

THE DAILY RECORD

State accepts responsibility for public defense

By: Denise M. Champagne October 22, 2014 0

New York will start ensuring criminal defendants are represented in five counties as part of a settlement agreement reached Tuesday in a civil suit against the counties, alleging failure to provide adequate resources and oversight of indigent criminal defense.

"It's good news," said William J. Leahy, director of New York State Office of Indigent Legal Services, an independent agency that will implement the provisions of the settlement. "Now that the court case has been settled, it is time for the political process to start to make sure no county is left behind the five counties and that all counties benefit to the same extent as the counties that are party to the settlement."

The New York Civil Liberties Union and the New York City office of Schulte Roth & Zabel LLP called the agreement historic, saying it lays the foundation for statewide reform of New York's broken public defense system.

"For the first time, New York State is acknowledging its constitutional responsibility to provide lawyers to poor defendants who have been forced to navigate the criminal justice system undefended and alone," says a statement from NYCLU Executive Director Donna Lieberman. "With New York's public defense system in the national spotlight, the state has entered this agreement and shown it will no longer stand by while innocent people lose their families, homes and jobs because they're too poor to hire private lawyers."

Under the settlement agreement, which is subject to court approval and ratification by each county, the state will adopt reforms in the next seven and half years to ensure every poor criminal defendant in Onondaga, Ontario, Schuyler, Suffolk and Washington counties have a lawyer, starting with the first court appearance where bail is often set and pleas taken.

Other provisions include:

- Hiring sufficient lawyers, investigators and support staff to vigorously represent defendants;
- Providing caseload standards, substantially limiting the number of cases any lawyer can carry; and
- Requiring the state to spend \$4 million over the next two years to increase attorney communications with defendants, promote use of investigators and experts, and improve qualifications, training and supervision of lawyers.

The agreement also strengthens the Office of Indigent Legal Services as a state-level oversight entity tasked with ensuring the constitutional provision of public defense services, and commits New York to provide the office with the resources it needs to develop plans and implement and monitor reforms mandated by the settlement.

The state was represented by the Office of Attorney General Eric T. Schneiderman, who called the right to effective legal representation for every criminal defendant a fundamental tenet of the criminal justice system.

"Now that this matter has been resolved, it is my hope that the approach outlined in this agreement can be a building block toward the kind of statewide reforms we need to move closer to the ideal of providing every criminal defendant in every part of our state with effective legal representation," Schneiderman said.

A copy of the settlement may be found on the office's website at www.ag.ny.gov/pdfs/DOC153.PDF.

Gov. Andrew M. Cuomo issued a release, calling the settlement a positive step for the state's judicial system that addresses longstanding inequities. He said it will ensure fulfillment of the constitutional promise of criminal defense counsel for those who cannot afford it.

"This was a problem that our administration inherited from years past and I am proud that we have been able to reach a resolution that results in a fairer, more humane justice system," Cuomo said.

Leahy said the settlement marks the first time the state has acknowledged, in a binding legal document, that it

holds responsibility for providing defense services to defendants in criminal matters. He is waiting to see whether the support and funding will be adequate to fully implement the terms of the agreement, something he said should be an urgent matter for the Legislature in its next session. Leahy said the Legislature also has to address services in the other 52 upstate counties instead of waiting for lawsuits from them.

"We certainly applaud Gov. Cuomo and Attorney General Schneiderman in recognizing that the necessary improvements that need to be made in indigent defense are a state responsibility," said Monroe County Public Defender Timothy P. Donaher, president of the Chief Defenders Association of New York.

"We certainly recognize that there are a number of improvements that are called for in the state settlement, however the CDANY sees this as only a first step toward improving indigent defense statewide," Donaher said. "We're calling on the governor and state Legislature to immediately implement a plan to provide the resources to implement a plan for the remaining 57 counties in New York state."

Defenders around the country have been watching the case of *Hurrell-Harring v. State of New York* (Index No. 8866-07) which was on the eve of trial in state Supreme Court in Albany County when the settlement agreement was reached.

The constitutional right to an attorney was guaranteed more than 50 years ago when the U.S. Supreme Court issued its 1963 landmark decision in *Gideon v. Wainwright*, 372 U.S. 322, unanimously ruling states were required to provide counsel to criminal defendants who could not afford an attorney.

New York designed its responsibility to the counties in 1965 by passing County Law Article 18-B. The NYCLU noted deficiencies in the resulting system were repeatedly documented, eventually prompting it to bring suit, along with Schulte Roth and Zabel, for particular deficiencies it alleged in the named counties.

The class-action suit, brought in 2007 on behalf of 20 defendants, led by Kimberly Hurrell-Harring, alleged the state's failure to provide adequate resources threatened to deprive defendants and others similarly situated in the class of their constitutional right to meaningful and effective assistance of counsel.

Hurrell-Harring, according to the NYCLU, was a young nursing assistant and mother of two when she lost her job and home after being sentenced to four months in jail for a felony conviction. She had only committed a misdemeanor by trying to bring a small amount of marijuana to her husband in prison. Hurrell-Harring, who had never been in trouble before, had inadequate counsel who the NYCLU noted has since been disbarred.

The NYCLU charged the state's decision to abdicate responsibility for public defense to its counties resulted in a patchwork of often understaffed, poorly resourced and largely dysfunctional public defense systems where defendants were routinely arraigned without attorneys, urged to take plea bargains regardless of the facts of their cases, burdened by excessively high bail and incarcerated for shockingly long periods for misdemeanor and petty crimes.

New York State Bar Association President-elect David P. Miranda welcomed the settlement, noting the association has called for creation of a statewide, state-funded indigent defense system since 2007.

The association's Commission on the Future of Indigent Defense Services, created in 2006, concluded a crisis existed in the delivery of defense services to indigent defendants throughout the state and that the right to effective assistance of counsel, guaranteed by the state and federal constitutions, was not being provided to a large number of people.

Problems cited included excessive caseloads for defense attorneys, an inability to hire full-time attorneys, lack of adequate support staff and lack of adequate training. The commission and state bar, at the time, recommended a restructuring of the delivery of indigent defense services.

"I hope that [Tuesday's] settlement makes some much needed changes in Onondaga County," Syracuse attorney Jason B. Zeigler said Wednesday. He has had issues with receiving payment from the county for representing indigent defendants.

"The changes to criteria for eligibility for assigned counsel are welcome and much needed," Zeigler said. "In Onondaga County, the problem with no counsel at arraignment could be solved with a phone call from the court to an attorney. The only thing needed to bring Onondaga County into compliance with what has been state law in this area since 2010 is a willingness from the courts to call and a willingness from the county to pay."

He said the right to counsel is meaningless if counsel's ability to advocate is compromised by the withholding of future assignments, delaying payments of funds owed and the ultimate refusal to pay counsel for anything more than what it would take to quickly plead out a defendant should counsel do more than quickly plead out their clients.

"The settlement does much to address the issues in Onondaga County, but ultimately, until the current county plan is reformed, panel attorneys are rotated as required by law, and the panel attorneys are paid as required by law, little will change in Onondaga County," Zeigler said.

Tagged with: PUBLIC DEFENSE WILLIAM J. LEAHY

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