

 [Click to Print](#) or Select 'Print' in your browser menu to print this document.

Page printed from: [New York Law Journal](#)

Judge Approves Settlement Over Indigent Criminal Defense

Joel Stashenko, New York Law Journal

March 18, 2015

ALBANY - A state judge has signed off on the settlement of a lawsuit challenging inadequate legal representation of indigent criminal defendants in five of New York's 57 upstate counties in violation of the U.S. Supreme Court's mandate in [Gideon v. Wainwright](#), 372 U.S. 335 (1963).

Acting Supreme Court Justice Gerald Connolly approved the agreement the state reached with the plaintiffs in [Hurrell-Harrig v. State of New York](#), 8866-07, last fall on the eve of a trial before him in Albany Supreme Court ([NYLJ, Oct. 22, 2014](#)).

[The settlement](#) covers Schuyler, Ontario, Suffolk, Washington and Onondaga counties. The state did not admit fault, and the settlement's terms cannot be used as precedent for future court actions.

Gary Stein, the Schulte Roth & Zabel litigation partner in charge of the firm's pro bono representation of the plaintiffs, said that while the settlement was limited to the five counties named as defendants, advocates for better criminal legal services for the indigent hope it will be the model for improvements statewide.

"The settlement is a terrific victory in our view, given the parameters of the lawsuit," Stein said in an interview Tuesday. "But it would be an even greater victory for the cause of justice if the Legislature and the executive branch decided to extend this to all counties outside New York City."

Connolly said in an order Monday that the agreement is "fair, reasonable, adequate, and in the best interests of the class" certified by the Appellate Division, Third Department, panel in [Hurrell-Harrig v. State of New York](#), 81 AD3d 69 (2011).

Connolly held fairness hearings in Albany, Central Islip, Fort Edward, Watkins Glen, Canandaigua and Syracuse ([NYLJ, Jan. 20](#)).

The settlement provides for the Office of Indigent Legal Services to oversee steps to improve representation of poor defendants by guaranteeing they have counsel at

arraignment, instituting quality standards for attorneys and insuring that public defenders have manageable caseloads over the next 7 1/2 years.

The agreement calls for the state to spend \$4 million in the next fiscal year to fund the improvements, and more in future years. The five counties are not required to contribute.

The \$4 million is in Gov. Andrew Cuomo's proposed 2015-16 state budget and in the one-house spending bills approved by the Senate and Assembly last week.

Advocates say the level of representation and funding they seek is generally available now to indigent defendants in New York City.

The New York Civil Liberties Union and Schulte Roth have represented the plaintiffs since the inception of the case in 2007.

According to the settlement, Schulte Roth will receive \$3 million in attorney fees and NYCLU \$2.5 million, paid by the state.

NYCLU staff attorney Corey Stoughton was the lead lawyer for the group.

Connolly noted that the legislatures or boards of supervisors in the five counties named in the suit had already endorsed the settlement.

Monitoring Compliance

The suit contended that representation provided to indigent defendants in the five counties failed to meet standards under *Gideon* in a variety of ways, including lawyers not being present at initial appearances, attorneys not conferring in a meaningful way with defendants prior to trial and public defenders or assigned counsels having few resources to investigate or adequately prepare a case.

The Office of Indigent Legal Services will monitor the improvements among the 11 legal services providers operating in the five counties. Its director, William Leahy, said the settlement gives it six months to establish a method of tracking the caseloads of public defense attorneys and nine months to establish numerical caseload standards, with other guideposts to be reached in the future.

"We are going to try to make this settlement as beneficial in reality in terms of improving the quality of representation as its provisions indicate on paper," Leahy said in an interview Tuesday. "It's a terrific settlement and we intend to faithfully implement all its provisions."

Leahy's office is advertising until April 3 for a "chief implementation" attorney to oversee compliance. It also plans to hire four attorneys to work on implementation and three staffers to work under them.

The office will grow to 18 from 10 once the new *Hurrell-Harring* hires are made.

Leahy said his office will also proceed on funding projects throughout the state that mirror the intent of *Hurrell-Harring*, such as the distribution of grants to help legal services

providers have attorneys available for arraignments and to reduce public defenders' caseloads.

Leahy's office released a study last fall estimating that it would take \$105 million a year to bring the standards of legal representation for the indigent in all the 57 counties outside New York City up to levels recommended by the American Bar Association and other groups ([NYLJ, Sept. 25, 2014](#)). The office recommended the state start spending \$20 million every year for five years, a proposal not included in the 2015-16 state budget, to bring funding closer to appropriate levels.

Leahy said he believes an expansion of the terms of the settlement to the other 52 counties outside New York City is the fairest way of improving and standardizing legal counsel for the indigent.

"It is very important to the rest of the state, what we call the 'forgotten 52 counties,' that the progress not stop," Leahy said. "In fact, it needs to accelerate, simultaneously, as we address the quality improvements in the five lawsuit counties. There is a lot at stake in this."

The executive director of the Association of Counties, Steven Acquario, said the greatest significance in the settlement from the counties' standpoint is that the state assumes the cost of improvements. Acquario said it is also acknowledgement that responsibility for the system lies in Albany and not with the counties, he said in an interview Tuesday.

"This is a federal constitutional obligation of the state," he said.

Acquario said other 52 counties will be watching to see how reforms are implemented. "The work of the five will help the 52," Acquario said. "We can't afford for this to fail for the five, because the outcome of this work affects the 52."

State Senate Finance Committee Chairman John DeFrancisco, R-Syracuse, said Tuesday he favors expansion of the settlement to the greatest extent practicable.

"If the principle is the same, that there was a settlement by both sides in that issue and they thought it was a fair settlement, it's a perfect opportunity to resolve that same issue in other counties," DeFrancisco said in an interview.

U.S. Attorney General Eric Holder's office issued a statement in which he said the settlement was a "major step forward in the safeguarding of the essential right to effective legal representation." The Justice Department's Civil Rights Division filed a statement of interest in the *Hurrell-Harring* case saying the constitutional rights of defendants are at risk by inadequate representation as guaranteed by *Gideon* ([NYLJ, Sept. 26, 2014](#)).

Daniel Greenberg, special counsel for pro bono initiatives at Schulte Roth, estimated that the firm's seven-year cost for litigating *Hurrell-Harring* was \$19 million. Of the \$3 million in attorney fees, Greenberg said \$1.3 million will pay Schulte Roth's "out-of-pocket" expenses such as the costs of depositions, expert witnesses and hotel and travel expenses.

Greenberg said the firm will donate the other \$1.7 million to public-interest organizations.

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

Copyright 2015. ALM Media Properties, LLC. All rights reserved.