

It has been a hectic 24 hours since yesterday's announcement of the settlement between the plaintiffs and the state defendants in the Hurrell-Harring litigation (please find a link to the settlement on our website, www.ils.ny.gov). I'd like to share with all of you a few preliminary thoughts on the significance of this settlement, what is needed for the settlement to be successfully implemented in the 5 counties that it covers, and -- very importantly -- what must be done to improve representation and reduce caseloads in the counties that the settlement does not include.

The significance of the settlement: The settlement is pathbreaking in two historically important ways. First, this is the first time since the State of New York in 1965 delegated to each individual county the State's duty to provide counsel to people who are entitled to the Assistance of Counsel but cannot afford to hire an attorney, that the State has accepted its responsibility to implement and to fund constitutionally compliant representation in upstate New York. In this agreement, the State has accepted the responsibility to ensure that each person charged with a crime in these five counties is represented by counsel at his arraignment (III) (A) (1); that ILS caseload/workload standards are implemented (IV) (D) (1); that dedicated funding will be provided to implement specific quality improvements (V) (C); and that the state will undertake its best efforts to pay in full for these long-needed enhancements (IX) (A) through (F). Second, the parties have properly vested the responsibility for implementing the settlement's provisions with a professionally staffed and independent Office and Board, thus complying with the first and most important of the American Bar Association's *Ten Principles of A Public Defense Delivery System* (2002). Governor Cuomo, Attorney General Schneiderman, the New York Civil Liberties Union and Schulte Roth & Zabel LLP deserve enormous credit for getting these bedrock principles right.

What is needed for successful implementation of the settlement in the 5 counties? Three things: 1) a continuation and strengthening of the cooperative working relationships that already exist among county government officials, county indigent defense providers and ILS; a goal to which we pledge our energy and expertise; and 2) full funding of the ILS FY 2015-2016 budget request for a Settlement Implementation Unit, headed by an experienced chief implementation attorney; and 3) the state's fulfillment of its fiscal commitments in the settlement.

What about the other counties? This question is vital. Everyone understands that this settlement, except for provision VI concerning eligibility standards, covers only the counties of Onondaga, Ontario, Schuyler, Suffolk and Washington. No one suggests that it contains any promise of state funding to support caseload reduction, counsel at arraignment or other legal requirements in any of the other 52 upstate counties. That those counties, as a group, have equally serious unmet needs with respect to the provision of counsel is undoubted. Let's take a look at one example, that of excessive caseloads. Our September, 2014 report [Estimate of the Cost of Compliance with Maximum National Caseload Limits in Upstate New York – 2013 Update](#) finds an unfunded need of \$105.2 million in the 57 upstate counties. Of that amount, only about \$16 million was unfunded in the five lawsuit counties; the balance, \$89 million, was unfunded in the 52 counties not included in the settlement. This is why the ILS budget request for FY 2015-2016 includes an additional \$20 million Aid to Localities appropriation to assist all upstate counties to reduce excessive caseloads, as the first installment in a 5 year remediation plan modeled after the 2009 enactment that forged the achievement by 2014 of appropriate state-funded caseload reductions for institutional criminal defense providers in New York City. If there is an argument based upon equity, justice or fundamental fairness that the 52 upstate counties should continue to be excluded from the benefits of the *Hurrell-Harring* settlement because of the

happenstance that they were not selected as lawsuit counties, I have yet to hear it. Therefore we will be working with the Governor, the Legislature, and everyone who stands for the principle of equal justice in the state of New York to ensure that appropriate funding is provided in the FY 2015-16 budget, so that no county, no defender and no client will be excluded from the benefits of this historic settlement, and so that the state of New York will have, at long last, one standard of justice for all.

We look forward to working with everyone who has a responsibility for or an interest in achieving these goals.

William J. Leahy
Director, Office of Indigent Legal Services