January 22, 2021

ILS-195 FAQs - Part 3

QUESTIONS RELATING TO COUNSEL AT ARRAIGNMENT

If the office provides representation for 49% of arraignments (by contract), and is not a conflict-only provider, would they not be considered a "primary provider" for the purposes of Question 16 which asks, "Is this program the primary provider of arraignment representation in the county?"

An office is the "primary provider of arraignment representation" when it provides representation at a majority of the arraignments in the county (even if that is by a very small margin). Additionally, if more than one office within a county provides routine, primary, and significant non-conflict arraignment representation, that office should indicate that it is a primary provider of representation. If the office would like to qualify this answer and provide specific the specific breakdown of arraignment representation, it should be noted in Question 26.

For arraignments where the client is in custody prior to arraignment, does it matter if they are in law enforcement or department of corrections custody (i.e., if they are arraigned on a warrant)?

Whatever the form of custody (law enforcement or corrections), if a client is in custody at the time of their arraignment in court, the arraignment should be considered custodial.

QUESTIONS RELATING TO DISPOSITIONS

The Question 19 instructions state that we should not provide the disposition of any "post-disposition, parole violation, or appeal cases." Does that mean there is no reporting requirement for dispositions (new trial, resentencing, etc.) in our CPL § 440 litigation?

Correct. We currently do not have anywhere to report dispositions of any post-disposition cases, including those CPL § 440 motions that fall under our definition and are counted elsewhere as new post-disposition cases. Question 19 does not apply to CPL § 440 motions (instead, it applies only to felony, misdemeanor, and violations) and Question 20 asks for appellate dispositions and does not include CPL 440s (including a specific note not to include appeals of 440 denials).

We might get remands in our appellate cases or repleaders or SORA dispositions. Do we need to report those dispositions?

Dispositions for appellate cases should be reported in Question 20. If an appeal results in a disposition that is not listed, it can be counted under "other dispositions" (and feel free to include any additional information in Question 26 if necessary). Otherwise, if it's a case type that falls under post-disposition, e.g., SORA cases, as above, we are currently

not requesting information on these dispositions. Of course, if you want to tell us about them, you can include this information in Question 26.

QUESTIONS RELATING TO NON-ATTORNEY PROFESSIONAL SERVICES

For Question 18, if an interpreter is used for a non-client meeting, should that be counted as "interpreter retained"? If an interpreter is used for translating a document or taped interview, should that be counted?

Yes. Question 18 is intended to capture all cases where interpretation resources are needed to assist in the defense of the client, regardless of the capacity in which they are used, so long as they are retained by the defense (in other words, relying on court interpreters should not be counted). The translation of documents or a taped interview can be critical to a client's defense and should be counted. If an interpreter is necessary to interview potential witnesses or as part of your case investigation, these instances should be counted. Similarly, communicating with a client's family and/or friends can be necessary to provide your client with a holistic defense; an interpreter used in these instances should also be counted.

Note: while the ILS Definitions for Reporting and Counting Criminal Cases indicate that cases should be counted as 'interpreter retained' when an interpreter was retained by the defense to assist with client communication," this question should be read to include any necessary interpretation services - other than those of court-employed interpreters - for a client's defense.

For Question 18, our organization has in-house Padilla staff as well as staff who provide reentry services and thus, have specialized expertise on the collateral consequences of a criminal conviction. When these Padilla and reentry staff provide the criminal attorneys with the expert consultation needed so these attorneys can meet their constitutional and professional obligation to advise their clients on the collateral consequences of a conviction, should this count as expert services? Similarly, if one of our criminal attorneys seeks the expert advice of one of the ILS funded Regional Immigration Assistance Centers (RIACS), on a case, can we count this case as having received expert services?

Yes, both should be counted in their respective categories in Question 18. To further explain, each category of staff (immigration/Padilla and reentry services) have been addressed separately:

Immigration/Padilla staff: these staff members provide specialized advice necessary for defense counsel to meet their constitutional/professional obligations. Cases that involve non-citizen clients, like cases that involve DNA or other forensics, call for consultation with individuals with specialized knowledge. Thus, consultation with an immigration

attorney, whether on staff or through the RIACS, should be counted as "expert retained" for purposes of Question 18.

Reentry services: these staff members assist in advising clients on the collateral consequences of a conviction, as well as providing reentry services. Our "instructions and definitions" define "social workers" to include "all persons licensed as social workers…as well as persons performing sentencing advocacy services, client and/or case management services, or mitigation investigation services, whether or not as licensed social workers." The work described above falls within this definition, so reentry services staff who assist in advising clients on the collateral consequences of a conviction should be considered social workers for purposes of Question 18.

If an investigator is utilized to obtain a client's Department of Motor Vehicles driving abstract, do I count that as "investigator used" under Question 18?

No. Cases should be counted as "investigator used" when a factual investigation took place on a case, either because an investigator was assigned to a case from among staff within an office or was retained for an individual case. "Factual investigation" includes but is not limited to the following: identifying and interviewing witnesses; visiting scenes of crimes to evaluate physical factors related to case investigations; preparing diagrams, charts, and drawings and taking photographs of crime scenes; and gathering records, reports and documents. We do not consider factual investigation to include functions that are more administrative in nature, such as process serving, screening of clients for financial eligibility, or obtaining DMV abstracts.