

Memorandum in Support

NYSBA #6

March 17, 2015

S.2000 & S.4200
A.3000 & A.6000

By: BUDGET
By: BUDGET

S.2003 & S.4203
A.3003 & A.6003

By: BUDGET
By: BUDGET

Senate Committee: Finance
Assembly Committee: Ways and Means

THE NEW YORK STATE BAR ASSOCIATION SUPPORTS ADEQUATE FUNDING FOR THE OFFICE OF INDIGENT LEGAL SERVICES

The State Commission on the Future of Indigent Defense Services examined New York State's county-based indigent criminal defense system. The Commission concluded that there is "a crisis in the delivery of defense services to the indigent throughout New York State and that the right to the effective assistance of counsel, guaranteed by both the federal and state constitutions, is not being provided to a large portion of those who are entitled to it." This is an alarming and disheartening finding in a state once lauded for its policies to ensure that people of lesser means are not marginalized.

The Office of Indigent Legal Services (the "Office") was created in 2010. The State Bar views the establishment of the Office as a step in the right direction toward adopting standards for and evaluating existing programs and service providers, and the general supervision of New York's public defense system by an independent entity.

Given the important function of the Office – to provide support and relief to localities in fulfilling the mandate of the U.S. and New York constitutions – **the Legislature should appropriate the funds necessary to expand the operation of the Office and maximize the funds from the Indigent Legal Services Fund (ILSF) to county governments.**

Hurrell-Harring v. State

Last fall, the state agreed to settle a class-action lawsuit (*Hurrell-Harring v. State*) that accused New York State of failing to provide adequate legal defense for the poor in five counties (Suffolk County on Long Island and four upstate counties: Ontario, Onondaga, Schuyler and Washington). The state agreed to pay for significant improvements in those counties.

Funding To Implement The Settlement In *Hurrell-Harding*

Since its inception, the Office has begun to meet the enormous challenge that faces the state in meeting the constitutional mandate. The recent settlement of the *Hurrell-Harring* case was an important step. However, that settlement, to which the state is now committed, imposes significant obligations on the part of the Office. Clearly, there needs to be adequate funding to support this settlement. Without such funding, the state will not be able to meet its obligations and would, once again, be facing the risks of litigation. Thus, having entered into the settlement, the state must support the Office with adequate funding for this purpose.

Operational Funds

In addition, we support the request of the Office for operating funds to:

- Add sufficient staff to accelerate improving the quality of representation in every locality;
- Establish regional support centers; and,
- Establish an appellate resource center.

These are important objectives that will continue the progress that has already been made.

Local Assistance Funds

Further, we support the Office's request for local aid funding to:

- Continue remediation of excessive caseloads and inadequate support services, supervision, and oversight in upstate counties;
- Extend the program to provide counsel at first appearance; and,
- Provide Requests For Proposals, to address deficiencies in assigned counsel programs, create model upstate parental representation offices, and create wrongful conviction prevention centers.

Funding for local aid has had a significant beneficial impact on the work done by providers, and it is important that this statewide effort be continued and expanded. The Office needs to continue to increase support and relief to localities in fulfilling the mandate of the U.S. and New York constitutions to provide the effective assistance of counsel for indigent criminal defendants.

We support these appropriations, especially the additional funding included in the Assembly one-house budget, and look forward to working with the Governor, the Assembly and the Senate to further the cause of making the constitutional guarantee of effective assistance of counsel a reality for all.

OPPOSE S.4205 – Part BB requiring report by ILS

S. 4205 – Part BB requires a report to be filed by ILS by July 2015, the Association believes such a report is premature. Requiring such a report would detract from ILS's focus on implementing the *Hurrell-Harring* settlement. Therefore, we recommend that such a report should be deferred to a date well into the future.