current indigent defense 'system' is a haphazard, patchwork composite of multiple plans that provides inequitable services across the state to persons who are unable to afford counsel." *Status of Indigent Defense in New York* [Final Report, The Spangenberg Group, (2006) at 155]); ("The current method of providing indigent defense services in New York imposes a large unfunded mandate by the state upon its counties [and] results in a very uneven distribution of services[.]" *Commission on the Future of Indigent Defense Services, Final Report to the Chief Judge of the State of New York*, [2006] at 20-21); and in every recent national assessment, including *Gideon's Broken Promise* (American Bar Association, 2004), *Justice Denied* (The Constitution Project, 2009) and *Securing Reasonable Caseloads* (ABA, 2011).

Every locality is in need of access to state-funded and locally accessible expertise, training, consultation and support. Once established, these Centers will help to assure that the quality of justice one obtains in New York does not fluctuate and often fail, depending solely on the happenstance of where one's case arises, or which provider assumes responsibility for one's representation. The State of New York cannot and must not tolerate the continuation of such inequity in the provision of counsel; a right that is "fundamental and essential to fair trials[.]" *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

We therefore propose the creation of state-funded Regional Support Centers that will assist local providers of indigent defense and parent representation by providing them with assistance in the following areas: 1) criminal defense and mandated family court representation, 2) legal research and advice, 3) appellate and post-conviction advice and assistance, 4) locally-based litigation and supervisory training; and 5) development of and access to investigative, forensic and other litigation support services. In particular, we emphasize two points: that these resources will be fully available to Assigned Counsel Programs in upstate New York, many of which lack the resources, expertise and independence to provide the effective representation that is required by law; and that the centers will encourage and facilitate regional cooperation in the delivery of mandated representation, with the twin goals of improving quality and increasing efficiency.

We envision a total of nine Centers: one in each of the upstate Judicial Districts 3 through 9, one on Long Island (JD 10), and one in New York City. Each Center would be staffed by a training director, a criminal defense attorney, a family court representation attorney, an appellate and post-conviction attorney, an investigative and forensic support resource person, a certified social worker, and an office manager/paralegal. We estimate the annual cost of operating these Centers to be in the vicinity of one million dollars annually, or a total annual expenditure of approximately \$9 million. We would like to begin building this essential support network in the new fiscal year, with the establishment of the first two Centers in far western New York (8th Judicial District, 4th Appellate Department: counties of Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, Wyoming) and in the North Country (4th Judicial District, 3rd Appellate Department: counties of Clinton, Essex, Franklin, Fulton, Hamilton, Montgomery, Saint Lawrence, Saratoga, Schenectady, Warren, Washington).

It has now been three years since we first formally requested an appropriation for the creation of the Regional Support Centers described above. All our experience during that time reinforces our conviction that the establishment of these Centers is indispensable to improving the quality of justice throughout New York. Furthermore, the concentration of state resources and increased state funding to implement the settlement agreement in *Hurrell-Harring* widens the gap between the five counties that are making state-assisted strides forward, and the 52 that are not. These Regional Support Centers will express the State of New York's commitment to all counties, by providing state-funded resources that are of immediate assistance to overburdened local providers of mandated representation. They are an idea whose time is now.

Attachment C



Andrew M.
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Upstate New York Appellate Resource Center: A Proposal to Ensure Equal Justice and Reduce the Risk of Wrongful Convictions

The State of New York would be well-served by creating an upstate appellate resource center to handle complex criminal appeals in the 57 counties outside of New York City, and to assist panel attorneys who handle complex appeals. The staff attorneys at the resource center would be available to litigate the most serious cases, such as those where the defendant has been sentenced to life without parole, or a life sentence, or cases that raise particularly complex facts and legal issues. Currently –outside of New York City – the task of filing appeals in these cases primarily falls upon individual solo practitioners on the assigned counsel plan. The hours needed to litigate these complex cases often exceed the statutory cap of \$4,400.¹ If the most complex and serious cases were diverted to a state-funded upstate regional appellate office, staff attorneys with experience in litigating complex criminal appeals would save the counties money by being able to collaborate, share their research and expertise,² and create statewide resources including a brief bank that would collect briefs by subject matter that could be made available to any attorney representing an indigent defendant on appeal. Additionally, the attorneys at the resource center would be available to serve as editors and readers of panel attorneys' briefs, as is required by Standard IV of the New York State Office of Indigent Legal Services' Appellate Standards and Best Practices.³

The creation of such an office would not obviate the need for panel attorneys, as those attorneys would continue to provide representation in the large majority of appeals that would not be diverted to the resource center.⁴ Nor would the creation of an appellate resource center

¹ In a meeting with Justice Peters and the staff at the New York State Supreme Court, Appellate Division, Third Department on February 26, 2013, ILS staff were informed that in 2012, of 520 payment orders, 65 exceeded the statutory cap.

² At a meeting on May 13, 2013, with Frances Cafarell, Esq., Clerk of the Appellate Division, Fourth Department, Ms. Cafarell noted that the more experienced attorneys on the panel were more efficient, and that they submitted vouchers for less money than less experienced attorneys on comparable cases. She believes that is because more experienced attorneys are more efficient at reading the record, spotting issues, researching issues, and writing, than those with less experience.

³ See Standard IV: "No appellate criminal or family court brief should be filed without having been reviewed by another experienced lawyer." <https://www.ils.ny.gov/files/Appellate%20Standards%20Final%20010515.pdf>

⁴ The upstate appellate resource center would handle less than 10% of the appeals state-wide. While some states that have created a state-wide appellate defender office handle virtually all of the indigent criminal appeals, e.g., Illinois, many state-funded appellate offices typically handle only a small percentage of the appeals throughout the state. For example, the State Appellate Defender Office in Michigan represented only 17% of indigent criminal defendants pursuing an appeal in 2011; the remaining 83% were represented by private assigned counsel.

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diminish the need for the existing institutional upstate defenders: the Monroe County Public Defender's Appeals Unit, the Hiscock Legal Aid Society in Syracuse, or the Buffalo Legal Aid Bureau, all of which handle a substantial number of appeals in a competent and professional manner. The attorneys at the resource center would, however, be available to any public defender, legal aid society attorney or assigned counsel panel member who needed research assistance, including access to the appellate resource center's brief bank, motion support practice, and mitigation reports by a certified social worker.

The staff attorneys at the appellate resource center would also be available to engage in collateral motions that challenge the validity of the conviction based on evidence outside the appellate record in the 57 counties. The most common such challenges are ineffective assistance of counsel claims and Brady issues (claims that exculpatory evidence has been withheld by the prosecution). The New York State Office of Indigent Legal Services' Standards and Best Practices require that assigned counsel assess each case as to whether collateral litigation would be in the client's best interest, and to pursue collateral litigation in appropriate cases.⁵ Creation of a state appellate resource center would enable all assigned counsel attorneys to comply with the ILS Standards and Best Practices.

Finally, creation of an upstate regional appellate defender office would serve the interests of justice by creating parity between the defense and the prosecution. As it stands now, a prosecution office that does not have the resources or ability to represent the People on appeal can refer its appeals to the New York Prosecutors Training Institute (NYPTI), and a staff attorney there handles the appeal on behalf of the People of the State of New York. NYPTI also has the resources to send its attorneys to any prosecutor's office in the state to assist prosecutors at trial.⁶ Although the New York State Defenders Association retains one attorney as a resource for appellate defense counsel, NYSDA does not have NYPTI's ability to provide comprehensive assistance and consultation to local litigators. In short, establishment of the Upstate New York Appellate Resource Center would level the playing field and provide a sorely needed measure of equal justice for indigent defendants in upstate counties. Finally, and very importantly, it would provide front-end protection against wrongful convictions, and the terrible human consequences and misuse of taxpayer funds that result from those tragic injustices.

⁵ See Standard XX: "After reviewing the record and case file, and after meeting with the client, appellate counsel must determine whether an investigation is warranted as to a possible CPL § 440.10 or § 440.20 motion. Claims not cognizable on direct appeal may involve ineffective assistance of counsel, undisclosed *Brady* material, competency of the client, newly discovered evidence, improper and prejudicial conduct outside the courtroom, and sentencing issues that cannot be raised on direct appeal. If such a motion is warranted, counsel must file it, seek permission to appeal from the denial of such a motion, and represent the client if leave is granted to defendant or to the prosecutor." <https://www.ils.ny.gov/files/Appellate%20Standards%20Final%2010515.pdf>

⁶ For example, a trial attorney who was employed at NYPTI from 2007 through 2010 spent nine weeks in St. Lawrence County assisting the District Attorney's office in a trial, and a month in Owego giving trial support to the Tioga County District Attorney's office. See, letter from Susan C. Ministero, Managing Attorney, The Legal Aid Bureau of Buffalo, Appeals Unit, dated August 16, 2013, on file with the Office of Indigent Legal Services.

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