



Implementing the Quality Improvement Objectives in the *Hurrell-Harring v. The State of New York* Settlement

2016 Update

November 10, 2016

Submitted by the New York State Office of Indigent Legal Services in accordance with
Section V(A) of the *Hurrell-Harring v. The State of New York* Stipulation and Order of Settlement.

**Update to the 2015 Plan to Implement the
Quality Improvement Objectives of the
Hurrell-Harring v. State of New York Settlement**

The New York State Office of Indigent Legal Services (ILS) submits this report to update its 2015 *Plan to Implement the Quality Improvement Objectives of the Hurrell-Harring v. State of New York Settlement*. This Quality Plan was finalized in November 2015 in accordance with § V(A) of the *Hurrell-Harring v. State of New York* Stipulation and Order of Settlement (Settlement). The Settlement recognizes that ensuring the right to counsel is predicated on improving the quality of public defense. Toward that end, the Settlement requires the five defendant counties (Onondaga, Ontario, Schuyler, Suffolk, and Washington) to adopt initiatives to improve the quality of indigent defense in the following areas: 1) supervision and training; 2) access to investigators, interpreters, and expert witnesses; 3) client communication; 4) qualifications and experience levels of attorneys; and, 5) in the case of assigned counsel, assignment of attorneys in accordance with County Law § 18-B. To “jump start” these quality improvement objectives, the Settlement requires the State to provide \$2 million in each of state Fiscal Years 2015/2016 and 2016/2017.

Pursuant to the Settlement, ILS met with stakeholders in each of the five *Hurrell-Harring* counties to establish a written plan for using that county’s allocation of the \$2 million for improving the quality of public defense services. On October 13, 2015, ILS submitted this Plan to the parties. The parties had 15 days to submit comments, and ILS had 15 days to review and consider these comments. On November 12, 2015 ILS submitted a final Quality Plan setting forth the quality initiatives to be implemented in each county.

This report details the steps that have been taken to implement the Quality Plan. It also details ILS’ work with providers in the five counties to enhance their capacity to collect, maintain and report on data relevant to assessing quality. Additionally, it discusses the initial steps that ILS has taken to better assess the quality of representation in the five counties, and describes remaining barriers to providing quality representation. Accordingly, this report is organized into the following sections:

- I. County Specific Updates on Implementation of the 2015 Quality Plan
- II. Improving Capacity to Measure Quality: Data Collection, Maintenance, and Reporting
- III. Assessment of the Quality of Representation: Court Observations and Attorney Interviews
- IV. Barriers to Providing Quality Representation

I. COUNTY SPECIFIC UPDATES ON IMPLEMENTATION OF THE 2015 QUALITY PLAN

Below is a description for each *Hurrell-Harring* county of the steps that have been taken to implement the Quality Plan.

ONONDAGA COUNTY

Onondaga County was allocated \$588,677 of the Settlement's \$2 million in funding to improve the quality of indigent criminal defense representation. Onondaga County has two providers of mandated representation: the Assigned Counsel Program of the Onondaga County Bar Association (ACP), which provides criminal representation in all justice, City, and County court cases; and Hiscock Legal Aid Society (Hiscock), which provides representation for criminal appeals and parole revocation cases. After several discussions about the respective needs of each provider (detailed more fully in the Quality Plan), it was agreed that the ACP should be allocated \$432,934 and Hiscock allocated \$155,697 of the funding.

1) Hiscock Legal Aid Society

Hiscock received \$155,697 to address their most pressing need: a more than two-year backlog for criminal appeals. This backlog means that defendants typically wait two years, often while incarcerated, before their assigned appellate attorney can start working on their appeal. Pursuant to the Quality Plan, the \$155,697 is to be used to hire two appellate attorneys to help alleviate the backlog.

Hiscock advertised, interviewed, and hired two full-time appellate attorneys, John Gilsenan and Sara Goldfarb, who began work on May 2, 2016. Both attorneys have prior legal experience. Mr. Gilsenan worked at the Federal Defender Office in Detroit, did private defense work, and was an Assistant Public Defender in Maryland before joining Hiscock. Ms. Goldfarb had interned at Hiscock previously, edited work for a disability rights textbook, and worked as an appellate attorney on behalf of individuals with disabilities before joining Hiscock. Although both attorneys have been working just six months, they have already helped to reduce the appellate backlog by thirteen cases, which is a significant accomplishment.

2) Assigned Counsel Program

The Quality Plan to use ACP's \$432,934 focuses on the critical need to provide enhanced supervision and training to the ACP panel attorneys. As outlined below, the Quality Plan seeks to accomplish this by enhancing access to training (including hands-on, intensive trainings and Continuing Legal Education (CLE) programs), and by creating a Mentoring Program.

Training:

The ACP allocated \$10,000 of additional money to their already-existing CLE program and \$24,000 for intensive, hands-on trainings. The ACP and ILS developed a list of approved hands-on trainings for which panel attorneys could receive scholarships. In March 2016, the Executive

Committee of the ACP Board drafted a protocol for how scholarships will be awarded to panel attorneys who apply for these training programs. In mid-October 2016, ILS had a telephone conference with the ACP Executive Director, Renee Captor, and the Assistant Director, Francis Walter, during which they stated that this draft protocol had never been finalized or approved by the ACP Board. They did not offer an explanation for this lengthy delay. To get the ACP to move forward with effective use of this training funding, ILS offered to revise the protocol for the hands-on training and draft an additional protocol for accessing training money to attend CLEs. At ILS' urging, Ms. Captor and Mr. Walter agreed to take immediate steps to ensure that the ACP Board reviews and approves these protocols as soon as possible.¹ ILS also urged Ms. Captor and Mr. Walter to make it a priority to disseminate the protocols to the panel attorneys immediately upon Board approval.

To date, only \$2,635² of the training money has been spent on scholarships for hands-on trainings or for CLE trainings. An additional amount of approximately \$2,000 has been spent on trainings related to the mentor program.

While development of the protocols has been pending, ILS has sought to ensure that attorneys know of the upcoming CLE programs by alerting the ACP to the existence of these programs and asking that they notify panel attorneys of the program itself and the availability of scholarship money. The ACP administration has not consistently followed through on our requests, doing so only after repeated requests from ILS and often in a time frame that is too late for panel attorneys to take advantage of the available training money for scholarships. Thus, little of the training money has been utilized as intended. ILS intends that having clear protocols that are disseminated to the panel attorneys will help to ensure that this money is used appropriately. We will continue to work with the ACP on this issue, and will continue to urge them to forward information about CLEs and other training opportunities to their panel attorneys.

Mentoring Program:

The bulk of the quality money - \$398,980 - is earmarked for the development and implementation of a Mentoring Program. The Mentoring Program is designed to recruit high-caliber criminal defense attorneys to mentor less-experienced ACP panel attorneys - i.e., attorneys with zero to eight years criminal defense experience. In order to develop the specifics of the program, ILS created a quality initiatives working group that met on January 21, 2016,

¹ Subsequent to this phone conference, and on October 30, 2016, ILS emailed Francis Walter and asked if the Board had approved the protocols at the October 27, 2016 meeting, as we had agreed during the phone conference. On November 1, 2016, Mr. Walter responded that the Board had not approved the protocols because they had not reached this agenda item during the meeting. After this email exchange, Mr. Walter emailed the protocols to the Board members asking for their approval. As of the writing of this report, ILS does not know the status of Board approval of these protocols.

² \$2635 is an estimate of expenditures. The bulk of the money, \$1,885, was spent to send a panel attorney to an intensive CLE sponsored by the National Association of Criminal Defense Lawyers this summer. ILS had alerted the ACP to this training opportunity and stated that this would be an appropriate use of the training fund. The balance is based on an estimate of 15 attorneys attending the New York State Association of Criminal Defense Lawyers Fall CLE in Syracuse on October 1, 2016. Again, the ACP offered scholarships to the panel attorneys for this program only after ILS repeatedly urged them to do so.

February 5, 2016, and March 3, 2016. Members of the working group are Amanda Oren (ILS), Deborah Schneer (ILS), Nora Christenson (ILS), Francis Walter (ACP Assistant Director), Renee Captor (ACP Executive Director), Kathy Dougherty (Senior Deputy County Attorney), and Carol Rhinehart (Deputy County Attorney).³ Ms. Captor attended only the first of these working group meetings.

Prior to meeting with the working group, ILS researched different mentor programs around the country, speaking with the following attorneys who have developed high-quality mentor programs: Nancy Bennett, Deputy Chief Counsel of the Massachusetts Committee for Public Counsel Private Counsel Division; Alex Bunin, Harris County Texas (Houston) Public Defender; Trudy Strassburger, Deputy Director of the Capitol Area Private Defender Service in Austin, Texas; and Robert Convissar, Administrator, Erie County Bar Association Assigned Counsel Program. ILS reviewed the December 2015 National Legal Aid and Defender Association (NLADA) report that surveyed several mentoring programs throughout the state of Texas with proposed formats and strategies for future mentoring programs. Additionally, ILS reviewed the Massachusetts Attorney for the Child Mentoring Program and various other legal and non-legal literature and programs on mentoring. Finally, we took into account standards for quality indigent defense representation, including but not limited to standards promulgated by the New York State Bar Association, the New York State Defenders Association, the American Bar Association, the Office of Indigent Legal Services, and standards from other states.

ILS drafted the structure of the mentoring program along with the mentor selection criteria and protocols, and a proposed posting to advertise the program.⁴ These drafts were discussed and revised by the working group at the February 5, 2016 meeting. The ACP then distributed the posting and selection protocol to the attorneys on the assigned counsel panel as well as to the New York State Defender Association (NYSDA) and the New York State Association of Criminal Defender Lawyers (NYSACDL) for posting on their respective websites and listservs. The goal was to create a transparent process and a wide distribution pool.

To select the mentors, a committee was formed that consisted of Amanda Oren (ILS), Patricia Warth (ILS), Kathy Dougherty (Senior County Attorney), Renee Captor (ACP), Francis Walter (ACP), and Keith Cieplicki (Jail Ministries).⁵ The ACP received nineteen applications for the mentor positions, and the committee interviewed twelve of these applicants over the course of two days in late April 2016. The committee then met on April 28, 2016 to review the interviews and select the mentors. Based on the ACP's initial reports of eligible attorneys, it was anticipated that there would be ten mentors assigned to approximately 40-50 mentees. Each mentor would have fifteen hours monthly to work with three to five mentees. After receiving a smaller, revised

³ Marthe Ngwashi, then-Deputy County Attorney, attended the first meeting. She has since left the employment of the County Attorney's Office.

⁴ At the first working group meeting, it was decided that the ACP should draft the protocol for selecting mentors. However, the ACP never followed through on doing so. To ensure timely implementation of the Mentoring Program, ILS assumed the responsibility of drafting all the necessary documents for the Program.

⁵ The Onondaga County Bar Association was invited to participate in the interview process, and they designated a bar association member to do so, but he did not participate.

number of eligible attorneys, the committee chose eight mentors for the initial class of twenty-two mentees.⁶

On May 19, 2016, ILS held a three hour mentor orientation at the County Attorney's Office in Syracuse. On June 25, 2016 a six hour joint orientation for mentors and mentees was held at Onondaga Community College.⁷ ILS conducted both orientations and drafted all presentations and documents necessary for the orientations and the Mentoring Program⁸ including:

- 1) Components (A baseline of quality defense used to guide the participants)
- 2) Mentee Self-Assessment
- 3) Mentee Professional Development Plan
- 4) Mentee Professional Development Plan (sample)
- 5) Mentor Reporting Form
- 6) Mentoring Agreement
- 7) Attorney-Client Confidentiality Form
- 8) Client Statement of Understanding

Additionally, a lunch-time panel presentation introduced the mentees to several agencies in the community that could be resources in the representation of their clients. Those participants were: Sharon Ames (ILS Regional Immigration Assistance Center); John Sindoni (Attorney Volunteer for Jail Ministries); Kelly Gonzalez and Ann Osborne (Center for Community Alternatives); Julie Morse (Legal Services of Central New York); and Linda Gehron (Hiscock Legal Aid Society, Family Court Division).

Finally, the quality improvement funding provides for a part-time administrative assistant to support the Mentoring Program. The ACP transitioned a part-time employee, Alex Doney, to full-time status to fill this position. Ms. Doney began working with the Mentoring Program in mid-May 2016 and helped with the logistics of the joint mentoring orientation in June 2016.

Since the beginning of July 2016, the mentors have conducted over 100 hours of mentoring, providing the mentees with various levels of support, from fielding questions to offering suggestions for hearings and trials. The mentors have reported to ILS that mentoring alone is not enough to ensure that panel attorneys have the requisite supervision and training. For that reason, the mentors have planned trainings to address pressing concerns of mentees. The first was an

⁶ Twenty-two mentees are participating in the Program out of an eligible group of approximately thirty panel attorneys. At this time, the Mentoring Program is voluntary as the ACP handbook/plan has not yet been revised to make participation mandatory.

⁷ During an April 21, 2016 meeting, ILS asked Ms. Captor to agree to dates for both of these orientations so that mentors and mentees could receive advance notice. Ms. Captor rejected every date suggested by ILS. Mr. Walter questioned whether anyone from the ACP even needed to attend these orientations. Finally, in consultation with the County Attorney's Office, ILS selected dates and made sure that mentors and mentees received advance notice. Mr. Walter and a representative from the County Attorney's Office attended parts of both orientations. Ms. Captor was absent from both.

⁸ In developing the necessary forms, ILS was guided by the NLADA report about mentoring programs in Texas as well as Massachusetts Attorney for the Child Mentoring Program.

intensive day-long training conducted on September 10, 2016. Notably, the mentors planned and delivered this training without the support or assistance of the ACP administration.

ILS met with the mentors on September 16, 2016 and September 23, 2016 for a quarterly evaluation to assess how the program is progressing. Ms. Doney from the ACP was present for the September 23, 2016 meeting. The mentors reported that the program is going well and that most of the mentees are actively engaged and excited about the program. Some of the mentors expressed deep concerns about the very basic skill and knowledge level of some of the mentees, even some who have been practicing for several years. The mentors brainstormed ideas for training and decided that intensive trainings paired with shorter discrete trainings should continue for the foreseeable future. ILS is working with the mentors on developing a training curriculum through May 2017; NYSDA is going to provide CLE credits for these trainings.

In September 2016, ILS conducted a survey of the mentees to ascertain how the program is functioning and to also gain feedback about training programs. The survey was brief, asking the following questions with these results:

- 1) Has the mentoring program enhanced your skills in any one of the following areas (percentages indicate percent of respondents who checked this skill):
 - Client Communication – 20%
 - Bail – 26%
 - Issue Spotting - 66%
 - Motions/Pleadings - 53%
 - Investigations - 20%
 - Use of experts, social workers, interpreters - 20%
 - Plea Negotiations - 40%
 - Hearings/Trials - 33%
 - Sentencing (expertise and/or advocacy) - 33%
 - Case Management - 46%
 - Office Management – 13%

- 2) How would you rate the quality of the advice you have received from your mentor (irrespective of case outcome)?
 - Very high quality - 93%
 - High quality - 7%
 - (0% of respondents checked Low quality or Very low quality)

- 3) Overall, have you found the mentoring program beneficial to your practice?
 - Extremely beneficial - 93%
 - Somewhat beneficial - 7%
 - Not beneficial - 0%

We also asked the mentees to identify one thing that can be done to improve the Mentoring Program. Several mentees said that they had no recommendations, either because the program is working well for them or because they thought it was too early to make suggestions. Several had

constructive recommendations such as creation of a “forms” database, having a mentor work one case with the mentee from beginning to end, being able to watch the mentor in action, and having a dedicated meeting time with the mentor. Additionally, we asked for the mentees to provide input for additional trainings which ranged from basic to trial practice training. The mentors were provided with the survey results so that they could incorporate these suggestions into their work with mentees as appropriate. The mentors also used the survey results to help shape the training program they have developed for the mentees and the panel in general. The program will include intensive, 6 hour trainings on some Saturdays throughout the year and 1 ½- 2 hour CLE courses about discrete topics at least monthly.

The Mentoring Program is an important first step in providing support for panel attorneys. But it has also highlighted the critical need for training and supervision of panel attorneys. The mentors themselves have told ILS that the Mentoring Program cannot be viewed as the sole mechanism for meeting the Settlement’s quality objective of ensuring that there is adequate supervision and training of attorneys. ILS will be mindful of this as we work with Onondaga County in developing a plan for spending other Settlement-related funding, including caseload relief funding.

Another component of the 2015 Quality Plan is expanding and more fully utilizing the ACP’s Second-Chair program. The Second-Chair program allows for panel attorneys to be compensated for “second-chairing” trials as a means of developing trial skills and experience. Ms. Captor has reported that the Second-Chair program has traditionally been under-utilized. ILS intends to work with the ACP Board to update its ACP Handbook, which has not been substantively updated since 2006. As part of this update, ILS will urge the Board to assess and, where appropriate, update the protocol regarding the Second-Chair program to ensure that attorneys who need it are using it as contemplated in the 2015 Quality Plan.

ONTARIO COUNTY

Ontario County was allocated \$146,123 of the Settlement’s \$2 million in funding to improve the quality of public criminal defense representation. Ontario County has three providers of mandated representation: the Ontario County Public Defender Office; the Ontario County Conflict Defender Office; and the Ontario County Assigned Counsel Program (ACP). After lengthy discussion about the respective needs of each provider (detailed more fully in the 2015 Quality Plan), it was agreed that the Public Defender Office would receive \$35,000, and the Conflict Defender and ACP would receive a combined total of \$111,123.

1) Ontario County Public Defender Office

The Public Defender Office received \$35,000 to fund a part-time legal support staff person to help alleviate the administrative burden placed on the Public Defender, Leanne Lapp, and her First Assistant so that both could devote more time to supervision. In May 2016, Ms. Lapp used this funding to elevate a current employee, Leah Morrow, to paralegal status. Ms. Lapp reports that Ms. Morrow’s support has been instrumental in relieving some of her administrative burden and the burden of other support staff. Specifically, Ms. Morrow assists with eligibility intakes,

thus enabling the receptionists at the front desk to assist walk-in clients and phone calls; she also handles eligibility interviews at the jail. Ms. Morrow also interviews jailed clients to obtain needed information when attorneys are in court. She has also taken over some appellate responsibilities by drafting Notice of Appeals and Applications to Proceed as a Poor Person. Ms. Morrow's support has helped provide additional time for Ms. Lapp to focus on supervision.

2) Ontario County Conflict Defender and Assigned Counsel Program

Andrea Schoeneman heads the Conflict Defender Office and is also the Assigned Counsel Administrator. Like many Assigned Counsel Programs, Ontario's program faces the challenges of adequate support and supervision services for panel attorneys as well as meaningful access to investigators, experts, social workers, and sentencing advocates. Accordingly, the Quality Plan provides that the Conflict Defender Office and ACP use its \$111,123 as follows: \$30,000 to contract with an experienced attorney to be a mentor to the ACP panel attorneys; \$40,000 for investigators and experts; \$30,000 for social worker/sentencing advocacy services; \$10,000 for a pilot post-conviction project; and \$1,123 for on-line legal research services.

With regard to a mentor for the ACP, the Assigned Counsel Program identified Robert Zimmerman to fill this role. Mr. Zimmerman has 30 years of criminal defense experience, practicing extensively throughout Western New York and having previously served as Administrator for the Ontario County Assigned Counsel Program. He has also worked as a part-time staff attorney for the Wayne County Public Defender. On June 17, 2016, Mr. Zimmerman and Ms. Schoeneman met with the panel attorneys to introduce Mr. Zimmerman as a mentor and to inform them of the support resources now available through the Quality Plan.

On September 22, 2016, ILS met with Mr. Zimmerman and Ms. Schoeneman to review implementation of the Quality Plan. Both report that the panel attorneys have not been fully utilizing Mr. Zimmerman's services. During this meeting, we discussed two possible reasons: 1) the panel attorneys are older and may not think support services are necessary⁹; and 2) Mr. Zimmerman's new role began in the summer when many attorneys are on vacation. We brainstormed several strategies to engage panel attorneys. Both Ms. Schoeneman and Mr. Zimmerman thought it would be beneficial to conduct monthly meetings during which attorneys can ask questions and talk about relevant issues they are facing. The first of these meetings was held on October 28, 2016. If response to these meetings is low, then Mr. Zimmerman will start to "push-in" by contacting attorneys directly. In the meantime, he will begin observing panel attorneys in court by obtaining court dockets daily to identify when panel attorneys have court appearances. Additionally, ILS assisted Ms. Schoeneman and Mr. Zimmerman in developing an email query for panel attorneys, which was designed to help identify the specific services the attorneys want from Mr. Zimmerman. Finally, Ms. Schoeneman will continue to communicate with her panel about Mr. Zimmerman's availability as well as the other available funding for investigators, experts, and social worker/sentencing advocate.

Though Mr. Zimmerman's services are being under-utilized, the allocated funding for support services is being well-utilized, particularly the services for investigators. The ACP attorneys now

⁹ Given the age of most of the panel attorneys, Ms. Schoeneman expressed her intent to recruit younger attorneys to the panel to ensure that the panel continues to function as members retire.

have access to significantly more funding for investigators and experts directly through the ACP program without having to “preview” their case by applying to the court. Ms. Schoeneman developed a protocol that requires panel attorneys to use an investigator for all A, B, and C level felonies. For D and E level felonies, attorneys must indicate specific reasons if they believe an investigator is not necessary in a particular case. This money can also be used by the Conflict Defender Office. Ms. Schoeneman has identified three well-regarded investigation agencies that the panel can access easily: Sand Investigations; Reinstein Investigations, Inc.; and Trident Recovery & Investigations Group, LLC. The panel attorneys are using the investigators extensively, and Ms. Schoeneman reports that the number of investigations has increased. Notably, the Quality Plan allocates \$1,123 for on-line legal research. However, after further discussion with panel attorneys, Ms. Schoeneman found there is no need for this service. Therefore, she believes it makes sense to redirect the money to use for investigative services.

With regard to the \$30,000 allocated for social worker and sentencing advocacy services, Ms. Schoeneman has recruited Kimberly Goulding. Ms. Goulding is a licensed clinical social worker, with a Master of Social Work degree. She also has several years’ experience working as a sentencing advocate and mitigation specialist for the Wayne County Public Defender Office, and as a result, has experience advocating for people charged with crimes and working with defense attorneys, district attorneys, judges, court personnel, treatment providers, probation officers, and other stakeholders. Additionally, Ms. Goulding has over ten years of experience working with people who need mental health and substance abuse treatment services. Negotiations regarding the necessary insurance requirements for the County are ongoing, but Ms. Schoeneman hopes to have the contract finalized by the beginning of November 2016.

Finally, with regard to the \$10,000 for a post-conviction pilot project, it was decided that attorneys can use this money to research and investigate the potential claims, and where appropriate, file a motion with the sentencing court to be assigned to represent defendants in a post-conviction matter pursuant to Criminal Procedure Law § 440.10 or § 440.20. Doing so is consistent with Standard XX of ILS’ *Appellate Standards and Best Practices*, (January 15, 2015). On August 18, 2016, Risa Gerson, then ILS Director of Quality Enhancement for Appellate and Post-Conviction Representation, and Alex Keeling, Deputy Attorney in Charge at the Office of the Appellate Defender in New York City, conducted a CLE in Canandaigua, New York on identifying post-conviction claims. Approximately 25 attorneys from Ontario and the surrounding counties attended. Ms. Schoeneman has already received a call from one of her appellate attorneys with a possible post-conviction issue.

With regard to the Conflict Defender Office, the County, through ILS’ non-competitive distribution funding, hired an experienced criminal defense attorney, Carrie Bleakley, as First Assistant Conflict Defender. Ms. Bleakley began work at the beginning of September 2016. Hiring a First Assistant will allow Ms. Schoeneman to transition to just Family Court representation which will provide her with more time to supervise the panel.

SCHUYLER COUNTY

Schuyler County was allocated \$55,956 of the Settlement's quality improvement funding. The County has had a full-time Public Defender since 2004. Currently, the Public Defender Office is staffed by the Public Defender, Wesley Roe, one full-time staff attorney, one part-time staff attorney, and a full-time Office Manager.

At the time that ILS developed the Quality Plan, Schuyler County had a contract with an attorney, Jessica Saks, to act as the Conflict Defender when there were cases that the Public Defender's Office could not take. Schuyler County did not have a formal Assigned Counsel Program; instead, when there were cases that the Public Defender Office and the Conflict Defender could not take, the Public Defender's Office Manager assigned the case to an attorney from a list of attorneys who accepted assigned criminal cases. There were approximately eight attorneys on that list. The Conflict Defender was paid a lump sum of \$30,000 annually no matter how many cases she handled. The County did not provide the Conflict Defender funding for CLE programs or training.

As a small county, Schuyler grappled with the issue of economies of scale and paying for a full-time ACP Administrator to oversee a small panel of attorneys and relatively few cases. To resolve the problems with the County's under-resourced Conflict Defender Office and lack of oversight for assigned counsel, Schuyler County officials began a series of meetings with Tompkins County officials, including Julia Hughes, the Tompkins County Assigned Counsel Program Coordinator, to explore the idea of creating a regional assigned counsel program. To do so, the County needed to devote all of the Settlement's \$55,956 quality money to the initiative.

On March 29, 2016, Schuyler and Tompkins Counties entered into an inter-municipal agreement that provides for Tompkins County Assigned Counsel Program to handle all of the cases that the Schuyler Public Defender Office cannot take. At the same time, Schuyler County discontinued its contract with the Conflict Defender. This new regional Assigned Counsel Program has been operating since April 1, 2016.

To facilitate the transition of Tompkins County ACP supervising assigned counsel cases in Schuyler County, Julia Hughes and Lance Salisbury, the Tompkins County Supervising Attorney, met with several of the Schuyler County judges and magistrates as well as the Schuyler County District Attorney. The Tompkins ACP also hired a part-time Administrative Assistant, Patricia Halstead, to work in Schuyler County. Ms. Halstead very quickly organized the intake procedure while maintaining accurate data about the cases.

In the four and half month period between April 1, 2016 and August 15, 2016, the regional ACP assigned 59 criminal cases to panel attorneys. The program was put to the test in early May 2016 with the arrest of 25 alleged drug co-conspirators in Schuyler County. The regional ACP was able to handle this unanticipated volume of cases and within one day, was able to obtain the 25 attorneys needed to represent these co-defendants. The regional ACP has approximately 30 participating attorneys, and ensures that Schuyler County has sufficient well-qualified attorneys who have the time and resources needed to handle the conflict cases arising in Schuyler County. The regional ACP also provides the training, oversight, and supervision necessary for attorneys handling assigned cases.

Lance Salisbury reports that he sees three indicators of improved criminal defense quality since Schuyler and Tompkins Counties regionalized the ACP. First, Schuyler County judges are now considering and reviewing written applications for eligible defendants to participate in Judicial Diversion pursuant to Criminal Procedure Law Article 216. Previously, judges would not consider applications for diversion unless the District Attorney consented, even though Article 216 makes it clear that District Attorney's consent is not required. Second, the panel attorneys have successfully fought for compliance with the Criminal Procedure Law in pre-indictment handling of felony and misdemeanor cases, and attorneys are often challenging judicial denials of preliminary hearings. Third, the attorneys are having success in arguing for pre-trial release or a lower bail, resulting in more defendants being released while their criminal case is pending.

Based on discussions with the regional assigned counsel program, we anticipate the continued success of this regionalization initiative.

SUFFOLK COUNTY

Suffolk County was allocated \$1,116,618 of the Settlement's \$2 million in funding to improve the quality of indigent criminal defense representation. Suffolk County has two providers of mandated representation: the Legal Aid Society of Suffolk County (LAS), which employs approximately 151 employees in three different offices; and the Suffolk County Assigned Counsel Program (ACP), which handles conflict cases and all homicides, and includes a panel of almost 200 attorneys. After lengthy discussion about the respective needs of each provider (detailed more fully in the 2015 Quality Plan), it was agreed that the ACP should be allocated \$424,047 and the LAS was allocated \$692,571 of the funding.

In terms of both geography and population, Suffolk County is the largest of the five *Hurrell-Harring* counties. There are approximately 1.5 million residents of the county and it encompasses an area of 912 square miles. In 2015, a combined total of 35,722 criminal cases were referred to Suffolk County's providers of mandated representation.

1) Assigned Counsel Program

Professionalizing Suffolk County's ACP and providing the program with more resources was identified as one of Suffolk County's most pressing criminal defense quality improvement needs. The ACP is currently administered by David Besso, an experienced criminal defense attorney, out of his private office. Mr. Besso essentially works for free, devoting all of the county funding for the program to paying part-time staff. One of these staff persons, Stephanie McCall, handles the growing administrative responsibilities of the program. Notably, the ACP does not have its own payroll, and as a result, ACP staff are technically sub-contractors. This has resulted in ACP staff being paid irregularly, as they must submit vouchers to the County and have these vouchers processed before they are paid.

As outlined in the 2015 Quality Plan, the ACP's \$424,047 of the Settlement's quality funding is to be used for professionalizing and better supporting the ACP as follows:

- hiring an experienced, quality attorney as a full-time Assigned Counsel Program Administrator
- elevating Ms. McCall's current administrative position to that of a full-time Deputy Administrator
- contracting with a part-time Grants Coordinator
- securing space
- purchasing the necessary equipment to start-up and run a professional office

In addition to the above, professionalizing the program necessitates updating the Suffolk County Assigned Counsel Plan, which was first written in 1965 and has not been substantively updated since.

The County received the *Hurrell-Harring* Quality contract from ILS in April 2016. However, it has taken several months for the County and the ACP to finalize the ACP's subservient contract and for the County to complete an advance-payment procedure so that ACP could obtain the advance payments needed to begin its quality initiatives. In the meantime, the ACP began the process of professionalizing by incorporating with New York State; in addition, the program is currently in the process of applying for non-profit status. It is hoped that by incorporating, the ACP will be able to have its own payroll so that staff are no longer contract employees, and can instead be payroll employees who are paid regularly and provided benefits, including health insurance, sick-time, and vacation time.

Working with the Suffolk County Bar Association and the Suffolk County Criminal Bar Association, the ACP also established a hiring committee for the full-time Assigned Counsel Program Administrator. This Committee includes the following members: Mr. Besso; Donna England (representing the Suffolk Bar Association); Steve Bellini (representing the Suffolk Criminal Bar Association); Tony LaPinta (an experienced and respected criminal practitioner); and Laura Golightly (an experienced and respected family court practitioner). The Committee encountered a barrier to hiring, however, when interested attorneys expressed concerns about the stability of the funding for the position. Mr. Besso and the Committee decided to hold an informational meeting to address these concerns. In August 2016, the ACP put a notice in the *Suffolk Lawyer* and the *New York Law Journal* about this new position, inviting interested attorneys to an information meeting on September 21, 2016. ILS and Mr. Besso presented at this meeting, which was attended by approximately 15 interested attorneys. During this meeting, Mr. Besso described the position and ILS assured prospective applicants about the stability of the funding. The Committee will formally post the position in November 2016, and then more formally begin the search process. Mr. Besso reports that, even prior to the formal posting, the ACP has already begun receiving applications.

In the meantime, the ACP has formally elevated Ms. McCall to the position of Deputy Administrator. Ms. McCall has already proven to be invaluable to the on-going running of the program while simultaneously taking the steps needed to professionalize it.

The ACP has also identified space for the program, and is currently working with the landlord regarding the terms of the lease. This space is located near the Cohalan Court Complex in

Central Islip. Ms. McCall has also begun the process of searching for vendors and pricing out necessary office equipment.

With ILS' support, Mr. Besso has decided to delay hiring a part-time Grants Coordinator until space is secured and the ACP Administrator is hired. Once the new full-time Administrator is hired, quality improvement money will be used to contract with Mr. Besso to provide two critical services: 1) assist the Administrator in mentoring attorneys; and 2) consult with the new Assigned Counsel Program Administrator about the running of the program.

2) Legal Aid Society

The remainder of Suffolk County's quality funding - \$424,047 - was allocated to the LAS to focus on four areas: 1) retention of quality attorneys; 2) quality control; 3) training; and 4) access to non-attorney supports, including investigators, interpreters, experts, social workers, and sentencing advocates.

As previously stated, the County received the *Hurrell-Harring* Quality contract from ILS in April 2016, but it took several months for the County and LAS to finalize LAS' subservient contract and for the County to complete an advance-payment procedure so that LAS could obtain the advance payments it desired to begin its quality initiatives. It is ILS' understanding that the LAS received an advance payment the week of October 24, 2016. In the meantime, and to ensure that LAS could start spending the money immediately upon its receipt, the LAS took the following steps with regard to each component of its Quality Plan:

Retention Fund (\$240,000): As stated in the Quality Plan, the LAS has lost several mid-level experienced attorneys since the County stopped funding pensions for LAS staff. The retention fund will be used to provide one-time bonuses to retain staff who have demonstrated a high level of commitment to quality defense. Laurette Mulry, Chief Attorney-in-Charge of the Legal Aid Society, has worked with the LAS Bureau Chiefs to develop written criteria and procedures for identifying attorneys to receive these bonuses. The criteria include an assessment of: litigation skills; negotiation and sentencing advocacy skills; mastery of substantive law; mastery of procedural and evidentiary law; research and writing skills; case assessment, preparation and strategy; client relations; accountability and contribution to a positive office culture; and other intangibles (such as morale and willingness to go above and beyond). The procedures provide for a comprehensive assessment of staff, and distribution of funds based on this assessment.

Quality Control Supervisors (\$150,000): The LAS realizes the importance of supervising the quality of staff attorney work, and LAS has already used ILS non-competitive distribution funding to contract with a retired, highly-respected LAS attorney to provide quality control oversight of the LAS felony-bureau. Because this model has worked well, this component of the Quality Plan will replicate it. The LAS has already identified three former LAS attorneys to serve as additional quality control supervisors on a part-time, contract basis.

Training (\$52,571): The LAS has developed a list of trainings and potential presenters to begin a more systematic training curriculum and continuing legal education program for its attorneys. The LAS identified fourteen initial topics for training with over eighteen potential presenters.

Online Legal Research (\$50,000): The LAS has negotiated a contract with LexisNexis to ensure that all staff attorneys will now have access to this on-line research program so that they can conduct the legal research necessary for their cases.

Non-attorney supports (\$50,000 for experts, \$80,000 for investigator services, \$50,000 for social worker services, and \$20,000 for interpreter services): LAS has already developed a plan for using the funding available for non-attorney supports. With regard to the funding for experts, the LAS canvassed their staff attorneys, supervisors, and Bureau Chiefs to develop a list of experts who are qualified and experienced in relevant areas. The LAS intends that these experts can be used not only for the purpose of testifying, but also to consult on cases early on to guide the defense. The DWI attorneys in particular compiled an extensive list of experts throughout the county who can serve as a resource for the attorneys. With regard to investigators, the LAS currently has four investigators in its District Court Bureau in Central Islip. Given that the bulk of the LAS caseload comes through the District Court, LAS has decided to hire a supervising investigator to manage this unit. For social work and case management services, LAS plans to use the allocated funds for a supervising social worker, whom they have already identified. This person has social work supervision certification and therefore will be able to officially supervise the social work staff. Finally, LAS will use the monies allocated for interpreter services to contract with several agencies to provide interpreting services for clients. Given the fact that there are six main languages spoken in Suffolk County in addition to the various other languages that may arise from time to time, the LAS requires the flexibility to contract with different agencies depending on the language services needed.

WASHINGTON COUNTY

Washington County was allocated \$92,624 of the Settlement's quality improvement money. The County's primary provider of mandated services is its Public Defender Office. For years, this Office included a full-time Public Defender, Michael Mercure, and all part-time staff attorneys, which made it challenging for Mr. Mercure to supervise his staff attorneys and create a culture of quality. In September 2015, the County took steps to address this problem by using ILS non-competitive distribution funding to transition three of the Office's seven part-time staff attorneys to full-time status.

Similarly, in September 2015, the County still did not have an Assigned Counsel Program. Instead, conflicts were handled by attorneys on an informal assigned counsel list which was administered by Marie DeCarlo-Drost, the Public Defender's secretary. There were no criteria to be on the list, and no formal assigned counsel program existed. As with the Public Defender Office, the County began the process of professionalizing the ACP by selecting Ms. DeCarlo-Drost as ACP Administrator, and physically moving her out of the Public Defender Office and into an ACP office. ILS non-competitive distribution funding will be used to pay the costs of equipment, furniture, etc.

The Settlement's quality money is being used to further the steps the County has initiated to professionalize both programs.

1) Public Defender Office

It was decided that the Public Defender Office would receive \$48,124 of the Settlement's quality money to hire a full-time Administrative Assistant to manage the Office's administrative functions and better support the staff attorneys. This Administrative Assistant, Lisa Ringer, started her position in a part-time capacity on February 25, 2016 and was promoted to full time on April 18, 2016. Mr. Mercure reports that her work has been invaluable. For example, Ms. Ringer is tracking all the statistics for the Office's counsel at arraignment programs, which frees up Mr. Mercure's time for other matters. Additionally, Ms. Ringer provides clerical support for two of the Office's staff attorneys.

In 2015, Mr. Mercure's office had only one administrative assistant and previous to that, his office had no administrative assistants. Now the Office has three full-time administrative assistants, who are quite busy with the Office's increased administrative work and with the responsibility of providing non-legal, clerical support to the Office's attorneys. Mr. Mercure reports that having this administrative staff has made a significant difference. For example, just a year ago, clients would have to leave a message when they called the Office because there was not enough staff to answer the phones. Now there is always a person responsible for answering the phone during business hours, and client calls are answered. This in-person contact for clients allows issues to be addressed in a timely matter. Mr. Mercure reports that with this support, his Office is already serving clients better. Still, he believes his staff attorneys could use more clerical support.

2) Assigned Counsel Program

The 2015 Quality Plan provides that Washington County will use \$44,500 of the Settlement's quality funding to further the steps already taken to professionalize its Assigned Counsel Program. Of this money, \$27,500 was used to hire an administrative assistant, Patricia Connors, to help Ms. DeCarlo-Drost with clerical and data-entry tasks. The rest of the ACP's quality funding - \$17,000 - was allocated to contract with an experienced criminal defense attorney to supervise and support the ACP panel attorneys. However, after the Quality Plan was completed the County decided, with the support of ILS, to use caseload relief money to enhance the salary to \$55,000. Doing so allowed the County to create a part-time, twenty-five hours per week position - not just a contract position. ILS assisted the County in developing a job description and posting for the position. The County posted the position in June 2016, and received applications from eight attorneys. With ILS' input, the County decided to interview five of these applicants. On July 22, 2016, the interviews occurred with the County's Board of Supervisors and a representative from ILS. After the interviews, the Board of Supervisors and ILS agreed that Thomas Cioffi, one of the Public Defender Office's part-time attorneys, was the strongest applicant. The Board offered him the position, and he immediately accepted. He resigned his position with the Public Defender Office, and assumed the position of ACP Supervising Attorney on August 22, 2016.

Mr. Cioffi immediately began working to confront many of the issues facing the ACP. The current list of attorneys who accept assignments consists of twenty-three attorneys who handle criminal matters and sixteen attorneys who handle family court matters, with many of these attorneys handling both. Mr. Cioffi has begun reaching out to all the judges and meeting with

them to explain that he is now the point of contact for issues that may arise with assigned cases. Indeed, several justices had concerns about panel attorneys, and now there is a supervisor who can address these concerns. Additionally, since Mr. Cioffi knows the attorneys on the list, he has begun making the assignments to ensure that the attorneys have the qualifications necessary to handle the types of cases assigned to them. Mr. Cioffi has also started to recruit new members to the panel who have more experience in criminal defense and can handle more serious felony offenses. He has also been overseeing the implementation of the new assigned counsel Eligibility Criteria and Procedures to ensure that defendants who cannot afford an attorney are provided with one. Finally, Mr. Cioffi has met with ILS on several occasions to discuss how to formalize the ACP and brainstorm about priorities. With ILS' assistance, Mr. Cioffi will draft a formal plan for the ACP.

The foregoing details steps the five *Hurrell-Harring* counties have taken to implement the 2015 Quality Plan. The next section describes ILS' work with the *Hurrell-Harring* providers to build capacity to better measure the quality of representation.

II. IMPROVING CAPACITY TO MEASURE QUALITY: DATA COLLECTION, MAINTENANCE, AND REPORTING

ILS recognizes the importance of working with the *Hurrell-Harring* providers to build their capacity to better measure quality and to answer critical questions contained in the Settlement. Doing so, of course, means that we must assist providers in building their capacity to collect, maintain, and report on relevant data. Better data collection, maintenance, and reporting can also inform and improve the daily practices of providers. This is why the *Hurrell-Harring* team includes two highly qualified researchers with expertise in criminal justice issues. Below, we describe the *Hurrell-Harring* team's work with providers to improve their capacity to collect maintain, and report data and information.

Overview of ILS' work to improve data collection/maintenance/reporting

ILS distributed the Settlement's Quality funding to the counties through contracts that included a work plan. For each contract, the work plan requires, among other things, that providers collect and report data regarding the quality of representation being provided. To accomplish this task, providers must consult with ILS to "develop a plan for attorneys to complete a quality survey upon completion of the case.... This plan will also identify the means by which the raw data from the surveys will be conveyed to ILS." To meet this obligation, the *Hurrell-Harring* team developed Case Closing Forms¹⁰ to systematically collect information on various quality indicators as evidenced by an attorney's representation practices during individual cases. Designed as a checklist, the Case Closing Forms ask attorneys to record whether they performed

¹⁰ Three Case Closing Forms have been created. The General Case Closing Form will be utilized by all providers who represent clients in felony, misdemeanor, and violation level offenses. The Hiscock Legal Aid Society represents clients in parole revocation and appeal cases only. Therefore, this provider will use the other two forms – the Appellate Case Closing Form and the Parole Revocation Case Closing Form. These Case Closing Forms are attached as Exhibit B.

specific tasks while working a case, such as using investigator services or filing various motions, and to also summarize the amount of time spent with their clients in person and otherwise. While every case will not require an attorney to perform each listed task, as a whole the Case Closing Forms reinforce the tenets of quality representation that are promoted within the *Hurrell-Harring* Settlement itself.

In furtherance of the Plan's data collection requirements, ILS' two Senior Research Associates visited each of the eleven providers in the *Hurrell-Harring* counties with two overlapping objectives: 1) to better understand each provider's existing data collection, maintenance, and reporting practices; and 2) to work with the providers to develop a strategy for collecting information on public defense practices utilizing the newly created Case Closing Forms.

In assessing each provider's data collection and maintenance practices, the ILS researchers diagrammed how case-related information is recorded and then brought back to the office for entry into their case management system. These conversations were very informative and provided critical understanding of defender practices at each stage of a criminal case. ILS' researchers also learned exactly which provider staff members perform data entry (e.g., only administrative staff, some/all attorneys, or a combination thereof) and what specific resources each program would need to increase their data collection capacity, such as additional software licenses, more advanced data entry training, more staff, etc.

Notably, the providers in four *Hurrell-Harring* counties (Ontario, Schuyler, Suffolk, and Washington) all use the New York State Defender Association's (NYSDA's) Public Defense Case Management System (PDCMS) as their primary case management and data collection system.¹¹ As a result of our meetings with these providers, the ILS researchers adopted the role of liaison between the providers and NYSDA to both convey provider concerns about their use of PDCMS and to work with NYSDA to integrate new data collection documents into PDCMS based on the feedback we received from the providers.

ILS met with NYSDA staff on several occasions to discuss the general Case Closing Form and develop the best possible plan to facilitate data entry of the completed forms into PDCMS. NYSDA also created a "canned report"¹² that formats the data for the providers so that they can submit it in aggregate form to ILS on a quarterly basis as agreed.

In the following section, we outline each provider's current data collection and maintenance practices, the agreed upon strategy for completing the Case Closing Forms (CCF), and the process for transmitting the data to ILS. Providers have agreed to submit quarterly reports so that ILS can more closely monitor data collection and data entry at the start of this new project.

¹¹ As discussed further in this report, the Tompkins County ACP is currently searching for a case management/data collection system. The Onondaga ACP uses ACPeep, and Hiscock Legal Aid Society uses LegalServer.

¹² NYSDA has developed a number of standardized reports, known as "canned reports," within PDCMS to meet the needs of providers across the state. To create these reports, PDCMS users click on a drop down menu called "Reports." Therefore, we use this terminology because it is well-known lingo amongst the providers.

ONONDAGA COUNTY

Onondaga County Bar Association Assigned Counsel Program, Inc.

1. Data Collection and Maintenance

The Onondaga County Assigned Counsel Program (ACP) uses ACPEEper as its case management and data collection system. Initial client information is collected by the assigned attorney on the hard copy application for assigned counsel, commonly called the “Blue Form.” The completed “Blue Form” is returned to the ACP where the case and client information is entered into ACPEEper. Attorneys can then access ACPEEper to update case information as needed. Following the disposition of the case, the attorney submits a payment voucher to the ACP and the case is closed in ACPEEper.

Attorneys collect summary data on all arraignment appearances using special arraignment vouchers, one each for: Syracuse City and Traffic Court arraignments; regularly scheduled sessions of the justice courts; and off-hour justice court arraignments. However, much of the information collected on the arraignment vouchers is not entered into ACPEEper and is instead only kept in the aggregate in Excel spreadsheets.

While Ms. Captor and her staff enter a large amount of case level data into ACPEEper, Ms. Captor has expressed difficulty in providing requested reports and information. In the past, she has stated that requests for specific data must be forwarded to a computer programmer she has on contract, and there is a cost attached to making that request. This has also resulted in delays in obtaining the requested information. Based on our conversations and experience with Ms. Captor, it is unclear whether the difficulty in providing reports is the result of ACPEEper not being used to its full capacity or a lack of training on the part of ACP staff. Moving forward, ILS researchers will work with ACP staff to ensure their proficiency with ACPEEper and the capability to meet future data requests in a timely manner. The ILS researchers will also identify data that is currently being collected but not entered into ACPEEper and develop a protocol for the ACP to start entering and reporting that data.

Additionally, at times Ms. Captor has told ILS that she does not have the information requested because attorneys are not consistently collecting it – that is, some information is consistently left blank. It seems that in such situations, Ms. Captor has not taken steps to monitor and address this issue with the panel attorneys. This problem is related to the lack of training and supervision of panel attorneys, which is discussed in the previous Section of this report. As ILS works with the ACP to enhance training, supervision, and support of attorneys, we will be mindful that this includes better training and supervision on data collection.

2. Case Closing Form Strategy

For several reasons, ILS decided to begin the CCF data collection initiative by first focusing on the attorneys participating in the Mentor Program. As such, all of the participating mentees and the mentors who are panel attorneys will be required to complete a CCF for every felony, misdemeanor, and violation level case closed on or after November 1, 2016. Mentees were

introduced to the CCF at a Mentor/Mentee training in June 2016. Mentees will have the option of using a hard copy or fillable PDF version of the CCF. The forms will be submitted to the ACP's Quality Coordinator, Alex Doney, who will then record the data in an Excel spreadsheet. The data will be submitted to ILS in aggregate form on a quarterly basis with the first report for November and December 2016 due February 1, 2017. ILS will work with the ACP on developing a process to expand use of the CCF to all panel attorneys who do criminal work.

Frank H. Hiscock Legal Aid Society

1. Data Collection and Maintenance

The Hiscock Legal Aid Society (Hiscock) uses a custom version of LegalServer, designed by their Technology Manager, Darrin Lawson, for case management and data collection in their Appeals and Parole Revocation units. LegalServer is the only data collection software used by Hiscock. LegalServer allows Hiscock staff to enter all pertinent case information and scan all case related documents into the individual case files once the case is assigned to Hiscock. Both administrative staff and attorneys have access to LegalServer. In fact, information can be entered directly into a case file's notes field via email. As a quality control measure, administrative staff double check and verify that all information has been properly entered whenever attorneys update the note field and before a case is closed in LegalServer.

After extensive conversations with Hiscock staff, ILS researchers are confident in staff's ability to collect, enter, and report requested data. Furthermore, with a two-person technology team on-site, Hiscock has the ability to incorporate new data fields directly into LegalServer as needed.

2. Case Closing Form Strategy

All Hiscock attorneys will complete a CCF for every appellate and parole revocation case completed on or after November 1, 2016. Mr. Lawson has recreated both CCFs in LegalServer, which allows attorneys to enter the required data directly into the system. ILS researchers are working with Mr. Lawson to create a format for reporting the aggregate data to ILS on a quarterly basis with the first report for November and December 2016 due February 1, 2017. ILS has relied heavily on Mr. Lawson to program and test these forms in LegalServer and we are grateful for his assistance in this endeavor.

ONTARIO COUNTY

Ontario County Public Defender

1. Data Collection and Maintenance

The Ontario County Public Defender Office uses NYSDA's PDCMS for case management and data collection. The Office has three office staff members who enter data into PDCMS. In addition, counsel at arraignment data is maintained in Excel spreadsheets: Off-Hour Arraignments and Missed Arraignments. Finally, much of the case information is also kept by attorneys in the hard copy case file. The Public Defender Office scans all case related documents

(e.g., motions, court notices) into PDCMS and has done so for several years. As with other providers, the Public Defender Office consistently enters data on cases when they are opened and when closed, but does not routinely enter data on all events occurring during the pendency of the case.

2. Case Closing Form Strategy

All attorneys will complete the general CCF for all felony, misdemeanor, and violation level cases closed on or after November 1, 2016. Attorneys will give the completed CCF to the designated administrative staff who will then enter the data into PDCMS as part of their existing case closing procedures. The Ontario County Public Defender Office will submit the aggregate data in the CCF canned report as a PDF to ILS on a quarterly basis with the first report for November and December 2016 due February 1, 2017.

Ontario County Conflict Defender and Assigned Counsel Plan

1. Data Collection and Maintenance

Like the Public Defender Office, the Ontario County Conflict Defender Office and the Assigned Counsel Program use PDCMS for case management and data collection. Administrative Assistant, Lisa Phillips, enters and maintains data in PDCMS for both programs. The two programs have been using PDCMS for less than two full years and therefore, Ms. Phillips is still learning the system. Furthermore, case information from the ACP must first be entered into the county-based financial vouchering system before Ms. Phillips then re-enters the pertinent case information into PDCMS. This somewhat overlapping data entry process creates added work for her while also limiting the amount of time she has available to increase her expertise in PDCMS. This duplication of data entry must be taken into consideration when making future changes to data collection practices, as Ms. Phillips must redesign the ACP voucher for the panel attorneys to collect the data, update forms for the Conflict Defender, and also enter the new data into PDCMS for the Conflict Defender and the assigned counsel panel attorneys.

2. Case Closing Form Strategy

The Ontario County Conflict Defender Office's two attorneys will complete the general CCF for all felony, misdemeanor, and violation level cases closed on or after November 1, 2016. The attorneys will give the completed CCF to Ms. Phillips who will then enter the data into PDCMS. The Ontario County Conflict Defender will submit the aggregate data in the CCF canned report as a PDF to ILS on a quarterly basis with the first report for November and December 2016 due February 1, 2017.

All Ontario County ACP panel attorneys will complete the general CCF for all felony, misdemeanor, and violation level cases closed on or after November 1, 2016. Assigned Counsel Administrator Andrea Schoeneman and mentor Robert Zimmerman introduced the CCF to the panel attorneys at a meeting on June 17, 2016. A fillable PDF version of the CCF will be provided to the panel attorneys who will complete and return the CCF by email or mail to the ACP. Ms. Phillips will then enter the data into PDCMS. The Ontario ACP will submit the

aggregate data in the CCF canned report as a PDF to ILS on a quarterly basis with the first report for November and December 2016 due February 1, 2017.

SCHUYLER COUNTY

Schuyler County Public Defender

1. Data Collection and Maintenance

The Schuyler Public Defender Office uses NYSDA's PDCMS for case management and data collection. All three Schuyler County Public Defender Office attorneys as well as Office Assistant Lisa Orr can and do enter data into PDCMS. However, Ms. Orr is solely responsible for opening new cases and closing cases in PDCMS. The attorneys keep the hard copy of the case file and records information therein until the case is disposed. Therefore, it is up to the individual attorney to enter specific information into PDCMS for events that occur throughout the adjudication process. The hard copy case file is handed off to Ms. Orr following disposition, and she double checks that all pertinent information has been entered before closing the case in PDCMS.

Since Schuyler County has an individual Settlement Agreement with the Plaintiffs, the Public Defender Office is required to keep specific information on counsel at arraignment cases. As such, the Office has developed a separate Excel spreadsheet to record information on both arraignments covered by the Office's attorneys and those missed.

Given that there are only three attorneys in the Public Defender Office, it is a more straightforward process to implement new data collection requirements and thus far, the Office has worked collaboratively with ILS to do so. However, with such a small staff, all requests for additional information must be considered in terms of having only one Administrative Assistant available to modify forms, and in some instances, collect and enter the new data if the attorneys themselves are not able to do so.

2. Case Closing Form Strategy

All attorneys will complete the general CCF for all felony, misdemeanor, and violation level cases closed on or after November 1, 2016. Attorneys will give the completed CCF to the Administrative Assistant who will then enter the data into PDCMS. The Schuyler County Public Defender Office will submit the aggregate data in the CCF canned report as a PDF to ILS on a quarterly basis with the first report for November and December 2016 due February 1, 2017.

Schuyler County/Tompkins County Regional Assigned Counsel Plan

1. Data Collection and Maintenance

As previously stated, Schuyler County and Tompkins County entered into an inter-municipal agreement such that the Tompkins County Assigned Counsel Plan (ACP) now provides assigned counsel services when the Schuyler County Public Defender's Office is unable to provide

representation. This agreement requires the Tompkins ACP to collect data related to Schuyler County cases as required under the Settlement, including information on both eligibility and case data for all felony, misdemeanor, and violation level cases handled. At present, the Tompkins ACP does not have a case management system and instead collects case level data from attorney submitted vouchers in Excel spreadsheets. The ACP provided ILS with a spreadsheet of cases assigned to date by case type. At present, the ACP is researching several case management systems but has not yet selected a vendor. In the interim, the ACP Administrator has agreed to work with ILS to develop data collection protocols that will capture all requested information, starting with the strategy to complete the CCF.

2. Case Closing Form Strategy

All Tompkins County ACP panel attorneys representing clients in Schuyler County will complete the general CCF for all felony, misdemeanor, and violation level cases closed on or after November 1, 2016. A fillable PDF version of the CCF will be provided to the attorneys who will complete and return the CCF by email or mail to the ACP. The Administrative Assistant will then enter the data into an Excel spreadsheet. The Tompkins ACP will submit the aggregate data from the completed CCF to ILS on a quarterly basis with the first report for November and December 2016 due February 1, 2017.

SUFFOLK COUNTY

Suffolk County Legal Aid Society

1. Data Collection and Maintenance

Suffolk County Legal Aid Society (LAS) uses NYSDA's PDCMS for case management and data collection. The LAS has thirteen administrative staff who enter data into PDCMS. A physical file folder is created for each case. LAS attorneys take the folder with them to the court date and, at the end of the day, they return them to the administrative assistants who, in turn, enter the data into PDCMS. Data thus is entered on a daily basis and there is a procedure in place to verify that it is done correctly.¹³

Suffolk LAS attorneys appearing in various arraignment parts record case data on the pre-printed case file folder with that data then entered into PDCMS. ILS worked extensively with LAS staff to make certain the new arraignment outcome data were included in the recent file folder redesign.

The LAS has a weeklong in-house training program for all new administrative assistants to thoroughly prepare them for the high level of data entry required in such a large office. Additionally, the LAS works closely with NYSDA to develop system customization to respond to their evolving needs for data analysis.

¹³ With such a large number of disposed cases (more than 30,000 per year) and several different staff involved in data entry, quality control is an imperative. LAS's Office Manager, MaryRose Heatherington, conducts routine quality control checks to ensure consistency across the office.

LAS staff willingly worked with ILS to develop more extensive data collection and reporting practices. In fact, Office Manager MaryRose Heatherington wants to require more complete data entry by both social workers and investigators and to more closely monitor what information these professionals are entering in PDCMS. However, with such a large number of attorneys and a dedicated unit of data entry staff, any requests for additional data must take into account the large scale training needs for both attorneys and data entry staff.

2. Case Closing Form Strategy

Given the large number of cases closed by the LAS each year (typically in excess of 30,000), requiring the completion of CCFs by all attorneys in all trial level cases at this time would be untenable. It was therefore decided that all attorneys representing clients in the East End Town and Village Courts, and the County Court will complete the general CCF for all felony, misdemeanor, and violation level cases closed on or after November 1, 2016. Attorneys will give the completed CCF to the administrative staff who will then enter the data into PDCMS. The LAS will submit the aggregate data in the CCF canned report as a PDF to ILS on a quarterly basis with the first report for November and December 2016 due February 1, 2017. Moving forward, ILS will work with the Suffolk LAS to expand CCF strategy to include those attorneys practicing in District Court and the West End Village Courts.

Suffolk County Assigned Counsel Plan

1. Data Collection and Maintenance

Like the LAS, the Suffolk County Assigned Counsel Plan (ACP) uses NYSDA's PDCMS for case management and data collection. The ACP currently has only two staff members entering data from all panel attorneys into PDCMS. Staff must also enter data into a vouchering system to process attorney payments. As soon as a case comes to the ACP, Deputy ACP Administrator Stephanie McCall opens the case in PDCMS. When the case is disposed, the attorney returns the voucher to the ACP and staff then enters relevant case events, including case disposition information, into PDCMS before closing the case.

The ACP uses the CAFA Attorney form for counsel at arraignment cases and enters all arraignment data into PDCMS. In fact, the Suffolk ACP is the only program using the current Counsel at First Appearance canned report in PDCMS.

The ACP recently redesigned their website making the majority of their required forms available for download. This will greatly facilitate the completion of the CCF. Additionally, Ms. McCall has expressed her willingness to modify the vouchers in any way needed to collect new data for entry into PDCMS. However, with such limited administrative staff and such a large number of panel attorneys, any changes to the voucher must take into consideration the time needed to modify the forms and to train the attorneys.

2. Case Closing Form Strategy

All panel attorneys assigned to cases initially charged at the felony level will complete the general CCF for felony cases closed on or after November 1, 2016. A fillable PDF version of the CCF, available for download on the ACP's website, will be completed and returned by email or mail to the ACP. Administrative staff will then enter the data into PDCMS. The ACP will submit the aggregate data in the CCF canned report as a PDF to ILS on a quarterly basis with the first report for November and December 2016 due February 1, 2017. Moving forward, ILS will work with the ACP to expand the CCF strategy to include those attorneys assigned to cases initially charged at the misdemeanor and violation levels.

WASHINGTON COUNTY

Washington County Public Defender Office

1. Data Collection and Maintenance

The Washington County Public Defender Office uses NYSDA's PDCMS for case management and data collection. The Office plans to increase its use of PDCMS by all of its attorneys over the next year. At present, only the administrative staff have the ability to enter data into PDCMS, and it is used primarily to enter initial case data for all cases assigned to the Office. However, no information on any activities or events that occur prior to case disposition are entered into PDCMS, nor is the case closed in PDCMS once it is disposed in court. Instead, the attorneys rely solely on their hard copy case files. Mike Mercure plans to obtain additional PDCMS licenses for all of the attorneys in the office so they can each enter their own case file data into PDCMS.

Data on counsel at arraignment is currently being entered in various Excel spreadsheets. It should be noted that administrative staff has worked very hard to capture all of the recorded data, even collaborating with ILS Researchers to make sure all data on covered and missed arraignments is being entered correctly. Mr. Mercure has expressed his willingness to work with ILS to collect additional information as needed and to increase his office's overall use of and proficiency in PDCMS.

2. Case Closing Form Strategy

Mr. Mercure was provided with a draft copy of the CCF at one of the initial meetings and was impressed with the design of the document and thought it would be a great checklist for all his attorneys. As such, he started to require CCF completion from all of his attorneys prior to the planned implementation date. All of the completed forms have been kept exclusively as hard copies thus far.

All attorneys will continue to complete the general CCF for all felony, misdemeanor, and violation level cases closed. Attorneys will give the completed CCF to the administrative staff who will then enter the data into PDCMS for cases closed on or after November 1, 2016. The Washington County Public Defender will submit the aggregate data in the CCF canned report as a PDF to ILS on a quarterly basis with the first report for November and December 2016 due February 1, 2017.

Washington County Assigned Counsel Plan

1. Data Collection and Maintenance

The Washington County Assigned Counsel Plan (ACP) uses NYSDA's PDCMS for case management and data collection. The ACP currently has two administrative staff members entering data into PDCMS for all panel attorneys. The ACP also has a separate vouchering process that requires overlapping data entry between that system and PDCMS. The ACP performs the eligibility screening for all individuals applying for assigned counsel in the county, however, they are not the primary provider. Therefore, case information is first entered into PDCMS when the defendant completes the Application for Assigned Counsel. If found eligible and then assigned to the Public Defender Office, the case is closed in PDCMS with disposition code "Assigned to PD." If the case is returned to the ACP due to a conflict, the case is reopened in PDCMS and assigned to a panel attorney. The initial eligibility packet is then forwarded to the assigned panel attorney. When the case is disposed, the panel attorney submits the payment voucher to the ACP and the ACP staff use that voucher to enter all relevant case disposition data (e.g., charges, sentence, disposition date, etc.) into PDCMS.

The ACP staff are willing to work with ILS to collect additional information as needed, and the appointment of the new Supervising Attorney facilitated that work. However, as an ACP, any requests for additional information may need to be included in the voucher, which will require the form to be updated by the administrative staff and panel attorneys to be trained on its use. This needs to be taken into consideration moving forward.

2. Case Closing Form Strategy

All panel attorneys will complete the general CCF for all felony, misdemeanor, and violation level cases closed on or after November 1, 2016. A fillable PDF version or hard copy of the CCF will be provided to the attorneys who will complete and return the CCF by email or mail to the ACP. Administrative staff will then enter the data into PDCMS. The Washington ACP will submit the aggregate data in the CCF canned report as a PDF to ILS on a quarterly basis with the first report for November and December 2016 due February 1, 2017.

III. ASSESSMENT OF QUALITY OF REPRESENTATION: COURT OBSERVATIONS AND ATTORNEY INTERVIEWS

Data collection, maintenance, and reporting provides important quantitative information about the quality of representation, but this quantitative information is just part of the picture. Additional qualitative information is necessary to complete the picture. There are several sources of qualitative information; two key sources are observing attorneys and interviewing them. This next section describes ILS' preliminary steps to assess the quality of representation in the five *Hurrell-Harring* counties through court observations and attorney interviews.

A. Court Observations

As one means to gain a better understanding of the quality of representation in the five *Hurrell-Harring* counties, ILS initiated the process of conducting court observations. For this first iteration of court observations, we decided to focus on regularly scheduled court calendars of the justice, city and district courts. For future reports, we will include the special sessions of these lower courts (during which hearings and trials are scheduled), as well as county court sessions.

i. Observation Instruments and Protocol for Court Selection

We began by developing standardized court observation instruments. The instruments have undergone multiple iterations based on in-court use by the *Hurrell-Harring* attorneys. The final instruments and accompanying instructions are attached (Exhibit A). The instruments are organized in two parts, one quantitative and another qualitative in nature:

- 1) Quantitative: We developed different forms to be used for the following types of court appearances: arraignments, pleas, adjournments, and sentencing. Each form is a structured questionnaire designed to document key indicators of attorney behavior in relation to these four types of court appearances.
- 2) Qualitative: This is an open-ended instrument designed to document general observations on: attorney advocacy, unrepresented defendants, and courtroom atmosphere/environment. The information collected in (1), above, was used to guide the completion of (2), thereby ensuring rigor.

We also collaborated to identify the courts to be observed. Given the large number of courts in the five Settlement counties,¹⁴ we devised a cross-section of representative city, district and justice courts across the five counties for direct observation by the *Hurrell-Harring* attorneys. This strategy guarantees representativeness while maximizing available resources. In designing the sampling strategy, the following parameters were set: all district and city courts were included; and at least 25% of an individual county's justice courts were selected.¹⁵

Most of the courts selected were visited twice during the months of June, July, and August 2016. In total, the five *Hurrell-Harring* attorneys conducted 61 visits, which amounted to 113 hours of court observations. One thousand eighty-six cases were observed, which include 424 arraignments, 144 pleas, 44 sentencing proceedings, and 442 adjournments.

¹⁴ While there are only three city courts and one district court in the *Hurrell-Harring* counties, there are over 100 town and village courts.

¹⁵ The selection of justice courts included any justice court specifically mentioned in the 2015 Counsel at Arraignment Plan; any justice court specifically mentioned in the *Hurrell-Harring Complaint*; and justice courts that were included in the county's original *Counsel at First Appearance Grant* initiative, or where counsel was already being provided at arraignment through other county funding, grant programs, consolidation initiatives, etc. Efforts were made to ensure that the observation schedule resulted in a fair combination of high and low volume courts based on information from the NYS Division of Criminal Justice Services on the number of misdemeanor cases arraigned and disposed in each justice court. If we needed to exceed the 25% parameter to reach a balance of high and low volume courts, we did so on a county-by-county basis.

ii. What ILS Learned from these Court Observations

In early September 2016, the *Hurrell-Harring* team met to review the information collected and to discuss what we learned from the court observations. At the outset, we acknowledged that there were significant limits to any conclusions we could draw from these court observations about the quality of representation. There are three general reasons for this. First, these lower court regular sessions do not include trials, extensive arguments on motions, or hearings. Indeed, as the foregoing data indicates, almost 41% of the cases observed were adjournments. Second, it was often difficult to hear what was being said, and thus, to ascertain what was happening. Third, what we observed was most often just a snapshot of attorney activities on a case. The observations were conducted without access to contextual information, such as the particular facts of the case, the defendant's prior record, whether the attorney had conferred with the client prior to the court appearance, and whether there had been ongoing conversations with the prosecution about the case. Thus, for example, while it might have been tempting to judge an attorney for accepting a quick plea to the top charge, we had no way of knowing the client's prior conviction history, whether there were other pending charges, or if the client had told the attorney that he or she had personal reasons for resolving the case as quickly as possible.

Despite these limitations, the court observations yielded important information. With regard to the counsel at arraignments programs in the five counties, the court observations helped us to identify some problems and gaps. For example, the observations of Onondaga County's Syracuse City Court revealed several instances in which the arraigning attorneys were not standing up for defendants being arraigned. In Washington County, we observed one regularly scheduled DA court session during which there was no staff attorney from the Public Defender Office present. These issues are discussed in the *Update to 2015 Plan to Implement the Counsel at Arraignment Obligations in the Hurrell-Harring v. State of New York Settlement*.

With regard to the quality of representation overall, the following county-specific themes emerged:

Onondaga County: We observed some high-quality ACP attorneys who were clearly well-prepared and zealously represented their clients in court. But the level of preparation and in-court advocacy was inconsistent amongst the panel attorneys. Indeed, because of the inconsistent level of quality amongst panel attorneys, many judges in Onondaga County have created a group of "core attorneys" to whom they assign cases in their court. (The problem with this judicial solution to the lack of consistency is discussed further below). Our observations emphasized the importance and value of the Mentoring Program as a mechanism for enhancing oversight and support. But they also reinforced the reality that the Mentoring Program is not enough, and ILS needs to continue to work with Onondaga County in a concerted effort to develop an infrastructure for on-going supervision, training, evaluation, and certification of ACP panel attorneys.

Ontario County: The quality of preparation and advocacy amongst the Public Defender Office staff attorneys was consistently high. The Office has also engaged in some creative litigation. For example, in one instance, the Public Defender Office filed a writ of habeas

corpus to release a defendant who had been denied counsel at arraignment and detained. This occurred after the court failed to notify the on-call arraignment attorney of the off-hour arraignment. For defendants who were not represented by the Public Defender Office, we had difficulty discerning if the attorneys for these defendants were assigned or retained. Therefore, we are unable to draw conclusions about the Assigned Counsel Program. We did not have an opportunity to observe the Conflict Defender attorneys.

Schuyler County: Because Schuyler is the smallest county, we observed only a few court sessions and therefore, we are unable to draw generalized conclusions about the quality of court advocacy. Overall, we were impressed with the efforts Public Defender Office attorneys made to communicate effectively with their clients. One of the staff attorneys told us that it is often difficult to communicate with clients between court appearances because so many clients are deeply impoverished and lack transportation and working phones. One suggestion may be for the Public Defender Office to explore whether there are ways to use its contract investigator to help facilitate communication.

Suffolk County: We were consistently impressed with the level of preparation and in-court advocacy of the Legal Aid Society staff attorneys. They are clearly well-trained and effectively use mental “check-lists” to ensure that they touch upon all relevant points when advocating. For defendants who were not represented by the Legal Aid Society, we had difficulty discerning if the attorneys of these defendants were assigned or retained. Therefore, we are unable to draw conclusions about the Assigned Counsel Program panel attorneys.

Washington County: It was a challenge to draw conclusions about the quality of representation from our court observations because in Washington County, cases are frequently conferenced off the record, where it appears that most client advocacy occurs. It did seem to us that the Public Defender Office staff attorneys prioritize effective client communication. With regard to assigned counsel attorneys, we observed an instance of an assigned counsel panel attorney failing to appear at a scheduled court session for a defendant who was in-custody. The court was forced to adjourn the case, and commented that this particular attorney had repeatedly failed to appear, resulting in the client’s continued detention. This occurred prior to the hiring of Thomas Cioffi as the ACP Supervising Attorney. In our conversations with him since his hiring, it is clear that he will seek to learn of and remedy this type of deficiency.

In addition to these general observations about each county, in all five counties, we also observed the subtle yet persistent ways in which the justice court system discourages quality representation. Examples of this include the following:

- *Many justice courts lack space for attorneys to have confidential meetings with their clients:* Most town and village justice courts do not have space in which attorneys can confidentially confer with their clients. This creates barriers to client communication and often results in hushed and pressured conversations in the court or in the hallways of the courthouse. In 2015, the Suffolk County Legal Aid Society successfully litigated this issue in Riverhead Town Court, resulting in the court converting a bathroom to a

confidential meeting space. It would take a significant investment of time and resources for this type of litigation to be replicated in all of the justice courts that lack confidential meeting space.¹⁶

- *Courts value efficiency over fairness:* We repeatedly witnessed judges attempting to rush through the court docket, and in so doing, openly discouraging defense attorneys from engaging in actions that take more time, such as asking for an opportunity to confer with a client or fully arguing an issue. We generally observed that well trained and more confident attorneys were best able to resist this pressure. Ongoing training and having an experienced supervising attorney in court would likely be good steps toward addressing this type of systemic issue.
- *The plethora of individual court policies that are of questionable legality:* In all of the five counties, different courts often maintain individual policies that are of questionable legality. For example, in one court we observed, the justices will not accept a guilty plea until the defendant has all of the money needed up-front to pay off the associated fines, fees and surcharges. This results in cases being adjourned repeatedly, significantly delaying resolution of the case and forcing defendants to attend multiple court appearances. In another court, people who plead guilty are told that if they do not pay the associated fines, fees, and surcharges within a specific time frame, they will spend two to three days in jail, regardless of their ability to pay. We also observed one magistrate consistently fail to advise defendants of their right to counsel; instead, he encouraged defendants to “go out to the parking lot to talk to the assistant District Attorney.” If such policies were infrequent, it would be manageable for providers to deal with them. But with so many different policies emerging unexpectedly depending on the whim of the particular judge and in a “whack-a-mole” fashion, it is challenging for even the most vigilant of providers to confront these policies in an effective and systematic manner.
- *The right to assigned counsel is not always honored in lower level cases:* In all five counties, it was not unusual to witness courts failing to honor the right to assigned counsel, and it is apparent that there is ongoing confusion over when a person has the legal right to assigned counsel. This could result from the discrepancy between County Law Article 18-b, and United States Supreme Court precedent, particularly in low-level Vehicle and Traffic cases.¹⁷ Again, having a supervising attorney regularly in court might help to resolve this issue.

Undoubtedly, these are state-wide issues that are not unique to the five *Hurrell-Harring* counties. The infusion of State funding to the five *Hurrell-Harring* counties via the \$2 million in quality funding and the funding for caseload relief will provide an opportunity to develop and implement systemic solutions to many of these problems. More resources for training and supervision, for

¹⁶ Many town and village courtrooms are multi-purpose rooms, making it even more complicated to adapt them to provide confidential meeting space.

¹⁷ This discrepancy is fully explained in ILS’ *Criteria and Procedures for Determining Assigned Counsel Eligibility*, Full Report, at 10-11.

example, can ensure that staff attorneys have the confidence and tools needed to push-back against court practices that elevate efficiency over fairness. More supervisory staff combined with a reduction in caseloads will give providers the time and resources to identify problematic court policies and develop a strategy for confronting these policies in a systemic and effective manner.

iii. Collateral Benefits of Court Observations

The hours of court observations resulted in a significant collateral benefit to the *Hurrell-Harring* team's work. We have spent hours in the courts in the five counties, listening, observing, and talking to defense attorneys, judges, and court staff. As a result, we now have a much better understanding of the daily challenges providers face, ranging from logistical to geographic constraints to local legal culture and practice. This more nuanced understanding has enhanced our ability to effectively work with the providers as thought-partners to identify and develop effective ways to overcome barriers to quality representation.

B. Attorney Interviews

In addition to court observations, we continued our on-going conversations with the supervising attorneys for all of the providers in the five *Hurrell-Harring* counties. Additionally, we initiated the process of interviewing staff attorneys by conducting interviews with at least one attorney in each of the *Hurrell-Harring* counties. Admittedly, this is just the beginning, and over the course of the Settlement, we will be interviewing more attorneys about an array of Settlement related topics.¹⁸ These short interviews were conducted to develop a sense of what individual attorneys consider to be important to improve the quality of defense.¹⁹ Despite the diversity of counties and size of agencies providing services, the following similar themes emerged.

Need for Investigator Support: All of the attorneys interviewed identified the need for more investigation support. Some attorneys have access to staff investigators while others have to seek authorization from a judge to contract with private investigators. Yet, even the attorneys who have investigators on staff expressed their concern that there simply are not enough investigators to meet all of the requests. The attorneys who contract with private investigators expressed concern about being able to find enough qualified and experienced investigators to do the work. Those attorneys also expressed concerns about obtaining an investigator in a timely manner when there are time-sensitive issues.

The Need for Access to Experts: The attorneys interviewed expressed a need for experts at early stages of the case (i.e., consulting experts) as well as at trial (i.e., testifying experts), and consistently said that there is insufficient funding available for experts. The interviewed

¹⁸ ILS interviewed the following attorneys: an Assigned Counsel attorney from Onondaga County, an Assistant Public Defender in Ontario County, an Assigned Counsel attorney from Tompkins County who participates in the regional ACP for Schuyler County, three Legal Aid attorneys in Suffolk County, and an assistant Public Defender in Washington County.

¹⁹ The interview with the attorneys was prompted by two simple questions: 1) How familiar are you with the requirements of the *Hurrell-Harring* Settlement, and 2) if you could allocate the settlement money, how would you use it?

attorneys raised concerns about being able to find experts who are willing to work at the lower assigned rates. Two attorneys expressed the need for a database of experts that would allow attorneys to quickly and easily locate experts instead of having to conduct timely searches in an ad hoc manner, often having to rely on word of mouth.

The Need for Training: The attorneys interviewed also stated that more training is needed. Notably, this need was identified by attorneys who work for institutional providers as well as assigned counsel attorneys. The institutional defenders expressed their desire for additional CLEs and hands-on training. Although most providers pay for a few CLE hours, attorneys expressed the need for providers to pay for additional CLEs and trainings, either in-house or externally, as many of the attorneys are not in a financial position to pay for these additional trainings on their own. Additionally, attorneys on assigned counsel panels expressed the need for required, up-front training to gain entry to panels as well as on-going training and mentoring after being accepted to the panel.

More time and better clerical support: Several attorneys also expressed the need to have more time to work on their cases. They said that this could be achieved by reducing their caseloads and hiring more support staff to handle the essential, non-legal tasks associated with quality representation. The attorneys acknowledged the difficulty of providing the level of representation necessary when caseloads are high. Lack of adequate support staff such as basic secretarial support makes it even more burdensome to handle a greater number of cases.

Financial compensation that better recognizes the commitment and expertise needed to provide quality defense: All of the attorneys interviewed raised the issue of compensation.²⁰ Some spoke of the lower salaries in general for public defenders while others highlighted the lack of parity with district attorneys. The attorneys noted that fair compensation is essential to keeping qualified and dedicated attorneys in the field of indigent defense. Too often lower salaries drive public defense attorneys to private, retained work, or to firms and/or agencies that pay higher salaries.²¹

These foregoing concerns mirror the quality improvement requirements set forth in § V(A) of the *Hurrell-Harring* Settlement, i.e. access to and utilization of investigators, interpreters and expert

²⁰ For example, the Legal Aid Society faces the geographic barrier of the Long Island Forks, i.e. the “North Fork” and the “South Fork.” The LAS office is in Riverhead, but there are many justice courts on the respective forks as well as Shelter Island, which sits between the two forks and is only accessible by ferry. Small roads access each fork, and in the high season of the summer when they are crowded with heavy traffic, travel time is extensive between courts and to and from the office and the jail. For this reason, the LAS has to recruit attorneys that live near the Courts. This proves difficult as it is more expensive to live on the South Fork (the Hamptons) and the North Fork. Not only are housing prices high but all goods cost significantly more from gas to groceries. Given the Legal Aid Society’s lower salaries, recruitment is difficult.

²¹ Indigent criminal defense is a demanding field with few accolades and compensation that lags far below that of the private sector. What impressed ILS during the interviews was the attorneys’ significant commitment to their work. When attorneys were asked how they would use Settlement funding, uniformly attorneys’ concern for their own salary was the last issue raised. They all first listed the myriad of supports necessary to practice effectively, and then, almost reluctantly, stated that better compensation is important if they are to be able to pursue a long-term career in public defense.

witnesses, effective supervision and training, and having the qualifications and experience necessary to handle the criminal cases assigned. They also dovetail with many of the remaining barriers to quality representation that the providers face, as discussed in the next Section of this report.

IV. BARRIERS TO PROVIDING QUALITY REPRESENTATION

The foregoing interviews, the ongoing conversations we have had with the providers over the past year, and our own observations and investigation into specific issues have illuminated the following barriers to the delivery of quality representation. As set forth below, some of these barriers are systemic across New York State; some are confined to a single *Hurrell-Harring* county.

1. Compensation rates for assigned counsel and non-attorney supports

The statutory hourly rates for assigned counsel present a barrier to quality representation. The rates, \$60 per hour for misdemeanors and \$75 per hour for felonies, have not been raised since 2004. Additionally, attorneys are not compensated for administrative, yet necessary, tasks, such as keeping track of their time. All of this makes it difficult for attorneys to continue to take assigned work and not, instead, turn solely to retained work or to abandon criminal defense work altogether.

An additional and pressing barrier to quality representation is compensation rates for non-attorney supports. Unlike attorney rates, non-attorney rates are not statutorily set, but determined by courts. In 1992, the Chief Administrator of the Courts issued an Administrative Order setting out guidelines (1992 Guidelines) for hourly compensation rates for non-attorney services. These Guidelines have not been updated in the twenty-four years since they were issued, and are still often used by courts and assigned counsel programs. Additionally, while County Law § 722-c authorizes courts to set an hourly rate for non-attorney supports, it caps payment at \$1,000 absent a showing of “extraordinary circumstances.” Thus, there are two ways that compensation is limited: unreasonably low hourly rates; and a cap on total amount of time spent.

Courts and ACP programs respond differently to these limitations. Some apply them rigidly, often creating an outright bar to using an expert. Others apply them less rigidly, allowing use of the expert, but only after the attorney explains to the court’s satisfaction why the hourly rate should be higher and why there are “extraordinary circumstances” justifying payment in excess of the statutory cap.

Of the five *Hurrell-Harring* counties, this problem has had the most pronounced impact in Onondaga County. The Onondaga ACP sets hourly rates that are at or below those set forth in the 1992 Guidelines. For investigators, the ACP had long been using a \$30 per hour rate of compensation. For years, the two primary investigative organizations in Onondaga County, Central New York Investigation Bureau and Pitirre Investigations, urged the ACP to adopt higher rates, explaining that in private cases they charge \$100 per hour, and though committed to indigent defense, they actually lose money at the \$30 per hour rate. The ACP failed to act. Finally, in May 2016, these two investigative organizations stated that they would have to refuse to take any assigned cases if the ACP did not raise its rates. At ILS’ request, the County

Attorney's Office reached out to the ACP Board and urged them to raise the rates. The Board did so, but apparently without talking to the investigators about what would constitute a reasonable rate, and as a result, set a rate that, according to what has been reported, is still too low to attract experienced investigators.²² Several attorneys have reported to ILS that retaining a quality, experienced investigator, even in a county as large as Onondaga, continues to be difficult.

Onondaga County ACP panel attorneys face similar barriers to retaining interpreters because of the low hourly compensation rate. Susana Carman, a long-time interpreter for assigned counsel cases, stopped taking cases earlier this year because the rate of \$40 hour is extraordinarily low compared to the court rate for City Court, which is \$140 per hour and federal court, which is \$226 per hour.

Assigned counsel attorneys in counties with smaller populations, such as Washington County, face barriers to finding experienced investigators due to their size: there is not enough need in the county to draw a pool of qualified investigators. In these counties, it is often necessary to find an investigator who lives and works much further away, which may be impossible if travel costs and time are not compensated.

2. *Judicial assignment of counsel: Onondaga County*

In Onondaga County, judges typically select the panel attorneys to be assigned to each case, and as a result, attorneys are not assigned on a rotational basis by the ACP Administrator as required under the County Law. *See* County Law §722 (3) (“Representation by counsel furnished pursuant to a plan of a bar association in each county...whereby the services of private counsel are rotated and coordinated by an administrator, and such administrator may be compensated for such service”).²³ Many of the assignments in the justice courts and Syracuse City Court are given to the specific court's “core” group of attorneys. There appears to be no objective criteria of how the “core” group of attorneys is chosen or how an attorney applies for or is removed from the judge's list. This practice fosters a culture in which attorneys feel beholden to the judges upon whom they rely for assignments, thereby chilling attorneys' ability to advocate zealously for their client.

It is our understanding that judges maintain a group of “core” attorneys to guard against the assignment of attorneys who have consistently engaged in poor quality representation. We acknowledge that this is a legitimate concern, given the ACP's current lack of supervision and oversight of the panel attorneys. The solution, however, cannot be the continued practice of

²² See a *Syracuse Post-Standard* newspaper article discussing investigator and interpreter compensation at: http://www.syracuse.com/crime/index.ssf/2016/06/syracuse_pis_refuse_to_work_for_low_pay_on_cases_of_poor_criminal_defendants.html.

²³ ILS acknowledges that in atypical cases, courts may go outside the rotational assignment process to ensure that there is an attorney assigned who has the qualifications to handle a specific case. *See Matter of Stream v. Beisheim*, 34 A.D.2d 329 (1970). This may happen, for example if a case requires a certain expertise.

judges assigning attorneys.²⁴ Rather, the solution must be to improve the quality of representation and ensure that all panel attorneys have the ongoing supervision, support, and the qualifications and experience necessary to handle the types of cases to which they are assigned. Judges will not give the ACP the responsibility of assigning attorneys to cases until they are confident that the ACP is actually engaging in quality control.

3. Cutting and delaying payment of vouchers: Onondaga County

Onondaga assigned counsel attorneys have consistently told ILS that their vouchers are often cut and that they face needless administrative barriers to getting their vouchers paid. In the 2015 Quality Plan, ILS referenced this issue and promised to investigate it further. We initiated our investigation by speaking with administrators of other, well-respected ACPs in New York State to assess how they handle the payment of vouchers. The ACP administrators to whom we spoke told us that it is exceedingly rare that they need to cut substantive services, and that as a result, they review vouchers primarily for miscalculations and double-billing. To the extent that they use the vouchers to gauge quality, it is more often questioning an attorney as to why she or he failed to spend time on a particular activity - in other words, why there was not more time spent in defense of the client. Moreover, this is done through communication between the administrator and the attorney about the quality of his or her work, not through a cumbersome, time-consuming, bureaucratic process.

We then spoke with several panel attorneys from the Onondaga ACP with varying years of criminal defense experience and learned that the problem of having vouchers cut or delayed is a problem faced by attorneys at all levels of the panel; voucher cutting is not confined to a select few attorneys. ILS then solicited vouchers from panel attorneys to discern the types of services that are regularly being cut. We had anticipated that non-legal services, such as transportation, would constitute the majority of services cut. While we found that non-legal services are cut, the vast majority of cuts involved legal services. Examples include:

- “communication with client”; “non-substantive communication with client”
- “communication with client’s family”; “communication with client sister and spouse”; “communication with client and family”; “communication and meetings with client family and girlfriend”
- “meetings and communication with witnesses”
- “meeting and communication with PI”
- “communication with the court”
- “routine correspondence”
- “review discovery”; “discovery issues”
- “prep motions”; “prep memo of law”
- “research”
- “prepare subpoenas”

²⁴ Even on a more practical level, the current system cannot continue. The Settlement requires providers to develop a system to enforce caseload standards so that attorneys are not assigned a caseload above the standards. This cannot be done if the ACP Administrator has no control over assignment of cases.

These services are critical to providing quality representation.

We also reviewed the time spent in the above instances of cut services to discern if attorneys were spending needlessly long periods of time on such services. We found no instance of unnecessary time being spent. Indeed, in some instances, we thought that not enough time had been spent on the service that was ultimately cut.

For all of the vouchers we reviewed, we tried to connect the amount of money cut with the explanation for the cut, and could find no connection. The actual amount cut seemed random and arbitrary; it did not match the time spent on the particular service identified as a problem, and it was not consistent with the tenth of the hour billed. We did not have enough vouchers to reach a definitive conclusion, but after our review of the vouchers, we better understand why attorneys consistently report that they assume that the ACP Executive Director has an unstated “cap” for misdemeanors and felonies, and she will find a reason to cut if the voucher goes over the cap.

Some attorneys reported that no matter what they bill, ACP will find a reason to cut 10% to 15% of the voucher. Attorneys generally know that if they appeal the cut voucher to the court, they will get paid because the court will deem the service reasonable and necessary. This knowledge illuminates the unfairness of the cuts – the courts consistently view the cut services as integral services that should be fully reimbursed. But having to constantly appeal to the court is time-consuming and demoralizing for attorneys, a dereliction of responsibility by the ACP, and a needless expenditure of time for the courts.

Panel attorneys have also expressed a myriad of problems that unnecessarily delay payment of their vouchers. One that keeps arising is the “dropping” of clients out of ACPEeper. Under ACP rules, attorneys must submit vouchers within 90 days of the close of the case. Attorneys report that their clients get “dropped” out of ACPEeper; at times, the case is not entered into ACPEeper in the first place. Attorneys contact ACP to fix the problem before the 90 days expires, but do not receive a timely response from ACP (or any response at all), and then are precluded from billing because of the 90-day rule. Additionally, attorneys report that ACP does not enter orders to withdraw, which in some circumstances are necessary to bill on a case, before the 90 days has passed thereby preventing attorneys from billing cases.

Finally, the voucher review process itself causes delays that can sometimes take months. A voucher is first reviewed by the ACP’s Executive Director. If she recommends that the voucher be cut, it is sent to the ACP Board’s Voucher Review Committee (“VRC”) which meets monthly. The VRC may then ask for information from the attorney. If the VRC decides to uphold the cutting of the voucher, then the attorney has to file a written appeal to the ACP Board’s Executive Committee. This process alone takes significant time, as the attorney has to draft a written explanation for why the cuts should be removed. The attorney is not allowed to bill for this time. Moreover, the VRC only meets monthly and sometimes cannot address all the vouchers before them, so vouchers get held over to another month.

The Onondaga County ACP’s voucher review and payment process is a significant issue which negatively impacts the quality of representation in Onondaga County. ILS has raised this issue

with the County Attorney's Office and has asked that this information be shared with the ACP Board. ILS hopes to elicit the ACP Board's assistance in resolving this issue.²⁵

4. *Vertical representation: Suffolk County*

The Suffolk County Legal Aid Society (LAS) faces the ongoing challenge of providing vertical representation to their clients. For misdemeanors, this problem occurs in the West End's District Court because it has been difficult for the LAS to staff all the various parts of the District Court when there is a separate arraignment judge. In the past, when judges followed their cases, the same attorney would have the case from beginning to end. Now, however, the District Court has two arraignment judges, so LAS must staff that court and then all the other court parts as well. Given LAS' limited funding they simply have not had enough attorneys to follow the cases through, thus resulting in dedicated arraignment attorneys who only appear in the arraignment part.

For felonies, the problem is complicated by the geography of Suffolk County. Suffolk County has two courts that handle felonies: West End cases originate in the District Court in Central Islip; if there is an indictment, the case is transferred to the County Court in Riverhead, which is thirty-three miles east of Central Islip.²⁶ LAS' County Court Bureau is located in Riverhead in order to cover the post-indictment County Court cases. Presently the County Court attorneys are only assigned felony cases from the District Court once they have been indicted. Since most felonies are handled pre-indictment in District Court and County Court attorneys have to be available to cover post-indictment felonies in Riverhead, the LAS attorneys face the problem of not being able to be in two places at one time.²⁷

In August 2016, the LAS asked ILS to consult on developing a system that would allow for vertical representation. The LAS provided ILS with a detailed memo about the problems they face with vertical representation. On September 21, 2016, Laurette Mulry, LAS Chief Attorney-in-Charge, Sabato Caponi, LAS East End Bureau Chief, Patricia Warth (ILS), Nora Christenson (ILS), and Amanda Oren (ILS) met to discuss the issue and brainstorm solutions. From that meeting, LAS developed a plan that would allow them to address the vertical representation issue. This plan will require additional attorneys as well as additional State funding that will hopefully be realized through caseload relief money. In the interim, LAS is implementing a pilot project to assess the feasibility of vertical representation in felony representation as well as the impact on staff.

²⁵ ILS expects that as part of reviewing and updating the ACP Handbook, the ACP Board will significantly revise the current process for reviewing and processing vouchers. Additionally, ILS has requested to be part of the Board subcommittee that updates the ACP Handbook.

²⁶ This includes only the western towns of Suffolk County who use the District Court system in Central Islip. The towns in the eastern part of the county on the "forks" of the island handle their own felonies pre-indictment. That said, the vast majority of felonies originate through the District Court.

²⁷ Logistical barriers are exacerbated by Long Island's heavily trafficked roads. It is common for heavy traffic to transform a 40 minute drive to a 90 minute drive. Thus, travel time is not only lengthy, it is also unpredictable.

CONCLUSION

In developing and implementing the 2015 Quality Plan, with one exception, ILS has consistently been impressed with the thoughtfulness of the *Hurrell-Harring* providers in targeting limited resources to the highest priority needs.²⁸ These needs have included: increased administrative and clerical support; enhanced access to non-attorney services, such as investigative, expert, interpreter, social work, and sentencing advocacy services; enhanced supervision and training; and reduced caseloads for attorneys. We found that the counties retained the same level of thoughtfulness in developing plans to spend the caseload relief funding available in the Fiscal Year 2016-2017 Budget.²⁹ Indeed, the information outlined in this report informed the provider-specific plans for spending this caseload relief funding.

ILS' next report on implementation of quality improvement initiatives will not only include an update of the 2015 Quality Plan, but it will also provide an update of providers' efforts to collect data pertaining to the quality of representation and ILS' ongoing efforts to assess the quality of representation.

²⁸ As described in Section I, The Onondaga County ACP has generally not been thoughtful or responsive in developing or implementing its Quality Plan, and ILS has consistently had to lead the implementation efforts, or ask the County Attorney's Office to intervene, which it has willingly done, or both.

²⁹ In May 2016, Onondaga County issued an RFP to submit proposals for the delivery of public criminal defense in the County. It was not until late August 2016, that it was announced that the ACP was the awardee of this contract. For that reason, for several months it has not been clear who would be the primary provider of public criminal defense in Onondaga County, and ILS was unable to work with the County to develop a plan for spending the caseload relief funding. ILS is currently working with the County on this important task.

EXHIBIT A

PART B: ATTORNEY BEHAVIOR BY CASE – ARRAIGNMENT



CASE _____ ← WRITE CASE NUMBER HERE

DEFENDANT	<input type="checkbox"/> WM <input type="checkbox"/> Non-WM <input type="checkbox"/> WF <input type="checkbox"/> Non-WF <input type="checkbox"/> Unknown <input type="checkbox"/> Other: _____	<input type="checkbox"/> In-custody <input type="checkbox"/> Failed to appear
CHARGE(S)	(Name all charges and statutory references if possible, e.g. 'Menacing 3 rd , 120.15')	
ATTORNEY	<input type="checkbox"/> PD <input type="checkbox"/> CPD <input type="checkbox"/> LAS <input type="checkbox"/> 18-B <input type="checkbox"/> PRIVATE <input type="checkbox"/> UNREPRESENTED	
ATTORNEY	<ul style="list-style-type: none"> • CONFERRED WITH CLIENT PRE-ARRAIGNMENT: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown • MADE BAIL APPLICATION: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA • SHOWED AWARENESS OF STANDARD FOR BAIL REVIEW: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> NA • USED DEFENDANT BACKGROUND IN PRE-TRIAL RELEASE/BAIL REQUEST: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA • MOVED TO DISMISS THE ACCUSATORY INSTR.: <input type="checkbox"/> Yes <input type="checkbox"/> No Nature of the challenge: _____ 	<ul style="list-style-type: none"> • WAIVED PRELIMINARY HEARING: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA • CHALLENGED ORDER OF PROTECTION: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA • ADVOCATED FOR OTHER LEGAL ISSUES: <input type="checkbox"/> Probable cause <input type="checkbox"/> Suppression <input type="checkbox"/> Competency <input type="checkbox"/> Other: _____ • DISCUSSED POST-ARRAIGNMENT ISSUES: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
OUTCOME	<i>Release status at conclusion of arraignment</i> <input type="checkbox"/> ROR <input type="checkbox"/> RUS <input type="checkbox"/> REMANDED, NO BAIL <input type="checkbox"/> BAIL SET <input type="checkbox"/> Other: _____	<i>Disposition (if applicable)</i> <input type="checkbox"/> DISMISSAL <input type="checkbox"/> PLED GUILTY: _____ <input type="checkbox"/> Other: _____
ISSUES	<input type="checkbox"/> Mental health <input type="checkbox"/> Substance abuse <input type="checkbox"/> ESL <input type="checkbox"/> Immigration <input type="checkbox"/> Other Special Needs <input type="checkbox"/> Other _____ <input type="checkbox"/> Unknown	
NOTES	<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>	

PART B: ATTORNEY BEHAVIOR BY CASE – PLEA

PLEA

CASE _____ ← WRITE CASE NUMBER HERE

DEFENDANT	<input type="checkbox"/> WM <input type="checkbox"/> Non-WM <input type="checkbox"/> WF <input type="checkbox"/> Non-WF <input type="checkbox"/> Unknown <input type="checkbox"/> Other: _____	<input type="checkbox"/> In-custody <input type="checkbox"/> Failed to appear
CHARGE(S)	(Name all charges and statutory references if possible, e.g. 'Menacing 3 rd , 120.15')	
ATTORNEY	<input type="checkbox"/> PD <input type="checkbox"/> CPD <input type="checkbox"/> LAS <input type="checkbox"/> 18-B <input type="checkbox"/> PRIVATE <input type="checkbox"/> UNREPRESENTED	
	<ul style="list-style-type: none"> • PLEA NEGOTIATED IN OPEN COURT: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unknown • CLIENT PLED TO TOP CHARGE: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unknown • CLIENT PLED TO A LESSER CHARGE: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unknown • THERE WAS A SENTENCE PROMISE: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unknown • PLEA SATISFIED OTHER CHARGES: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unknown • APPEARED PLEA HAD BEEN DISCUSSED WITH CLIENT PREVIOUSLY: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unknown 	<ul style="list-style-type: none"> • APPEARED THE DEFENSE ATTORNEY HAD DISCUSSED OFFER WITH PROSECUTOR: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unknown • OFFER HAD AN EXPIRATION DATE OR OTHER TIME PRESSURE: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unknown • ATTORNEY DISCUSSED IMMIGRATION CONSEQUENCES RELATED TO THE PLEA: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unknown • ATTORNEY DISCUSSED ANY OTHER POTENTIAL CONSEQUENCES RELATED TO THE PLEA: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unknown • PLEA RESULTED IN CLIENT'S IMMEDIATE RELEASE: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unknown
ISSUES	<input type="checkbox"/> Mental health <input type="checkbox"/> Substance abuse <input type="checkbox"/> ESL <input type="checkbox"/> Immigration <input type="checkbox"/> Other Special Needs <input type="checkbox"/> Other _____ <input type="checkbox"/> Unknown	
NOTES	<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>	

PART B: ATTORNEY BEHAVIOR BY CASE – ADJOURNMENT

ADJ

CASE _____ ← WRITE CASE NUMBER HERE

DEFENDANT	<input type="checkbox"/> WM <input type="checkbox"/> Non-WM <input type="checkbox"/> WF <input type="checkbox"/> Non-WF <input type="checkbox"/> Unknown <input type="checkbox"/> Other: _____	<input type="checkbox"/> In-custody <input type="checkbox"/> Failed to appear
CHARGE(S)	(Name all charges and statutory references if possible, e.g. 'Menacing 3 rd , 120.15')	
ATTORNEY	<input type="checkbox"/> PD <input type="checkbox"/> CPD <input type="checkbox"/> LAS <input type="checkbox"/> 18-B <input type="checkbox"/> PRIVATE <input type="checkbox"/> UNREPRESENTED	
ATTORNEY	<ul style="list-style-type: none"> • ATTORNEY BROUGHT FILES TO COURT: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unknown • ATTORNEY APPEARED TO HAVE SPOKEN TO CLIENT BEFORE: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unknown • ATTORNEY APPEARED TO HAVE SPOKEN TO CLIENT'S FAMILY MEMBERS BEFORE: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unknown • ATTORNEY SPOKE WITH FAMILY MEMBERS IN COURT: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unknown • BENCH WARRANT WAS ISSUED: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unknown • ATTORNEY OPPOSED OR TRIED TO PREVENT BENCH WARRANT: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unknown 	<ul style="list-style-type: none"> • OFFER WAS PRESENTED IN COURT: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unknown • IT WAS CLEAR THAT CLIENT UNDERSTOOD THE OFFER: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unknown • CLIENT WAS GIVEN A REASONABLE OPPORTUNITY TO CONSIDER THE OFFER: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unknown • ATTORNEY ADVOCATED FOR CLIENT ABOUT OTHER ISSUES: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unknown If so, _____ • AT SOME POINT, THE CLIENT EXPRESSED CONCERNS ABOUT ATTORNEY'S BEHAVIOR AND/OR ABOUT COURT PROCEEDINGS: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unknown
ISSUES	<input type="checkbox"/> Mental health <input type="checkbox"/> Substance abuse <input type="checkbox"/> ESL <input type="checkbox"/> Immigration <input type="checkbox"/> Other Special Needs <input type="checkbox"/> Other _____ <input type="checkbox"/> Unknown	
NOTES	_____ _____ _____ _____ _____	

COURTROOM OBSERVATIONS

PART A – GENERAL OBSERVATIONS INSTRUCTIONS

Part A records your general observations of the courtroom and the quality of the advocacy you witness. It is divided into four sections.

1) **ATTORNEY ADVOCACY** –

a. **Advocacy in court.** *The list provided is not exhaustive but should guide observations. Generally, your observations should include, for example:*

- attorneys' effectiveness in requesting bail, awareness of standard for bail review, use of defendants' background in pre-trial release/bail request;
- attorney advocating for a sentencing recommendation during the plea negotiation process;
- attorney opposing the issuance of a bench warrant.
- You should provide any additional information that speaks to the attorneys' overall efforts to actively advocate for clients' rights during the court appearance.

b. **Attorney-client communication.**

- Overall, assess the attorneys' interaction with their clients, making specific note of whether attorneys/clients appeared to have spoken prior to and after the current court appearance;
- whether attorneys spoke to family members;
- whether attorneys appeared to explain the court proceedings to their clients;
- whether pertinent communications happened in a confidential setting.

2) **UNREPRESENTED DEFENDANTS** –

a. *For defendants not represented at the current court appearance while other clients are, provide overall information on:*

- how the court handled unrepresented defendants making specific note of whether they were informed of their right to counsel;
- the process by which they could apply for the assignment of counsel, particularly at arraignment.
- Also note whether financial eligibility was discussed and if defendants were required to reveal any other information in open court.

b. **Basic characteristics of proceedings.**

- For arraignment, indicate how defense counsel was provided (e.g. on-call defense attorney represented all clients, defense was not present, etc.).
- Note any process for addressing a conflict of interest and assigning a conflict defender if applicable.
- For all observations, list what other courtroom members were present (e.g. DA, court officers, probation, eligibility screener, etc.). Indicate whether this was a specific docket (e.g. traffic court).

3) **ATMOSPHERE/ENVIRONMENT** –

- Describe the general court environment including physical setting and facilities, how the court was set up and the overall behavior of the judge, defense attorney(s), prosecutor(s), court officers and other court personnel.

Please be sure to record both general observations and any revealing stories about exceptional cases or circumstances whether good or bad.

PART B – CASE-SPECIFIC OBSERVATIONS – ARRAIGNMENT

In Part B, record on a separate sheet as much information as possible about each case observed. This includes the defendant's demographics, custody status, charges, representation, and case outcomes. Other relevant issues such as mental health, substance abuse, ESL, immigration should also be noted. Additional space is provided to record any other observations about the case.

Case number

Observation booklets contain multiple pages for case-specific observations. Be sure to number the cases at the top of each page:

CASE ____ ← Write number here

Finally, be sure to staple all completed pages together.

Defendant

- To the best of your ability, record the **defendant's race and gender**:
WM – White Male Non-WM – Non-White Male
WF – White Female Non-WF – Non-White Female
Unknown Other:
- In-custody** – Was the client in custody prior to arraignment?
→ *Leave BLANK if defendant NOT in-custody or if custody status is unknown.*
- Failed to Appear** – Defendant did not appear when case was called, whether or not the judge indicated that a bench warrant would be issued.

Charge(s)

- Charges and statutory references** – record, if possible, e.g., 'Menacing 3rd, 120.15'.

Attorney

- Type of attorney** providing representation (you may already know which program handles arraignments under the existing Counsel at Arraignment plan):
PD – Public Defender CPD – Conflict Public Defender LAS – Legal Aid Society
18-B – Assigned Counsel Attorney Private Unrepresented Unknown
- Conferred with Client Pre-Arraignment** – Did you witness the defense attorney and his/her client talking prior to arraignment? During the arraignment process, did the defense attorney state that he/she had a prior conversation with the client?
- Made Bail Application** – Encompasses all defense attorney efforts to secure pre-trial release for the client, either through ROR, RUS or having bail set in response to the prosecutor's recommendation. If the client appeared on an appearance ticket/summons and pre-trial release/bail was not an issue, mark 'NA'.
- Showed Awareness of Standard for Bail Review** – In making the bail application or refuting information argued by the prosecutor, did the defense attorney appear to know that the proper standard was ensuring the defendant's appearance at all future court dates?

PART B – CASE-SPECIFIC OBSERVATIONS – PLEA

In Part B, record on a separate sheet as much information as possible about each case observed. This includes the defendant's demographics, custody status, charges, representation, and case outcomes. Other relevant issues such as mental health, substance abuse, ESL, immigration should also be noted. Additional space is provided to record any other observations about the case.

Case number

Observation booklets contain multiple pages for case-specific observations. Be sure to number the cases at the top of each page:

CASE ____ ← Write number here

Finally, be sure to staple all completed pages together.

Defendant

- To the best of your ability, record the **defendant's race and gender**:
WM – White Male Non-WM – Non-White Male
WF – White Female Non-WF – Non-White Female
Unknown Other:
- In-custody** – Was the client in custody prior to arraignment?
→ *Leave BLANK if defendant NOT in-custody or if custody status is unknown.*
- Failed to Appear** – Defendant did not appear when case was called, whether or not the judge indicated that a bench warrant would be issued.

Charge(s)

- Charges and statutory references** – record, if possible, e.g., 'Menacing 3rd, 120.15'.

Attorney

- Type of attorney** providing representation (you may already know which program handles arraignments under the existing Counsel at Arraignment plan):
PD – Public Defender CPD – Conflict Public Defender LAS – Legal Aid Society
18-B – Assigned Counsel Attorney Private Unrepresented Unknown
- Plea Negotiated in Open Court** – Did you witness conversations between the defense attorney, the district attorney and/or the judge about the possible sentences/outcomes if the client agreed to plea to a given charge(s)? Did the defense attorney appear to discuss these possible alternatives with the client while the client was before the judge?
- Client Pled to Top Charge** – Did the defense attorney, district attorney, and/or judge indicate that the client pled (was pleading) guilty to the top charge?
- Client Pled to Lesser Charge** – Did the defense attorney, district attorney, and/or judge indicate that the client pled (was pleading) guilty to a lesser charge (or charges)?
- There was a Sentence Promise** – Relates to any indication that in agreeing to the plea offer the client was getting some type of sentence consideration, i.e., that the district attorney would recommend a specific number of months (days) in jail/prison within the sentencing structure, a specific number of months on probation, etc.

- **Plea Satisfied Other Charges** – Did the judge indicate that the plea to the current charge(s) would satisfy other charges faced by the client?
- **Appeared Plea Had Been Discussed with Client Previously** – Based on your observations, did it appear that the client had a prior conversation with the defense attorney about the current plea offer?
- **Appeared the Defense Attorney Had Discussed Offer with Prosecutor** – Based on your observations, did it appear that the defense attorney had discussed the plea offer with the prosecutor prior to this court appearance?
- **Offer Had an Expiration Date or Other Time Pressure** – Did you observe the district attorney or the judge tell the client that the current plea offer was only being offered for a limited period of time, e.g., “This is the best offer you are going to get and if you don’t take it today, it won’t be offered again.”
- **Attorney Discussed Immigration Consequences Related to the Plea** – Did you observe or did it appear that the defense attorney had discussed the possible immigration consequences of the current plea offer, e.g., when the judge provided the statement about immigration consequences, did the client indicate that he/she understood or that the defense attorney had discussed the immigration consequences in a prior conversation?
- **Attorney Discussed Other Potential Consequences Related to the Plea** – Did you observe or did it appear that the defense attorney had also discussed with the client the possible consequences related to housing, education, employment, etc.?
- **Plea Resulted in the Client’s Immediate Release** – If the client was in custody at the beginning of the court appearance, was the client immediately released from custody at the conclusion of the court appearance when he/she agreed to the plea?

Issues

- Did the client appear to have or did the attorney or client indicate he/she had any of the following issues (these may be observed or discussed in court):

Mental health	Substance abuse	ESL – English as a Second Language
Immigration	Other Special Needs	Other

Note: Substance abuse issues are not limited to charges involving DWI/DWAI/DUI and possession of controlled substance. If the defendant or his/her attorney indicates that a client was recently in or completed drug/alcohol treatment program or is attempting to get into a program that should be coded as a substance abuse issue. **Other Special Needs refers to physical disabilities.**

Notes

Please make any additional notes about the case in the space provided. These notes should further describe any significant concerns you have as a result of observing the plea negotiation process with that particular client. This is also the place to indicate whether the defense attorney did an exceptionally good job of representing that client. These notes will help you to complete Part A of the document.

PART B – CASE-SPECIFIC OBSERVATIONS – ADJOURNMENTS

In Part B, record on a separate sheet as much information as possible about each case observed. This includes the defendant's demographics, custody status, charges, representation, and case outcomes. Other relevant issues such as mental health, substance abuse, ESL, immigration should also be noted. Additional space is provided to record any other observations about the case.

Case number

Observation booklets contain multiple pages for case-specific observations. Be sure to number the cases at the top of each page:

CASE ____ ← Write number here

Finally, be sure to staple all completed pages together.

Defendant

- To the best of your ability, record the **defendant's race and gender**:
WM – White Male Non-WM – Non-White Male
WF – White Female Non-WF – Non-White Female
Unknown Other:
- In-custody** – Was the client in custody prior to arraignment?
→ *Leave BLANK if defendant NOT in-custody or if custody status is unknown.*
- Failed to Appear** – Defendant did not appear when case was called, whether or not the judge indicated that a bench warrant would be issued.

Charge(s)

- Charges and statutory references** – record, if possible, e.g., 'Menacing 3rd, 120.15'.

Attorney

- Type of attorney** providing representation (you may already know which program handles arraignments under the existing Counsel at Arraignment plan):
PD – Public Defender CPD – Conflict Public Defender LAS – Legal Aid Society
18-B – Assigned Counsel Attorney Private Unrepresented Unknown
- Attorney Brought Files to Court** – Did the defense attorney have the physical file for that particular case with him/her in court? Did you notice the defense attorney referencing documents in a physical file while discussing the case?
- Attorney Appeared to Have Spoken to the Client Before** – Did the defense attorney affirmatively state that he/she had spoken with the client prior to the current court appearance? Did the client appear to know what was going to happen during this particular appearance? Did the client give any indication that he/she was unaware of the purpose of the current proceeding or its expected outcome?
- Attorney Appeared to Have Spoken to the Client's Family Members Before** – Did the defense attorney state that he/she had spoken to the client's family prior to the court appearance? If the client's family was in the courtroom for the appearance, did the defense attorney acknowledge their presence in a manner that indicated prior communication or that the defense attorney expected their appearance?

- **Attorney Spoke with Family Members in Court** – Did the defense attorney speak with any member of the client’s family during a break in the court proceedings while the family members were in the courtroom? Did the defense attorney step outside of the courtroom with the family members to perhaps have a private conversation?
- **Bench Warrant was Issued** – Did the judge issue a bench warrant in this particular case?
- **Attorney Opposed or Tried to Prevent Bench Warrant** – Did the defense attorney argue against the issuance of the bench warrant? For example, did the defense attorney tell the judge that the client had made all previous appearances or that something must have happened because the attorney spoke with the client who assured the attorney that he/she would be in court for the current appearance?
- **Offer was Presented in Court** – Was a plea offer presented for the first time at this court appearance?
- **It was Clear that the Client Understood the Offer** – Did the client indicate that he/she clearly understood the plea offer? Or conversely, did the client make any statement that indicated he/she DID NOT understand the offer or he/she was confused by what the district attorney was proposing?
- **Client was Given a Reasonable Opportunity to Consider the Offer** – Was the client offered the opportunity to have the case adjourned while he/she considered the offer? Or was the client pressured to make a decision on the spot?
- **Attorney Advocated for the Client About Other Issues** – For example, did the defense attorney advocate for mental health or substance abuse services for the client?
- **At Some Point, the Client Expressed Concerns About the Attorney’s Behavior and/or About Court Proceedings** – At any point during the appearance, did the client express dissatisfaction with the defense attorney’s representation, e.g., stating that he/she had not been able to communicate with the attorney outside of court, that the attorney was not doing what the client had asked, that the client would like to have another attorney?

Issues

- Did the client appear to have or did the attorney or client indicate he/she had any of the following issues (these may be observed or discussed in court):

Mental health	Substance abuse	ESL – English as a Second Language
Immigration	Other Special Needs	Other

Note: Substance abuse issues are not limited to charges involving DWI/DWAI/DUI and possession of controlled substance. If the defendant or his/her attorney indicates that a client was recently in or completed drug/alcohol treatment program or is attempting to get into a program that should be coded as a substance abuse issue. **Other Special Needs refers to physical disabilities.**

Notes

Please make any additional notes about the case in the space provided. These notes should further describe any significant concerns you have as a result of observing the court appearance of that particular client. This is also the place to indicate whether the defense attorney did an exceptionally good job of representing that client. These notes will help you to complete Part A of the document.

PART B – CASE-SPECIFIC OBSERVATIONS – SENTENCING

In Part B, record on a separate sheet as much information as possible about each case observed. This includes the defendant's demographics, custody status, charges, representation, and case outcomes. Other relevant issues such as mental health, substance abuse, ESL, immigration should also be noted. Additional space is provided to record any other observations about the case.

Case number

Observation booklets contain multiple pages for case-specific observations. Be sure to number the cases at the top of each page:

CASE ____ ← Write number here

Finally, be sure to staple all completed pages together.

Defendant

- To the best of your ability, record the **defendant's race and gender**:
WM – White Male Non-WM – Non-White Male
WF – White Female Non-WF – Non-White Female
Unknown Other:
- In-custody** – Was the client in custody prior to arraignment?
→ *Leave BLANK if defendant NOT in-custody or if custody status is unknown.*
- Failed to Appear** – Defendant did not appear when case was called, whether or not the judge indicated that a bench warrant would be issued.

Charge(s)

- Charges and statutory references** – record, if possible, e.g., 'Menacing 3rd, 120.15'.

Attorney

- Type of attorney** providing representation (you may already know which program handles arraignments under the existing Counsel at Arraignment plan):
PD – Public Defender CPD – Conflict Public Defender LAS – Legal Aid Society
18-B – Assigned Counsel Attorney Private Unrepresented Unknown
- This Was an Agreed Upon Sentence** – Did you witness communication between the defense attorney, district attorney and/or judge that indicated the sentence had been discussed and agreed upon in a previous conversation? Did the client appear aware that this was the sentence he/she was going to receive?
- PSI Prepared in this Case** – Did the defense attorney or district attorney reference or present a prepared PSI in this particular case?
- Attorney Received PSI in Court** – Did the defense attorney or district attorney indicate that the PSI was presented to the defense attorney for the first time at this sentencing appearance?
- Attorney Requested Time to Review PSI** – Did the defense attorney request time to review the PSI if he/she was presented with the PSI for the first time at this sentencing appearance?

- **Attorney Identified Mistakes in the PSI** – Did the defense attorney identify mistakes in the PSI on the record in open court, for example, the client’s prior history information was incorrect, current employment, etc.?
- **Attorney Specifically Requested that the PSI be Rewritten and Resubmitted with the Corrected Information** – If the defense attorney identified specific mistakes in the PSI, did he/she request that the probation department rewrite and resubmit the PSI to the court?
- **Attorney Prepared a Pre-Sentencing Memorandum** – Did the defense attorney make reference to a prepared pre-sentencing memorandum? Did the defense attorney submit the pre-sentencing memorandum to the district attorney and the court?
- **Attorney Advocated for a Particular Sentence** – Did the defense attorney advocate for a specific sentence length, for probation instead of a jail sentence, for substance abuse treatment, etc.?

Issues

- Did the client appear to have or did the attorney or client indicate he/she had any of the following issues (these may be observed or discussed in court):

Mental health	Substance abuse	ESL – English as a Second Language
Immigration	Other Special Needs	Other

Note: Substance abuse issues are not limited to charges involving DWI/DWAI/DUI and possession of controlled substance. If the defendant or his/her attorney indicates that a client was recently in or completed drug/alcohol treatment program or is attempting to get into a program that should be coded as a substance abuse issue. **Other Special Needs refers to physical disabilities.**

Notes

Please make any additional notes about the case in the space provided. These notes should further describe any significant concerns you have as a result of observing the sentencing of that particular client. This is also the place to indicate whether the defense attorney did an exceptionally good job of representing that client. These notes will help you to complete Part A of the document.

ABBREVIATIONS

18-b	Panel attorney	NCR	No Charges Read
ACD	Adjourned in Contemplation of Dismissal	NYSP	New York State Police
ACP	Assigned Counsel Plan	OP	Order of Protection (Full no contact; do not harass) 1Y, 3Y, 5Y, etc.
ADA	Assistant District Attorney	PD	Public Defender
ADJ	Adjournment	PG	Pled Guilty
ARRG	Arraignment	PLEA	Plea offer from ADA/DA
ATTY	Attorney	POL	Police Department (Local, Sherriff)
CD	Conditional Discharge	PRB	Probation sentence (1Y, 3Y, 5Y, etc.)
CPD	Conflict Public Defender	PRIS	Prison sentence (2 ½ to 4 years; 5 to 8 years)
CR#	Crime Report Number	PSI	Pre-Sentence Investigation
Δ	Defendant	ROR	Release on recognizance
DA	District Attorney	RUS	Release under supervision
DISM	Dismissal (of all or some charges/counts)	T&C	Terms and Conditions
JAIL	Jail sentence (90 days, 2mos, etc.)	TOP	Temporary Order of Protection (Full no contact; do not harass) 30D, 60D,NCD, etc.
J	Judge (e.g., J Mueller)	TS	Time Served
MOT	Motion (to Dismiss, to Show Cause)		
NCD	Next Court Date		

EXHIBIT B

CASE CLOSING FORM-GENERAL

ARRAIGNMENT

Was an attorney present at arraignment? YES NO Don't know

INITIAL CHARGE (Check ALL that apply):

Violation Misdemeanor Non-Violent Felony Violent Felony
 Homicide Drug Sex Offense
 DWI Other:

DISPOSITION TYPE:

Not guilty after trial Dismissal Guilty-Plea Top Charge
 Guilty-Plea Lesser Charge Guilty-Trial Top Charge Guilty-Trial Lesser Charge
 Other:

LENGTH CASE OPEN: (From assignment to end of attorney's involvement in the case)

<1 day 1-7 days 8-14 days 15-30 days
 31-90 days 91-180 days 7-12 months More than 1 year

IMMIGRATION AND OTHER COLLATERAL CONSEQUENCES	YES	NO	N/A
Did you ascertain the client's immigration status?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did you consult with an attorney experienced in immigration and criminal law?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did you advise the client about any related immigration consequences?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did you advise the client (whether or not a citizen) as to other collateral consequences of a conviction (i.e., employment, housing, higher education, family, etc.)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

INVESTIGATION

Did you use an investigator?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did any member of the defense team visit the crime scene?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Were any potential witnesses interviewed by a member of the defense team?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did any member of the defense team request or subpoena records (other than the client's rap sheet or discovery materials)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did any member of the defense team conduct legal research in the course of the case?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

EXPERTS/INTERPRETERS

Was there physical or scientific evidence in the case?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did you consult with or retain an expert witness in the course of the case? (If YES, type of expert:)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did the expert testify in the case?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did you use a sentencing advocate, social worker or other client advocate in the case?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Was English the client's first language?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Was an interpreter used in the case?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Was an interpreter retained by the defense to communicate with the client outside of court?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SUPERVISION

Did you seek advice on the case from a supervisor on any issue such as: legal, practice, investigative, sentencing, or client relations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
--	--------------------------	--------------------------	--------------------------

Case#:

Court:

CASE CLOSING FORM-GENERAL

	YES	NO	N/A
CONSULTING/BRAINSTORMING			
Did you seek advice on the case from a colleague (other than a supervisor) on any issue such as: legal, practice, investigative, sentencing, or client relations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
COURT PROCEEDINGS			
Were any of the following types of <i>motions</i> filed by the defense at any time during the case?			
Discovery demand (If YES: <input type="checkbox"/> oral <input type="checkbox"/> written)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Omnibus motion (If YES: <input type="checkbox"/> oral <input type="checkbox"/> written)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Motion in limine (If YES: <input type="checkbox"/> oral <input type="checkbox"/> written)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Motion to suppress evidence (If YES: <input type="checkbox"/> oral <input type="checkbox"/> written)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Motion to dismiss the case (If YES: <input type="checkbox"/> oral <input type="checkbox"/> written)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Which of the following kinds of <i>hearings</i> were conducted in the case?			
Contested bail hearing (any time after initial arraignment)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Preliminary hearing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Suppression hearings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Molineux/Sandoval	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did the case proceed to trial? (If YES: <input type="checkbox"/> Jury <input type="checkbox"/> Bench)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did you file a sentencing memorandum?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did you file a notice of appeal?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

TIME AND APPEARANCES

Total number of court appearances in the case
 0 1 2 3 4 5 6 7 8 9 10 or more

Total number of meetings with client in jail
 0 1 2 3 4 5 6 7 8 9 10 or more

Total number of meetings with client (including telephone) outside of court or jail
 0 1-5 6-10 11-15 16 or more

After arraignment, how many days elapsed before you met with the client?
 <1 day 1-2 days 3-5 days 6-10 days 11-20 days More than 21 days

Estimate total amount of time of all client meetings combined HOURS

ADDITIONAL CASE DETAILS (A response is optional, but please consider answering the following types of questions: What was your greatest accomplishment in this case? What specific work did you do that you think affected the outcome of this case the most? Were there any specific resources/ assistance that were lacking that you would have liked to utilize while working on this case? What other details would you like to describe about this case?):

Case#:

Court:

CASE CLOSING FORM-APPELLATE CASE

	YES	NO	N/A
IMMIGRATION			
Did you ascertain the client's immigration status?	<input type="radio"/>	<input type="radio"/>	
Did you advise the client about any related immigration consequences?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
RECORD REVIEW			
Did you go to the lower court to review the court file?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did you talk to or meet with the trial lawyer?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did you review the trial lawyer's file?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did you review the DA's exhibits?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
CLIENT COMMUNICATION			
Did you counsel your client about possible risks?	<input type="radio"/>	<input type="radio"/>	
If YES, select ALL that apply: <input type="radio"/> By letter <input type="radio"/> By telephone <input type="radio"/> In person	<input type="radio"/>	<input type="radio"/>	
Did you discuss the issues to be raised in the brief with your client prior to drafting the final brief?	<input type="radio"/>	<input type="radio"/>	
If YES, select ALL that apply: <input type="radio"/> By letter <input type="radio"/> By telephone <input type="radio"/> In person	<input type="radio"/>	<input type="radio"/>	
Did you communicate with your client about any other matter?	<input type="radio"/>	<input type="radio"/>	
If YES, select ALL that apply: <input type="radio"/> By letter <input type="radio"/> By telephone <input type="radio"/> In person	<input type="radio"/>	<input type="radio"/>	
Did you communicate with your client within a week of assignment?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
If YES, select ALL that apply: <input type="radio"/> By letter <input type="radio"/> By telephone <input type="radio"/> In person	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Was English your client's first language?	<input type="radio"/>	<input type="radio"/>	
Was an interpreter used in the case?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
MOTION PRACTICE			
Did you file a motion to expand the record?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did you review the record to determine if a CPL §440.10 motion was necessary?	<input type="radio"/>	<input type="radio"/>	
Did you investigate possible CPL §440.10 issues?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did you consult with or retain an expert witness in the course of the case? (If YES, type of expert: _____)	<input type="radio"/>	<input type="radio"/>	
Did you utilize an investigator?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
SUPERVISION [Review]			
Did you consult with a supervisor/another attorney about the issues in the case before writing the first draft of the brief?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did a supervisor/another attorney review/edit the brief prior to filing?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
BRIEFING			
Did you file a substantive brief?	<input type="radio"/>	<input type="radio"/>	
Did you file an excessive sentence brief?	<input type="radio"/>	<input type="radio"/>	
Did you file a stipulation of withdrawal?	<input type="radio"/>	<input type="radio"/>	
Did you file an Anders brief?	<input type="radio"/>	<input type="radio"/>	
Did you file a reply brief?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did you argue the appeal in court?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did you file a leave application? No, because I won the case!!!! _____	<input type="radio"/>	<input type="radio"/>	
HOLISTIC ADVOCACY			
Did you engage in parole advocacy?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did you assist your client with reentry issues?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did you engage in advocacy to obtain appropriate medical or psychiatric treatment for your client?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did you assist your client with time computation issues?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Please describe any other advocacy or assistance you provided:			

Case #: _____

CASE CLOSING FORM-APPELLATE CASE

Any additional details about the case? *(A response is optional, but please consider answering the following types of questions: What was your greatest accomplishment in this case? What specific work did you do that you think affected the outcome of this case the most? Were there any specific resources/assistance that were lacking that you would have liked to utilize while working on this case?):*

CASE CLOSING FORM- PAROLE REVOCATION

	YES	NO	N/A
IMMIGRATION			
Did you ascertain the client's immigration status?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
NOTICE OF VIOLATION			
Was the client timely served with the notice of violation?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did you review the notice of violation with the client?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
PRELIMINARY HEARING			
Did the client waive a preliminary hearing?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
If YES: <input type="radio"/> waiver <i>before</i> attorney assigned			
<input type="radio"/> waiver <i>after</i> attorney assigned			
<input type="radio"/> N/A			
If NO: Did you represent the client at the preliminary hearing?	<input type="radio"/>	<input type="radio"/>	
CASE PREPARATION			
Did you confer with your client prior to any hearing?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
If YES, select ALL that apply: <input type="radio"/> By telephone <input type="radio"/> In jail	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
If new criminal charges, did you consult with trial attorney?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did you discuss with client whether to proceed with hearing versus waiting for resolution on criminal matter?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Was English your client's first language?	<input type="radio"/>	<input type="radio"/>	
Was an interpreter used in the case?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did any member of the defense team request or subpoena records?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did you request any discovery from DOCCS?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Were any potential witnesses interviewed by a member of the defense team?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did you use a sentencing advocate, social worker, mitigation specialist, or other client advocate in the case?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did any member of the defense team conduct legal research in the course of the case?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did you prepare and file a written motion, and/or memorandum of law?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
SUPERVISION			
Did you seek advice on the case from a supervisor on any issue such as: legal, practice, investigative, sentencing, or client relations?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
CONSULTING/BRAINSTORMING			
Did you seek advice on the case from a colleague (other than a supervisor) on any issue such as: legal, practice, investigative, sentencing, or client relations?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
PAROLE HEARING			
Did you challenge the timeliness of the hearing?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Was the hearing a negotiated disposition, or contested?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Negotiated disposition _____	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contested _____	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did the client receive delinquent time back?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
If contested, were any charges dismissed?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did you call witness to testify?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did client testify?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did you prepare client for testimony in advance of hearing?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did you submit any other evidence on behalf of client?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did you make any oral motions at the hearing?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Was any mitigation evidence presented at the hearing?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

CASE CLOSING FORM- PAROLE REVOCATION

POST-HEARING

- Did you file a state writ of habeas corpus?
- Did you inform your client on the right to appeal?
- Did you ensure your client was timely transferred from the local jail to DOCCS custody?

ADDITIONAL CASE DETAILS *(A response is optional, but please consider answering the following types of questions: What was your greatest accomplishment in this case? What specific work did you do that you think affected the outcome of this case the most? Were there any specific resources/ assistance that were lacking that you would have liked to utilize while working on this case? What other details would you like to describe about this case?):*