

Dear Mandated Representation Leaders,

I want to bring you up to date on several matters of significance:

- The plan (attached) that we submitted in July to the Budget Director to use \$726,283 of the \$800,000 Aid to Localities funding in the current (FY 2016-17) budget to continue funding Counsel at First Appearance (CAFA) in the four Hurrell-Harring counties that have participated in our first CAFA RFP has recently been approved. This is great news. It gives those counties the assurance of continuity in the portion of their CAFA coverage that has been funded to date under CAFA RFP #1; and it clears the way for the release of CAFA RFP #2, for which all of New York's non-NYC and non-HH counties are encouraged to apply. We expect to issue this RFP within the next few weeks.
- Our RFP for a Model Parental Representation Office, to be located in a county outside of New York City, and modeled after the successful parental representation programs that have been created in the city within the past decade, was delivered to the Office of the State Comptroller some time ago for review. We intend to issue this RFP by the end of 2016.
- Our implementation of the Hurrell-Harring Settlement Agreement is active and ongoing. We are making important progress on each of the four components of the settlement: Counsel at Arraignment (section III); Caseload Relief (section IV); Initiatives to Improve the Quality of Indigent Defense (section V); and Eligibility Standards for Representation (section VI). I attach a copy of the HH **Stipulation and Order of Settlement** for those who may wish to read it anew. (There have been several amendments that extend time frames, and give the parties to the settlement a chance to review and comment upon ILS implementation plans before they are issued. Copies of those amendments may be obtained by contacting me, Joe Wierschem, or Patricia Warth). With respect to Counsel at Arraignment and Quality Initiatives, as you know we filed implementation plans for each of the five counties in November, 2015. These plans may be found on our website. Soon, we will be filing the one-year updates of the progress and extant issues for each of those settlement provisions.
- Our Caseload Study, which is being done under contract with the Rand Corporation, is in full swing, with two of the critical fact-gathering phases completed, the Timekeeping Study and the Time Sufficiency Survey. We want to express our thanks to the scores of lawyers in Onondaga, Ontario, Schuyler, Suffolk and Washington counties who made the effort to track their time on every case over an eight week period, and then commented upon the sufficiency of the amount of time dedicated to specific case-related purposes that the timekeeping phase had revealed. Results of both those stages will now be shared with the Delphi panel, which will meet in a day-long session on Thursday to consider the average amount of time attorneys should have to devote to each of eight categories of criminal cases. The Delphi panelists have been carefully selected, from the five counties and throughout New York, to ensure that a group of experienced, dedicated, practicing criminal defense lawyers will meet to achieve consensus on how much time is appropriate and necessary. We are very grateful to these lawyers for their generous participation. We are also very grateful to Rick Jones, Executive Director of the Neighborhood Defender Service of

Harlem and incoming President of the National Association of Criminal Defense Lawyers (NACDL), for agreeing to deliver opening remarks to the Delphi panel.

After the Delphi session, Rand will evaluate the data and will submit a report and recommendations to ILS by November 15, which we will then provide to the respective parties. On November 22, the parties will meet with ILS to provide any comments on said recommendations. On December 1, ILS must file its determination of “the appropriate numerical caseload/workload standards for each provider of mandated representation...in each [lawsuit] County, for representation in both trial and appellate-level cases”, pursuant to section V (B) of the Settlement Agreement. We have, of course, been meeting regularly with the parties – counsel for the plaintiffs and for Governor Cuomo – in the exercise of this and all other aspects of our settlement implementation responsibilities.

- Finally, we have implemented our Eligibility Standards and Criteria in the five lawsuit counties; and we will carefully study the impact of those Criteria and Procedures upon the quality of representation and the cost of providing it. Here too, we have a responsibility under section VI (C) of the settlement agreement to issue “an annual report regarding the criteria and procedures used to determine whether a person is eligible to receive Mandated Representation in each of the Five Counties.” We intend, in fact, to issue a preliminary report based upon our early experience in the five lawsuit counties in January, 2017.

Any questions about any aspect of our Hurrell-Harring settlement implementation are always welcome, and may be addressed to Patricia, Joe, or me.

- Last Tuesday, October 25, I attended the Second Annual Meeting of the **Right to Counsel National Consortium** at the Department of Justice in Washington, DC. (Copy of agenda attached). The panel in which I participated was one of two that discussed the efforts by several states – Idaho, Missouri, Utah and Washington as well as New York – to make improvements in the quality of mandated representation. The panels were entitled “Securing a Meaningful Right to Counsel: Perspectives on State Reforms”. They were moderated by David Carroll of the Sixth Amendment Center and by Colette Tvedt of NACDL. In my remarks, I described the many constructive changes we have been able to make throughout the state, by setting the expectation that localities will use their state funding to improve the quality of mandated representation, and that they will do so in consultation with their local providers of that representation and with ILS. I referred to the increases in staffing and decrease in average (though still excessive) caseloads in upstate offices; to our progress in parental representation as evidenced by statewide standards, two statewide training conferences and a pending RFP for a Model Parental Representation office; to our trial and appellate standards; to our statewide network of Regional Immigration Assistance Centers; and to the emergence of regional cooperative initiatives. Next I addressed our implementation of the Hurrell-Harring settlement reforms, and I also discussed the post-settlement history in which the desire for equal treatment led to the unanimous legislative passage of the Public Defense Mandate Relief Act in June, 2016. Finally, in response to a question from the audience, I emphasized how important it is for public defense providers and advocates to provide evidence to legislative and executive leaders that the public funds expended for the provision of mandated representation are being and will be spent wisely and responsibly.

Following our panel discussion, I was approached by Denise O'Donnell, who was formerly in charge of DCJS and who has served since 2011 as the Director of the Bureau of Justice Assistance at DOJ. Denise left Albany for Washington just as I was arriving here from Boston to start this fledgling operation called ILS. She told me that what we have accomplished during our short history was both amazing and very exciting, and she wished us every success in achieving our goals going forward. That was definitely a highlight of the day. Another was the keynote address by Deputy Attorney General Sally Q. Yates, who delivered a passionate endorsement of the imperative that every person charged with a crime have a lawyer at his or her side during arraignment or at any time when his or her liberty or ability to defend against criminal charges is at issue. Yates argued that the "attachment" of the right to counsel at arraignment declared by the Supreme Court in the 2008 *Rothgery v. Gillespie County* decision did not go far enough: counsel must be appointed for an indigent defendant at that point – not days or weeks later. "[R]egardless of whether the Supreme Court determines that the Sixth Amendment requires it, it is clear to me that our nation's core values demand that all jurisdictions recognize the need for court-appointed counsel at a bail hearing. Not only is the defendant's liberty at stake, so too is the fairness of our criminal justice system."

Pervasive throughout the day-long meeting in the Great Hall in the Department of Justice was the sense of just how vital a role New York plays in fulfilling national values and establishing national expectations with respect to the Sixth Amendment. All eyes are on our progress here. If New York can find its way to establishing justice in its Justice Courts, and to achieving consistently high quality lawyering for all mandated representation clients in all of its courts, the nation will take notice: similarly situated states will emulate our example, and the national movement to regenerate the spirit underlying *Gideon* will be renewed. That is the hope I felt at the end of the day, and want to share with you today.

Our best to everyone,

Bill

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