

INDEPENDENT OFFICE OF ASSIGNED COUNSEL

Annual Report for 2022

Submitted by the Board of Directors of the Independent Office of Assigned
Counsel

Wendy Weathers, Esq. Chair

Overview of the Office

The Independent Office of Assigned Counsel is Westchester County's largest provider of mandated representation as defined by County Law Article 722, offering high quality legal representation by approximately 280 independent lawyers in private practice to low income people with cases in the Criminal and Family Courts of the county as well as criminal and family law appeals and matters related to parole violations, revocations and appeals.

The office was created and operates pursuant to Westchester County Law Chapter 186, passed unanimously by the County Board of Legislators and signed into law by County Executive George Latimer in 2021. It is governed by a Board of Directors comprised of members selected in accordance with the law. Oversight of this office is also provided by the New York State Office of Indigent Legal Services (ILS).

Board of Directors Summary

Following establishment of the Board of Directors, its members studied issues relating to the administration of an assigned counsel panel. There were meetings with officials from ILS, the Legal Aid Society of Westchester County (LASW)—the long-time panel administrator replaced by this office, administrators from other counties in the state and heads of county departments that interface with the administration of the panel.

In June, 2022, the Board elected Wendy Marie Weathers, Esq. as its Chair. The Board also created a Hiring Subcommittee, worked with County Human Resources (HR) to create a job description to attract candidates with the skills and experience necessary for the Administrator and HR then determined a broad range of places to post the job description. The Hiring Subcommittee conducted numerous interviews and upon their conclusion, made a recommendation to the Board and to the County Executive. After the candidate was approved by both, the Board of Legislators unanimously approved the appointment of the Administrator.

The Board of Directors holds monthly public meetings during which time the Administrator reports to the Board and takes direction from directors.

Administrator's Summary

Below is a summary of the anticipated and unanticipated issues and hurdles as well as the definitive progress made since the OAC assumed responsibility for the administration of the assigned counsel panel on September 30, 2022.

Assumption of Responsibility on September 30, 2022

Prior to the OAC's assumption of responsibility for the administration of the assigned counsel panel, the County gave notice of termination to the Legal Aid Society (LAS) at least 30 days in advance. During this transition phase, Chair Weathers and the Administrator met with officials from the Legal Aid Society to obtain relevant data and other information, as well as officials from Indigent Legal Services and other county's Assigned Counsel Administrators.

Office Space

A lease was signed for approximately 2000 square feet of office space at 235 Main Street in White Plains. Renovations to the space, including upgrades for technology, are to be completed prior to the move in date, projected to be in early 2023.

Hiring

A search for the Deputy Administrator was conducted and, with the assistance of and consultation by the Hiring Subcommittee, a Deputy Administrator was hired.

After exhausting all search options to attract candidates for the two administrative support positions, two full-time staff members were hired, primarily to review vouchers submitted by attorneys and other service providers for payment by the Finance Department.

Administrator's Assessment of Program Status

During the transition phase, the Board Chair and the Administrator met with officials from LAS, ILS and the County. Information, particularly budget information, was sought from LAS; however, receipt was delayed, resulting in delays in assessing the budgetary needs and capacity of the OAC in the 4th Quarter of 2022 and into 2023.

On September 30, 2022, LAS transferred approximately 200 signed vouchers for payment and approximately the same number of assignment notices requiring creation of a blank voucher (a condition precedent to billing) to the OAC. The OAC also purchased the license to a case management system (CMS) to create vouchers, obtain and store data and have the capacity to generate reports based on the data.

As the Quarter progressed, several operational issues, including previous service gaps, emerged. They included the need to manually set up the vast majority of the approximately 280 attorneys in the (CMS) as they had no prior access to it, the lack of information recorded in the system, the failure to track the status of signed vouchers, the high volume of old, often closed cases for which no voucher had been generated, preventing the attorney or other service provider from submitting a bill, and the high number of pre-OAC vouchers rejected by the Finance Department due to provider error into the end of the Quarter.

Notwithstanding these complications, during the Quarter, the OAC has been planning a transition to a partial digital voucher system in 2023 that will facilitate payment to providers and provide greater insight into billing practices and quality of representation. As well, the OAC applied for and was awarded a grant from ILS that will provide resources to individuals facing actual or potential Family Court Act Abuse, Neglect and Termination of Parental Rights cases and their attorneys, has forged a partnership with the Osborne Association for the preparation of mitigation reports in criminal cases, and has applied for stipends to panel attorneys to support weekend arraignments, parole recognizance hearings and Raise the Age arraignments.

OAC Priorities

The following priorities guide the office's development into 2023 and beyond:

1. Service to providers
 - a. Responding to inquiries immediately
 - b. Transparency
 - c. Regular communication with panel members
 - d. Customer service oriented approach
 - e. Assisting attorneys to correct ministerial errors and miscalculations to facilitate prompt payment
2. Development of a paperless payment system
 - a. Reduces billing errors
 - b. Tracks billing practices
 - c. Tracks quality of representation metrics
 - d. Provides transparency and accountability allowing service providers to be updated on the status of their bills
3. Client access to counsel
 - a. Providing immediate access to interpreters with plans to expand services in 2023
 - b. Obtaining attorney access to Securus Jail video conferencing at no cost to attorneys
 - c. Grant funding to provide pre-petition representation to parents in Family Court Article 10 Abuse, Neglect and Termination of Parental Rights cases
4. Quality Enhancement Through Resources and Support for Attorneys
 - a. Investigators
 - b. Access to online legal research search engine for all panel attorneys
 - c. Access to Westchester Records through County Clerk's Office at no cost to attorney
 - d. Stipends for attorneys on special duty
 - i. representation at weekend arraignments
 - ii. representation at Raise the Age arraignments when needed
 - iii. representation at parolee Recognizance Hearings

Case Volume and Attorney Caseload

Due to the absence of data from the prior provider, the OAC cannot provide reliable data regarding case volume and attorney caseload. Moreover, due to service gaps by the prior provider, the OAC has been opening cases, focusing on providing vouchers for cases that were not opened by the prior provider from as far back as 2018, thereby calling into question the accuracy of past case numbers and delaying the opening of cases from Quarter 4. The impact of this prior service gap is projected to continue into 2023. OAC staff is looking at ways to streamline processes to address this issue.

Budget

The OAC submitted a budget proposal to Westchester County that was approved as part of the Westchester County 2023 Operating Budget, that shows a minimal impact to tax levy. Given limitations in forecasting the needs of a new office, it may be necessary to request amendments to the 2023 budget during the year. The office also submitted funding requests under ILS's

Distribution 13 three-year funding period to support the work of both criminal and family court practitioners and clients and a one-year budget under the Hurrell-Haring Quality Enhancement Grant for funding exclusively for criminal defense. Both budgets contain a mixture of staffing requests and funding for resources, including such things as investigators, interpreters and experts as well as funding for training, a mentor program and a Second Chair program.

Additionally, as noted above, the OAC was awarded a grant to enhance the quality of Parental Representation and provide funding for early access to parental representation in pre-petition Abuse, Neglect and Termination of Parental Rights cases. Some of those services are to benefit clients represented by Legal Services of the Hudson Valley. Also during the Quarter, the office applied for a grant to support attorney representation at weekend criminal arraignments.

Conclusion

In its first Quarter of operation, with oversight from the Board of Directors and ILS and tremendous assistance from numerous county departments, OAC staff has worked hard to identify needed resources to enhance representation and provide training, funding and support for attorneys to do their finest work. The office is also focusing on ensuring early access to counsel by those in need of representation without the financial means to retain counsel.

While staff has been hampered by the pressing need to address widespread service gaps preceding OAC's assumption of responsibility that affected attorneys and caused payment delays, plans are nearing completion to transition to a partial digital payment system by the end of the Second Quarter of 2023 that will significantly reduce billing errors and track billing practices and quality of representation while allowing providers to see the status of their bills.

Plans for 2023 include implementation of the funding initiatives outlined above as well as the implementation of a digital payment system, setting performance standards, recruitment planning and the development of a robust training program.