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Plaintiffs Hope to Broaden Indigent Defense Pact

Joel Stashenko, New York Law Journal

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The Cuomo administration and the New York Civil Liberties Union said Tuesday they settled a suit that challenged New York's system of providing legal services to indigent criminal defendants.

[See the settlement.](#)

The agreement, which came on the eve of the opening of trial in *Hurrell-Harring v. State of New York*, 8866-2007, before Albany Supreme Court Justice Gerald Connolly ([See Profile](#)), will apply to representation of the poor in the five counties named as defendants in the seven-year-old litigation.

But the NYCLU and Schulte Roth & Zabel, working pro bono for the plaintiffs, said the settlement lays out a blueprint that can eventually be used by all counties outside New York City to meet the obligation to provide adequate representation to indigent defendants called for by the U.S. Supreme Court in 1963 in the landmark [Gideon v. Wainwright](#), 372 U.S. 335.

"Our settlement overhauls public defense in five counties and lays the foundation for statewide reform of New York's broken public defense system," said NYCLU Executive Director Donna Lieberman. "Today's agreement is a victory for equal justice more than 50 years in the making."

In those five counties—Suffolk, Washington, Ontario, Onondaga and Schuyler—the settlement calls for all indigent criminal defendants to be represented by an attorney at arraignment, for limits to be imposed on the caseloads of public defenders and assigned counsels and for more investigators, interpreters and other support staff to be available to help represent the indigent.

In addition, the Office of Indigent Legal Services will be put in charge of the public defense operations in the five counties, the first time in New York that a statewide entity will be responsible for criminal representation of the indigent.

The settlement is subject to Connolly's approval.

NYCLU counsel Corey Stoughton, who has been the group's lead counsel from the beginning of the case, said the settlement aims to provide defense services in the five counties that are already available to indigent defendants in New York City.

"Five years ago, the state Legislature capped caseloads in New York City," she said during a

conference call with reporters Tuesday afternoon to announce the settlement. "Five years later, now the state has committed to do that for five upstate New York counties. And that is a specific illustration of how this lawsuit is really about catching up and bringing an equal level of justice and a fundamentally required level of justice across the whole state."

Stoughton added, "It was a five-county settlement because it was a five-county lawsuit. But we think this is going to be a springboard for change all around the state."

The agreement calls for the state to spend \$4 million in the next fiscal year to begin phasing in the improvements stipulated in the five counties, which the plaintiffs said account annually for about 20 percent of the criminal cases in New York state outside New York City.

Change Coming 'Very Quickly'

Schulte Roth partner Gary Stein said that it is unclear exactly how much money the state will have to come up with to meet the mandate in the settlement or precisely when the improvements will all occur. He noted that the settlement provides for all indigent defendants in the affected counties to be represented by counsel at arraignment within 20 months of the settlement's approval.

Other upgrades will take place sooner, he said.

"It's a gradual process for sure, but you should begin seeing changes very quickly," Stein said.

Gov. Andrew Cuomo said in a statement that the agreement addresses "longstanding inequities and ensures 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.

Attorney General Eric Schneiderman, whose office was defending the state in the *Hurrell-Harring* litigation, said he hoped the agreement would be a "building block" to reforms statewide.

The Cuomo administration has been under pressure for months to settle the *Hurrell-Harring* suit prior to trial. In late September, the U.S. Justice Department and Attorney General Eric Holder filed a statement of interest in which they said New York's public defense system provided representation "in name only" and called for adoption of meaningful statewide reforms ([NYLJ, Sept. 26](#)).

A hodgepodge system of public defense funded primarily by New York City and the 57 counties outside the city developed in New York in the wake of *Gideon*. Legal representation is provided by Legal Aid Societies, public defenders' offices or assigned counsels—or a combination of all three—in a system that critics say produces wildly uneven quality in services provided to indigent clients ([NYLJ, March 26, 2013](#)).

Twenty-six states in the country have state-funded and operated systems. Critics of New York's current system have generally advocated adoption of a statewide approach as well.

Putting the Office of Indigent Legal Services [ILS] in charge of the services in the five counties will mark the first time New York state has assumed direct responsibility for counties' indigent defense services, said William Leahy, director of ILS.

"What it gives us is very significant involvement, which we welcome, for the improvement of criminal defense representation in the five lawsuit counties," Leahy said in an interview. "There are some darn good provisions in this settlement, some strong and client-affirming standards that should be expected of assigned counsels and public defenders."

Leahy said his office's budget proposal for fiscal 2015-16, submitted to the governor on Tuesday and including funding requests called for in the *Hurrell-Harring* settlement, asks for \$950,000 to fund a new unit to handle ILS's public defense oversight responsibilities.

Assemblywoman Helene Weinstein, a Brooklyn Democrat who chairs her chamber's Judiciary Committee, called the settlement a "great first step" toward providing meaningful improvements in both the five counties and in other counties outside of New York City.

"It continues our move to try to make those last words of the Pledge of Allegiance, 'and justice for all,' come a little closer to reality for many New Yorkers," Weinstein said in an interview. "I would anticipate assuming that if the process works well in these counties, that it would set the template for the rest of the state."

But Steven Acquario, executive director of the state Association of Counties, said it was unclear whether the settlement provides the relief his group has been seeking. Counties maintain that *Gideon* imposes a legal obligation on the state, which New York has been passing off to the counties since the mid-1960s, he said.

"Did we miss an opportunity here as a state?" Acquario asked. "I don't know."

@|Joel Stashenko can be reached [via email](#) or on Twitter [@JoelStashenko](#).

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