



COUNTY OF ROCKLAND
OFFICE OF THE PUBLIC DEFENDER

Allison-Parris Building
11 New Hempstead Road
New City, New York 10956
(845) 638-5660
(845) 638-5667 Fax

EDWIN J. DAY
County Executive

JAMES D. LICATA
Public Defender

August 10, 2015

New York State Office of Indigent Legal Services
Attn: Tammeka Freeman, Executive Assistant
80 S. Swan Street, 29th Floor
Albany, NY 12210

RE: Written Testimony on Eligibility for Assignment of Counsel

Dear Ms. Freeman:

The Public Defender's office in Rockland County consists of nine full time attorneys and ten part time attorneys covering the 21 Justice Courts throughout the County as well the County Court, which includes two trial parts for indicted cases, an SCI part, Drug Court and a Domestic Violence Court. In 2014 this office handled 4,505 criminal cases. The Assigned Counsel Plan, as administered by the Rockland County Bar Association, has a panel of 18-b attorneys who are quickly assigned those cases that would represent a conflict for the Public Defender's office.

In terms of eligibility criteria for representation, it is incumbent for legal defense providers, as a first priority, to assure that all incarcerated defendants are immediately accounted for and presumptively deemed eligible, at least while they remain in jail. As a first line of defense, incarcerated defendants must be provided with the representation that will insure that statutory release dates, such as C.P.L. 180.80 and C.P.L. 170.70, are adhered to and that timely and appropriate bail reductions are sought. Our office accomplishes this by interviewing all newly committed defendants at the jail in the morning on a daily basis.

At the present time our office has also instituted the staffing of attorneys for off calendar arraignments in the Justice Courts, as well as calendar arraignments when our attorneys are otherwise present and handling their cases. Those defendants who are released on their own recognizance are directed to timely appear at the Public Defender's office to be fully interviewed, if they will be seeking representation by our office. Office interviews are conducted without appointment, pursuant to designated hours each day during the week. That interview will include a financial eligibility component that fully assesses their financial circumstances and means.

As a general standard for financial eligibility purposes, our office uses percentages of the Federal Poverty guidelines; these percentages can only be considered a starting point as there are a myriad of factors that also have to be

considered. Certainly, the receipt of public assistance benefits such as Temporary Assistance; SSI and SNAP benefits should be indicative of an individual's inability to retain counsel.

So too, the complexity of the case has to be considered. A bright line income chart to determine financial eligibility is simply not realistic in assessing whether or not an individual is financially capable of coming up with the substantial lump sum retainer that private counsel would ordinarily require.

Perhaps the most important point to consider when attempting to formulate State financial standards for eligibility is to be mindful of the fact that strict adherence to any "standard" may ultimately work against the goal of trying to ensure that individuals in need of legal representation don't find themselves languishing in that "no man's land" between ineligibility and the inability to come up with the cash outlay to satisfy private counsel.

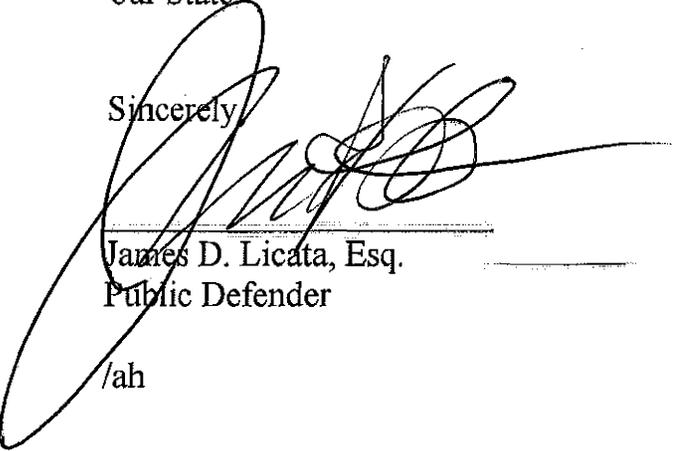
Anecdotally, it has not been our experience that individuals seeking our services are camouflaging assets that need to be flushed out by declaring them ineligible for our services. In other words, individuals don't need "motivation" to hire private counsel. In the great majority of cases, an individual seeks the services of the Public Defender because of legitimate financial need; it is counterproductive for the system of justice to presume otherwise.

Ultimately, it would seem, at the least in the case of our office, that our clients benefit from our ability to retain a measure of control in determining who is eligible for our services. There is reason for concern that if said determination was "out of our hands" and determined by a State standard, it might well lead to less discretion and a greater disservice to those individuals that we, as defense providers, are seeking to assist.

Speaking for our office here in Rockland County, I would conclude by stating that I do not believe the eligibility system is broke and thus does not necessarily need to get "fixed" by the implementation of State standards; at the very least it would be important for any State standards to contain the fluidity that would allow defense providers to make upward modification determinations on a case to case basis.

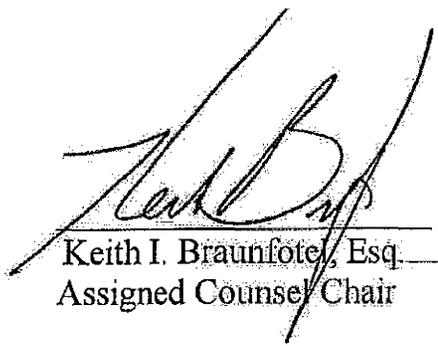
On behalf of our office we thank you for allowing us this opportunity to be heard and commend you for your efforts to improve the quality of public defense in our State

Sincerely,



James D. Licata, Esq.
Public Defender

/ah



Keith I. Braunfote, Esq.
Assigned Counsel Chair