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Office of Indigent
Legal Services

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

August 20, 2014

Greetings,

I am a visitor advocate in the Jail Ministry program in Onondaga County. I was present but did not speak at the July 9 New York State Office of Indigent Legal Services public hearing on eligibility for assignment of counsel. My understanding is that you are looking for input on three areas:

- criteria for determining eligibility
- procedures and process
- societal and economic impact

Criteria

The Onondaga County criteria for eligibility are overly stringent and exclude many who are unable to retain counsel on their own. People are deemed ineligible in Onondaga County if they own or have a loan for a car or if they own or have a mortgage on a house. Another exclusion factor is an income level higher than 125% of the FPG.

I would like the qualifier to be raised to 200% FPG with the stipulation that it would not be the sole qualifier to determine eligibility. There needs to be room in the process for situational hardship considerations (i.e., extensive medical bills, child support responsibilities, catastrophic situations, etc). People with 200% of the FPG exist "hand to mouth" and do not have a ready supply of cash to retain counsel. Further, I do not feel the following should be used to exclude people for assigned counsel:

- Ability to post bond or bail-puts them in the position of choosing between their liberty and obtaining counsel
- Parental income or assets when the person charged lives in the parents' home but is not a minor
- Eligibility for other county and federal benefits (ie, SNAP, HEAP, WIC, etc)-these benefits should not be considered as income

There should be no payment expected from the defendant for the assigned counselor. There should be no application fee for a right that we each are afforded as United States citizens.

Procedures and Process

I believe the determination of eligibility for assigned counsel is the responsibility of the courts. Consideration of attorney caseloads, judges' calendars, politics and cost should not impact a person's right to equal treatment under the law. Could there be an office, without a vested interest in the outcome, which would administer the collection of application information and make initial determinations of eligibility? I believe that many people are denied assigned counsel due to the inability to provide income verification. The decisions need to be made within a fixed time period and would be subject to final review by the judges. Counsel assignments need to be swift with a person meeting face to face with his or her assigned attorney within 1 week of incarceration.

Societal and Economic Impact

The economic cost of implementing and administering an assigned counsel program needs to be considered. It should not, however, be viewed as less important than the costs incurred while prosecuting and incarcerating people. We have little problem finding room in the budget for prosecutions and incarcerations but balk at providing adequate funds for the development, implementation and oversight of the assigned counsel program.

Our incarceration rate is way too high, rooted in the 'get tough' and mandatory sentencing of decades past. The Onondaga County Justice Center is filled with predominantly young, low income people of color, many with substance abuse and mental health issues. Our system of justice is unjust.

I strongly concur with the conclusions of the National Association of Criminal Defense Lawyers March 2014 paper entitled Gideon at 50: a Three-part Examination of Indigent Defense in America. It states, "...defendants who fail to qualify for assigned counsel but lack the financial resources to hire a lawyer are forced to either represent themselves or pay a defense attorney for what amounts to representation in name only." The Center for Community Alternatives in Syracuse, New York confirms that 90% of case dispositions are obtained via plea bargain. I have been present in courtrooms when defendants accept a plea that impacts the rest of their lives based on the advice of someone they met only minutes prior.

The NACDL report further states, "in redefining what it means to be "too poor to hire a lawyer," too many states have been able to ignore the central premise of *Gideon* that "lawyers in criminal courts are necessities, not luxuries." I am hopeful that the New York State Office of Indigent Legal Services will take the actions needed to help all the people of our state receive equal justice under the law. Thank you for the opportunity to provide input into this process.

Sincerely,

A handwritten signature in cursive script that reads "Patricia Moriarty".

Patricia Moriarty