

INDEPENDENT OFFICE OF ASSIGNED COUNSEL

Annual Report for 2023

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

Wendy Marie Weathers, Esq. Chair

Overview of the Office

The Independent Office of Assigned Counsel (OAC) 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 this Honorable Board 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).

Summary of State Funds Intended to Support the OAC

The primary source of funds to support this office and its initiatives are state grant funding provided by the New York State Office of Indigent Services (ILS). ILS has 2 main grants:

- **Distribution Funding**—a lump sum is granted to the County for the County to determine allocation among providers. It is a 3-year budget cycle. This funding covers funding for resources to support Family Court attorneys as well as Criminal Court attorneys. The OAC is the primary provider of parental legal representation. In the vast majority of cases, at least 2 assigned attorneys are involved in each case. Legal Services of the Hudson Valley is the other provider of parental representation. They do not receive funding from this funding stream.
- **Hurrell-Harring Settlement Funds**—ILS determines funding to each provider of criminal defense representation. The Legal Aid Society of Westchester and the OAC provide this representation.

There are also 3 smaller grants:

- **Counsel at First Appearance in Criminal Cases (CAFA)**—a lump sum is granted to the County to provide stipends to ensure counsel at arraignment in after court hours in criminal cases. This is a 3-year budget cycle.
- **Upstate Quality Improvement Grant**—a lump sum granted to the County to determine allocation among providers. This is a 3-year budget cycle. Funds can be used for both Family and Criminal.
- **Second Upstate Family Representation Grant**—a competitive 3-year grant submitted by the County to provide pre-petition representation to parents in Article 10 (abuse/neglect) cases and to provide support for attorney resources to improve the quality of representation.

Board of Directors Summary

The Board met regularly during the year to review reports from the Administrator and Deputy Administrator. Meetings were primarily public, but on occasion some parts of the meetings were conducted in Executive Sessions.

Board member Ron Abad resigned in October, 2023. The County Executive's Office was notified of this and the resulting vacancy on the OAC Board.

Administrator's Summary

In General

OAC provided important resources for attorney use in furtherance of high-quality legal representation and greater access to counsel by low-income litigants detailed under "Accomplishments" on the next page. It should be noted that, as discussed above, state grant funding through ILS is intended to be the primary funder of this office designed by this Honorable Board to replicate the resources, supports and accountability measures typically available in an institutional provider setting, (minus their high administrative costs).

Attorney Billing/Attorney Retention

In June, OAC implemented an overhaul of the attorney billing process by instituting the first phase of a digital billing system, streamlining the billing process and leaving more time for attorneys to work on their cases.

OAC introduced the E-Voucher system in June via live Webex trainings, a videotaped training, a set of 7 pieces of written how-to materials, group and private tutorials in the office and in Peekskill and Port Chester to accommodate attorneys from across the county, and designated drop-in and calling hours to review the system and troubleshoot for attorneys.

Also, in its first full year of operation, OAC's new administrative support team cleared an extensive inherited backlog that had resulted in delayed payments to attorneys, which in turn threatened to adversely impact attorney retention.

Data Highlights

From January 1, 2023-November 17, 2023 the OAC opened over 17,000 cases in the case management system. Opening a case permits attorneys to bill for services rendered on them. The number of cases opened in 2023 does not correlate to the number of cases assigned to attorneys during that time period as the OAC has also continued to open cases and create vouchers on cases that pre-dated the opening of the office in October 2022.

During the same time period, the OAC reviewed, corrected when necessary, and sent 10,542 vouchers to Finance. As of November 17, 2023, OAC is 100% up-to-date processing vouchers, inputting preliminary payment data and sending them to Finance for payment.

Accomplishments

Below is a table that lists notable accomplishments in 2023:

<u>ACCOMPLISHMENTS</u>	<u>DESCRIPTION</u>
Securus Video Visitation	virtual lawyer/client visitation for all 18-B attorneys courtesy of our DOC partners
Language Line	instant access to counsel for all non-English speaking clients via certified interpreters, on telephone and/or video platform
Lexis legal research subscription	immediate access to perform online legal research, to enhance their cases and their representation. Previously, only 100 of the 280+ attorneys on the panel had this access. Also enhanced research & writing tools for Appellate attorneys.
Training Director	Assists attorneys in obtaining experts, including investigators. Provides training for attorneys. Prepares practice advisories on matters of legal significance and new decisions.
Accountant	Maximization of reimbursable expenses.
E-vouchering program	Overhaul and modernization of billing system.
Overcame backlog	Worked quickly to address the backlog of un-reviewed vouchers and cases that were never opened.
Limited Voucher Forgiveness Program	Payment to attorneys who were unable to timely bill due to factors beyond their control.
Osborne Association	Partnered to provide case management and mitigation services.
Stipends	Stipend for attorneys to handle both parole violations and Raise the Age cases. It has been difficult to attract attorneys to handle these cases.
2 nd Upstate Family Representation Grant	Funding for pre-petition representation in Abuse/Neglect cases and consultation with criminal defense lawyers in appropriate circumstances.
Temporary staffing	ILS agreed to fund temporary staff positions to address backlog and facilitate modernization of billing system.

Staffing

In addition to the Training Director and Accountant noted above, due to the departure of Deputy Administrator Karen Beltran, a search for a new Deputy was undertaken. Stephanie Perez, a former Assistant District Attorney and attorney at the Family Court Bureau of the County Law Department, accepted the position and has been instrumental in developing and advancing the OAC agenda since she started in March.

As a result of the deferment in the hiring of Training Director David Hymen, ILS permitted OAC to hire 2 temporary hourly administrative support staffers whose hard work has complemented the superb work performed by our small permanent support team of Bouchra Loumhrari and Saju Peter.

Attorney Rate Increase

In May 2023, the New York State Legislature voted an historic retroactive rate increase for assigned counsel that provides partial reimbursement (\$41.50 for felonies and family cases; \$49 for misdemeanors) to counties for 1 year, necessitating the implementation of policies to address already submitted bills eligible for the increase. To optimize reimbursement claiming, OAC proposed to the Finance Department and Budget Office another overhaul of the billing process designed to optimize reimbursement during the 1 year of guaranteed state reimbursement to be claimed quarterly. Our accountant is focused on submitting claims to ILS for reimbursement of attorney hours. As of November 17, 2023, there is \$82,000 of reimbursements for attorney hours to be claimed at the end of the 4th Quarter. We expect the number of reimbursable hours to grow as attorneys continue to submit vouchers that include services post April 1, 2023.

2024 County Budget

The OAC budget was timely submitted to the County Budget Office. Anticipated revenue from State reimbursement is intended to offset the cost of all staff except 2 permanent administrative support staff (1 full-time, 1 part-time), \$40,000 to the Westchester County Bar Association, miscellaneous expenses, such as bar memberships for legal staff and, all pre-April 1, 2023 hourly attorney fees and a portion of those post-April 1, 2023 hourly attorney fees. As such, as compared to County tax levy impact prior to the OAC, there is a \$700,000 savings to taxpayers in administrative operating expenses.

Office Space

In January 2023, the County signed a lease for office space at 235 Main Street in White Plains and the OAC moved from its temporary space at the Probation Department. OAC is very grateful to the Probation Department for its generosity and support during the transition period.

DPW&T handled all moving-related issues and IT retrofitted the office space to ensure all tech needs were met prior to move-in.

During the summer, OAC overcame challenges within the office: air conditioning and ventilation failed in the office; a flood and several leaks from upstairs' tenants; and an isolated roach infestation. Additionally, there were unsanitary conditions in the bathrooms and broken locks on the stalls preventing use. By October, the HVAC system was replaced, and conditions in the bathrooms have improved and are now accessible. OAC also informed Landlord that the contracted janitorial services inside OAC's office were not being performed, and improvements have been made there as well.

Despite this, attorneys regularly visited the office to conduct business, ask questions, hone their e-vouchering skills, discuss legal and practice issues, and the like.

Objectives for 2024

The OAC intends to focus on:

- early access to counsel for low-income litigants (CAFA)
- the creation of a rotation of attorneys in courts to foster attorney independence
- the implementation of standards for high quality representation that all panel attorneys will be required to meet
- expansion of the digital billing platform.
- Submitting reimbursement claims to ILS

Counsel at First Appearance (CAFA)

OAC has requested that the County authorize a fair share of new State **Distribution** grant funds. Before Local Law Chapter 186 came into effect, 85% or more of these funds were distributed to the Legal Aid Society -Westchester County (LASW) which was charged with administering the assigned counsel panel. OAC requests these funds on behalf of Domestic Violence victims in Family Court matters, Adolescent Offenders (16-18 year olds), parolees subject to incarceration, and newly arrested individuals charged with crimes to ensure that they have assigned counsel at after-hours arraignment

OAC requested 50% of the CAFA grant fund described above. LASW requested and received 100% of CAFA past grants, resulting in a disparity between the institutional provider and assigned counsel that creates a disincentive to assigned counsel to provide representation after hours. It is essential to have counsel at this critical stage in a legal action. Beyond that and with respect to criminal matters, funds for CAFA would go a long way toward instituting a fair rotation of attorneys that in turn best assures attorney independence—a key ingredient of high-quality legal representation and a mandate of Local Law Chapter 186.

Administrative Support to Expand Digital Billing Program

OAC is requesting funds from Distribution funds to support 2 additional administrative support staff members to effectuate the intended expansion of the digital billing platform. One of these positions appeared in the 2023 Adopted Budget, however, in consideration of fiscal prudence and in order to maximize the opportunity for State funding of this important staff addition, hiring was deferred until a new State grant budget cycle was announced in the hope that the County would reallocate State grant funds from the other recipient to the OAC. That funding cycle was announced in August, 2023 and was due to the State October 31, 2023. The OAC submitted a proposed budget to the County in September 2023.

ILS agreed to fund an accountant for the OAC, in parity with funding already provided to LASW for a Grants Manager. OAC's Accountant II, Chinmy Roy, started in August and it was determined that she will be paid using prior unspent ILS funds. OAC requested, however, that the County create a line for this position in the new Distribution funding cycle to ensure that it is sustainable. The accountant is focused on obtaining state reimbursement for expenses covered by grant funding as well as for the partial reimbursement of the hourly rate increase.

Outlook for 2024

The outlook for 2024 is uncertain. Funds from the **Hurrell-Harring Settlement** will permit the OAC to start a mentoring and second chair program to benefit less experienced attorneys as well as provide some funding for non-attorney experts and training as well as pay office expenses and most staff salaries. The small amount of **Distribution** funds are used to pay for online research and interpreters for non-English speaking clients.

Conclusion

In its first full year of operations, the OAC modernized and streamlined billing for the over 280 panel attorneys, resulting in the successful completion of the extensive voucher backlog and OAC currently directing vouchers to Finance within 2 business days of OAC's receipt. This is due to the extraordinary efforts of the OAC team.

We provided attorneys with key resources to facilitate access by clients to their attorneys as well as online research tools comparable to that available at the Law Department and District Attorney's Offices. This is available to all panel attorneys for their assigned cases at no cost to them.

With this, we are poised to continue building a solid foundation in furtherance of the intent of Local Law Chapter 186-- to ensure that the legal rights and interests of low-income litigants are protected through high quality, well-resourced legal representation. As a result of the major structural change that occurred in the County with the creation of the OAC, a rethinking of the allocation of ILS funds is essential to the continued success of the Independent Office of Assigned Counsel.