

LEGAL AID SOCIETY OF SUFFOLK COUNTY, INC.

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August 24, 2015

**Mr. William Leahy
Executive Director
New York State Office of Indigent Legal Services
80 S. Swan Street, 29th Floor
Albany, New York 12210**

**ANNE M. KEHOE
PRESIDENT**

**ROBERT BRINK
VICE PRESIDENT**

**MICHAEL SHERIN
SECY TREASURER**

Re: Recommendations for Determining Eligibility for Mandated Representation

DIRECTORS:

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Director Leahy:

In response to the invitation of the Office of Indigent Legal Services (ILS), the Legal Aid Society of Suffolk County (SCLAS) offers the following insights in our effort to assist ILS in its responsibility, pursuant to the *Hurrell-Harring* settlement agreement, to establish criteria and procedures to guide Courts in determining eligibility for mandated legal representation.

As the primary provider of indigent defense in Suffolk County, SCLAS can offer a perspective of the many challenges specific to this locality. Suffolk is indeed unique by virtue of its population, geography, high cost of living, and diversity of its court structure. Suffolk's population is in excess of one and a half million people. The County is eighty-six (86) miles in length and twenty-six (26) miles in width, making it the second largest county by area in New York State.

In its 2010 study, the New York State Self-Sufficiency Standard Steering Committee evaluated every county in the state based on the costs for a working family to make ends meet. It measured the costs of meeting six basic needs in every county: housing, child care, food, health care, transportation and miscellaneous items as well as the cost of taxes and the impact of tax credits. Suffolk was ranked as the second most expensive county in the state behind South Manhattan. The self-sufficiency standard as a percent of the Federal Poverty Level (FPL) for the vast majority of New York counties ranged between 225% and 275% of the FPL. However, the self-sufficiency standard as a percent of the FPL in the twelve most expensive counties ranged between 300% and 500% of the FPL, with Suffolk being in the 400% range.

In 2012, following the release of U.S. Census Data indicating that poverty had risen dramatically in the suburbs, the Welfare to Work Commission of the Suffolk County Legislature held public hearings and issued a report, "Struggling in Suburbia: Meeting the Challenges of Poverty in Suffolk County." In the report's cover letter to members of the Suffolk County Legislature, it was stated that "20% of Suffolk residents are poor, earning under \$46,100 which is the actual poverty level for our high-cost region...[m]any are the so-called near poor or working poor who earn too much for government supportive programs and too little to make ends meet in a county where \$75,000 is the base line for a family of four to pay for necessities."

The court structure of Suffolk County ensures that eligibility determinations are made in at least six different courts (District, County, Supreme, Family, Justice and Village) and in at least thirteen jurisdictions. The courts call upon a variety of individuals for assistance in determining eligibility for assigned counsel. The Department of Probation performs the bulk of the information gathering in District Court. SCLAS is frequently called upon to provide eligibility screenings in Family, County and Justice Courts. Also, many judges make eligibility determinations without any assistance.

This diversity has led to a system in which eligibility determinations are neither uniform nor transparent. We urge the ILS to develop county wide criteria and procedures that are as objective as possible and which truly reflect an individual's ability to afford counsel.

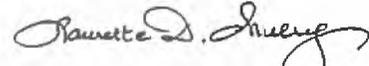
Because of Suffolk County's high cost of living, lack of significant public transportation (a car is a necessity), high housing costs, etc. the income aspect of the eligibility instrument must begin with a significant multiple of the Federal Poverty guidelines should the ILS elect to utilize those guidelines at all. Alternatively, it is suggested that ILS promulgate county-specific guidelines and update them annually. It is also suggested that the guidelines serve as an initial inquiry, allowing for presumptive eligibility below certain established levels, and acting as a threshold for further inquiry of other salient factors.

The *Hurrell-Harring* settlement calls for eligibility determinations to factor in the actual cost of retaining private counsel for the crime charged. We propose that the ILS request input or a study by the New York State Bar Association's Committee to Ensure Quality of Mandated Representation of the actual cost of retaining counsel including necessary investigative and expert services for a broad range of criminal charges in Suffolk County. The cost of an attorney in Suffolk County should take into account criteria such as the seriousness of the charge and the complexity of the case.

Placing an individual's income, an income guideline and the actual cost of retaining counsel on a grid along with their family's structure would provide a reasonable and objective starting point for a fair decision maker to make a determination on the eligibility of an individual for assigned counsel. It would also promote uniformity and allow for decisions to be appealed and reviewed when appropriate.

I respectfully submit for your review the foregoing perspective and recommendations for determining eligibility for mandated representation as specific to Suffolk County.

Very truly yours,

A handwritten signature in black ink, appearing to read "Laurette D. Mulry". The signature is fluid and cursive, with a prominent loop at the end.

Laurette D. Mulry, Esq.
Deputy Attorney in Charge