

Implementing Caseload Relief and Quality Improvement Initiatives in Assigned Counsel Programs: Lessons Learned from Settlement Implementation in the *Hurrell-Harring* Counties

Well-managed and robust assigned counsel programs (ACP) are critical to quality public defense representation.¹ ACP Panel attorneys must have access to necessary supports and training to enable them to spend adequate time on assigned cases and ultimately provide high caliber representation. Thus, improved quality and caseload standards compliance for ACPs requires “well-designed, properly maintained, and adequately funded” programs.² Below are the various strategies the *Hurrell-Harring* (H-H) ACPs have utilized to implement the H-H settlement (which is incorporated into Executive Law 832(4)) and comply with ILS’ ACP Standards:

Supervision and Support

ILS’ ACP Standards emphasize the importance of supervision and support for quality ACP attorney representation. Standard 4.2 requires each county to ensure access to supervision, mentoring, consultation, and second chairs.³ Executive Law § 832(4)(c)(1)(A) similarly lists “effective supervision” as a quality improvement mandate. The H-H ACPs have funded the following positions and programs to meet these objectives:

- *Supervising attorney and/or attorney administrator* – ACPs have funded new or additional positions to oversee panel attorney administration and provide quality oversight.⁴
- *Mentor(s)* – ACPs have developed mentor programs consisting of anywhere from one to ten (depending on program need and size) experienced criminal defense attorneys to act as mentors to panel mentees.
- *Resource attorney(s)* – Recognizing that even the most experienced attorneys can benefit from consulting with other attorneys, the H-H ACPs have budget lines to pay experienced and/or specialized attorneys (e.g., those with SORA, appeals, or forensic expertise) to serve as resource and support attorneys to all ACP panel attorneys.
- *Second chair program* – ACPs have budget lines to pay attorneys to act as second chairs on assigned cases. Notably, this program not only provides support to attorneys with less experience (i.e., appointing a more experienced attorney to assist on the case) it also

¹ See, American Bar Association Standards for Criminal Justice: Providing Defense Service (3rd ed.), Standard 5;1(b) (Every public defense system “should include the active and substantial participation of the private bar” which “should be through a coordinated assigned counsel program.”).

² ILS Standards for Establishing and Administering Assigned Counsel Programs (ACP Standards) July 2, 2019, preamble, available at:

<https://www.ils.ny.gov/files/ACP/ACP%20Standards%20with%20Commentary%20070119.pdf>.

³ See ACP Standards 4.2, 4.2.a., 4.2.b, 4.2.c, 4.2.e.

⁴ See also, ACP Standards 3.3. (requiring experienced and qualified Administrator) and 4.3.a (noting that “[t]he Administrator shall be responsible for the supervision of assigned counsel, and such responsibility may be delegated to one or more supervising attorneys.”).

allows for less experienced attorneys to gain “on the job” training when they act as second chairs to other attorneys.

Training

ACP Standard 4.2.d. requires that panel attorneys have “access to appropriate substantive, procedural, and practical training programs.” Consistent with this standard, Executive Law §832(4)(c)(1)(A) identifies training as a quality improvement mandate. The H-H ACPs have dedicated funds to host or co-host CLEs and other trainings as well as offer scholarships to panel attorneys to attend external trainings. The types of trainings funded range from traditional CLE and other education which enhances legal knowledge to skills-based trainings which provide attorneys with hands-on learning experiences (for example, multi-day trial skills trainings). Notably, many ACPs have made skills-based trainings a priority for panel attorneys.

Scholarships not only cover the cost of the external training but also associated travel and other reasonable expenses. Additionally, some programs offer nominal stipends to panel attorneys who attend trainings out of recognition that they must forgo billable hours to attend trainings.

Non-Attorney Professional Supports

ILS’ ACP Standards emphasize the importance of client centered representation which includes “[u]tilizing appropriate non-attorney professional services, such as investigators, expert witnesses, sentencing advocates, and social workers.”⁵ Likewise, Executive Law § 832(4)(c)(i)(B) requires that attorneys “have access to and appropriately utilize investigators, interpreters and expert witnesses on behalf of their clients.” The H-H ACPs have dedicated funds to ensure timely access to such professional services, as they are critical to quality representation.

- *Experts* – ACPs have funds to approve and pay for expert services directly rather than attorneys seeking approval from the courts.
- *Investigators* – ACPs have contracted with specific investigators, reserved funds to approve the use of and pay investigators as needed and funded in-house investigators as a part of the ACP infrastructure.
- *Social Workers and Case Managers* – ACPs have contracted with organizations for social work and/or case manager services (e.g., Center for Court Innovation or Opportunities, Alternatives, and Resources of Tompkins County), reserved funds to directly approve the use of and pay for social work and/or case management services, and funded in-house social work/case management services as part of the ACP infrastructure.
- *Interpreters* - ACPs have contracted with specific interpreters and/or Language Line, reserved funds to approve the use of and pay interpreters as needed, and funded in-house interpreters as a part of the ACP infrastructure.

⁵ ACP Standard 9.2.k; see also ACP Standard 3.3.d.vii.

- *Mitigation Specialists/Sentencing Advocacy* – ACPs have contracted with organizations that do mitigation and sentencing advocacy (e.g., Center for Community Alternatives), reserved funds to directly approve the use of and pay mitigations specialists, and funded in-house mitigation specialists as part of the ACP infrastructure.

Resources for monitoring attorney caseloads and assignments

Essential to caseload standards implementation is the ability of programs to monitor panel attorney assignments and workload to ensure no attorney is overburdened and that every attorney is qualified to accept the type of case assigned. ACP Standards 8.1 (attorney panels), 10 (attorney capability), and 11.1 (attorney caseloads) require that ACPs establish systems to ensure compliance. Similarly, Executive Law § 832(4)(c)(i)(E) requires that ACPs take steps to “ensure that attorneys ... are assigned to cases in accordance with article 18-b of the county law⁶ and in a manner that accounts for the attorney’s level of experience and caseload/workload.” The H-H ACPs have allocated funds in the following ways to meet these objectives:

- *Case management systems* – ACPs have dedicated funds to develop and maintain case management systems that allow for caseload monitoring and other necessary reporting. Some have also used funds to develop electronic vouchering which allows for faster voucher submission and payment as well as more efficient program quality oversight via voucher review.
- *Administrative staff* – ACPs have hired additional administrative support staff to assist with attorney assignments, collecting case and voucher information, data entry, and reports.

Resources for effective program management

The ILS ACP Standards recognize that ACPs need solid internal infrastructure which includes both executive level and administrative level staff as well as appropriate office space and access to appropriate technology to properly oversee and support quality panel attorney representation as well as ensure timely voucher payment.⁷ This solid infrastructure is a prerequisite to complying with the caseload standards, quality improvement, and counsel at arraignment requirements of Executive Law § 832(4). Thus, the H-H ACPs have utilized funds for the following:

- *Executive staff* – in addition to Administrators and Supervising Attorneys, ACPs have added executive level positions such a Deputy Director/Administrator, Quality Enhancement Director, Juvenile Justice Director, and other positions intended to further program initiatives, recruit and retain qualified attorneys, and support effective representation. Notably, and in line with ACP Standard 4.3.c, some programs have used

⁶ County Law 722(3) contemplates that for ACPs, “the services of private counsel are rotated and coordinated by an administrator...”

⁷ See ACP Standards 4.1 (office space and technology), 4.3 (staffing), 4.6 (access to facilities for confidential client communication and legal research), 8.3 (ensure full compensation and prompt payment); *see also* ACP Standard 2.2 requiring ACPs to “ensure the provision of professional, skilled, ethical, and client-centered legal representation for all clients.”

funding to right size salaries to ensure that they are able to hire and retain qualified executive level staff.

- *Administrative staff* - in addition to data support, ACPs have added administrative support staff to assist with clerical work, budget and finance support, and eligibility screening. Again, some programs have used funding to right size salaries to ensure that they are able to hire and retain qualified staff.
- *Financial/Program Support*- ACPs have funded in-house financial positions, e.g., Chief Financial Officer, as well as contracted with specialists to support the program's development (e.g., as a not-for-profit), and financial health and accountability.
- *Office Space* – ACPs have allocated funds to secure appropriate office space for both professional administrative functioning as well as to support panel attorney needs (i.e., offering meeting space and easy access to resources at that location).
- *Technology* – funds are used for basic technological needs - phones, computers, smart devices, internet, etc. - as well as technology for investigations and trial work.
- *Legal Research* – some programs have funded legal research terminals in the ACP office to ensure panel attorney access to this service.

Anticipated increases in attorney vouchers

The shift from triaging cases to effective investigation, advocacy, and litigation should result in more time spent per case on average, thus increased voucher costs. H-H counties have dedicated funds for the anticipated increases in voucher costs as attorneys are better trained and begin to utilize the new supports and resources available to effectively work on each assigned case. Of note, all the H-H ACPs frontloaded the costs to build supportive infrastructures and enhance necessary resources with the understanding that, over time, voucher costs will likely increase.