

Law & Major Contracts Meeting Agenda



Committee Chair: Nancy Barr

800 Michaelan Office Bldg.
148 Martine Avenue, 8th Floor
White Plains, NY 10601
www.westchesterlegislators.com

Monday, June 28, 2021

1:00 PM

Committee Room

CALL TO ORDER

Joint with Legislation committee

MINUTES APPROVAL

June 16, 2021 at 10:00 a.m.

I. ITEMS FOR DISCUSSION

1. [2021-306](#) PH - Independent Office of Assigned Counsel

A RESOLUTION to set a Public Hearing on a "LOCAL LAW amending the Laws of Westchester County by adding a new Chapter 186 creating the Independent Office of Assigned Counsel." [Public Hearing set for _____, 2021 at _____ .m.]. LOCAL LAW INTRO: 2021-307.

COMMITTEE REFERRAL: COMMITTEES ON LEGISLATION AND LAW & MAJOR CONTRACTS

Guests: County Attorney John Nonna, Chief Deputy County Attorney Stacey Dolgin-Kmetz, Budget Director Larry Soule

2. [2021-307](#) LEGISLATORS JOHNSON AND WOODSON-SAMUELS - LL - Independent Office of Assigned Counsel

A LOCAL LAW amending the Laws of Westchester County be adding a new Chapter 186 relating to the creation of the Independent Office of Assigned Counsel.

COMMITTEE REFERRAL: COMMITTEES ON LEGISLATION AND LAW & MAJOR CONTRACTS

II. OTHER BUSINESS

III. RECEIVE & FILE

ADJOURNMENT

Christopher A. JohnsonLegislator, 16th District

Chair, Committee of Appointments

**Committee Assignments**

Labor & Housing

Public Safety

To: Ben Boykin, Chairman of the Board of Legislators
Sunday Vanderberg, Clerk of the Board of Legislators

From: Christopher Johnson, Legislator, 16th District
Tyrae Woodson-Samuels, Legislator, 13th District

Date: May 3, 2021

Re: Independent Office of Assigned Counsel Legislation

Please refer the attached proposed Local Law, amending the Laws of Westchester County by adding a new Chapter 186 relating to the creation of the Independent Office of Assigned Counsel, to the appropriate committee(s) on the May 10, 2021 Westchester County Board of Legislators agenda.

While the County is required by New York State law to institute these changes, we firmly believe that the creation of the Independent Office of Assigned Counsel will better serve Westchester residents in need of legal services when they cannot afford it. The passage of this law will ensure access to fair, just, and free legal counsel to those that need it.

We continue to strive for equal access to services for all Westchester residents and believe that this is a positive step in achieving this goal.

TO: HONORABLE BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of a communication from the County Attorney recommending adoption of “A LOCAL LAW amending the Laws of Westchester County by adding a new Chapter 186 creating the Independent Office of Assigned Counsel.”

Your Committee is informed that New York State County Law (“County Law”) Article 18-B (“18-B”), sections 722-722-F, enacted in 1965, delegated to counties throughout New York State and New York City, the responsibility for providing counsel to indigent defendants in criminal and Family Court cases. While section 722 of the County Law set out the types of providers that counties could employ to fulfill the right to counsel, the statute provided no details as to the proper establishment of Assigned Counsel Programs. Therefore in the past, counties and bar associations in New York State created and maintained programs with little guidance.

As your Committee is aware, currently, Westchester County provides indigent legal services or Assigned Counsel pursuant to a Plan of Representation (“Plan”) approved by the New York State Administrator, first entered into in 1965, amended in 1975, and renewed on an annual basis, between the County, Legal Aid Society of Westchester County (“Legal Aid”) and the Westchester County Bar Association (“WCBA”). *See* Chap. 878, Laws of 1965. The Plan provides for legal representation by Legal Aid attorneys and by private attorneys (“18-B Panel”) for indigent clients. Membership on the 18-B Panel is coordinated by the WCBA, who reviews applications and certifies to Legal Aid a list of attorneys who may be appointed to represent indigent defendants in the criminal and Family Courts in Westchester County. Legal Aid as

“administrator” of the Plan, promulgates rules and regulations for the conduct of the Plan and coordinates the assigned counsel assignments of its own attorneys as well as the 18-B Panel. Legal Aid also applies for funding from New York State to improve the quality of indigent legal representation in the County. The County is responsible for the payment of the 18-B Panel attorneys. Vouchers for payment of attorneys on the 18-B Panel are first submitted to the Court for approval, then to Legal Aid for review and processing and finally to the County Finance Department for payment.

Your Committee is advised that Westchester County, along with other counties throughout New York State have or are in the process of amending their Plans based upon legislation enacted by New York State mandating reforms in the provision of indigent legal services in New York. These reforms are the result of a settlement of a lawsuit brought in 2007 by the New York Civil Liberties Union against New York State alleging that the State had systematically and structurally denied meaningful and effective representation to defendants entitled to publicly funded representation in violation of their Sixth Amendment right to counsel. *Hurrell-Harring v. State of New York*; 15 N.Y.3d 8 (2010); 930 N. E. 2d 217 (N.Y. 2010). As a result of this litigation, in 2010, the New York State legislature enacted New York State Executive Law (“Executive Law”) §§ 832 and 833 respectively, authorizing the creation of the New York State Office of Indigent Legal Services (“ILS”), and a 9-member Indigent Legal Services Board (“ILS Board”). The express statutory purpose of both ILS and the ILS Board “is to monitor, study and make efforts to improve the quality of services provided pursuant to article eighteen-B of the county law.” *See*, Executive Law §§ 832(1), 833 (1).

Your Committee is further advised that in October 2014, the parties in the *Hurrell-Harring* case reached a Settlement Agreement that mandated New York State to remedy four major areas of deficiency in the provision of indigent legal services: the lack of counsel at arraignment; excessive caseloads and inadequate support services; lack of quality control and oversight structures; and the failure to have a uniform standard of eligibility for the assignment of counsel. The Settlement, which required the state to provide funds for reform, applied only to the five counties involved in the lawsuit and not to any of the other fifty-two upstate counties or to New York City. On January 17, 2017, however, Governor Cuomo proposed the extension of the *Hurrell-Harring* reforms throughout New York State at state expense. ILS was given responsibility to develop plans for the statewide reforms to the provision of assigned counsel and to oversee their implementation. On April 10, 2017, the final FY 2018 New York State budget included two statutory amendments. Specifically, County Law § 722-e, which since 1965 had required counties to fund Assigned Counsel, was amended to specify that any costs of implementing the ILS reform plans “shall be reimbursed by the state to the county or city providing such services.” Further, the statute provides that the “state shall appropriate funds sufficient to provide for the reimbursement required by this section.”

Your Committee notes that a new subdivision of the Executive Law § 832 (4), entitled “Additional Duties and Responsibilities,” gave ILS the authority to craft and implement plans for statewide implementation that provide counsel at arraignment, caseload relief, and quality improvement. Pursuant to this mandate, ILS has been meeting with public defense providers and local government officials in the counties and New York City to create implementation plans that

meet the mandates of the Executive Law, determine appropriate interim steps, and estimate the cost of full compliance with those plans in the coming years. Accordingly, to aid counties and to ensure quality representation, ILS, in consultation with the ILS Board, promulgated Standards for Establishing and Administering Assigned Counsel Programs (“Standards”, attached hereto), pursuant to Executive Law § 832. These Standards encompass criminal defense, family law, and appellate representation of assigned counsel clients. With Statewide implementation of reforms in compliance with the Standards, 41 counties and New York City now operate with independent administrators, and all counties are developing enhanced structure and resources for their assigned counsel attorneys.

Your Committee is informed that the County’s Plan currently relies upon Legal Aid to provide attorneys for representation of indigent clients, administer the 18-B panel of private attorneys to represent indigent clients, apply for all funding from the State and process the vouchers to forward to the County for payment of attorneys. ILS strongly believes that this arrangement clearly creates a conflict of interest for Legal Aid; in 2020, the then Presiding Justice of the Appellate Division, Second Department, indicated the necessity for the County to create a new Plan for an Assigned Counsel program that would meet the requirements of not only New York State law but the Standards as well. Over the past several months, I and the Chief Deputy County Attorney have met and consulted with ILS, WCBA and Legal Aid to establish a new program for the provision of assigned counsel in Westchester County. We have drafted proposed legislation to create an Independent Office of Assigned Counsel (“Office”) that complies with New York State law and the Standards issued by ILS. Moreover, on

February 25, 2021, as required by County Law §722, ILS formally approved the County's new plan for provision of Indigent Legal Services contained in the proposed legislation creating the Office.

Your Committee is further informed that pursuant to the proposed legislation, the Office will be administered by an Assigned Counsel Administrator with the advice and consent of an 11 member independent Assigned Counsel Board of Directors. The Board of Directors will be appointed by the County Executive on the recommendations of various Bar Associations and confirmed by this Honorable Board. All of the administrative duties currently carried out by Legal Aid will be assumed by the Office. The County will contract with the WCBA and other appropriate agencies to provide specific services including review of attorney applications for certification and recertification to the 18-B panel, as well as training, investigation, expert witnesses, social work/sentencing advocacy, quality control, or second chair and mentoring programs. Moreover, the Assigned Counsel Administrator will be responsible for applying to the State for the Distributions of Funding and Grants to fund the Office. As with any County Department or Agency, the County Board will approve the Budget and any contracts of the Office as required by law.

As you know, this Honorable Board must comply with the requirements of the State Environmental Quality Review Act ("SEQRA"). Your Committee is advised that the Department of Planning has reviewed the applicable SEQRA regulations, and has concluded that this proposed Local Law is not an action. Your Committee concurs with that conclusion.

Your Committee, after careful consideration, recommends adoption of this Local Law.

Dated: _____, 2021
White Plains, New York

COMMITTEE ON

Sdk/4-16-21

RESOLUTION NO. ____ - 2021

RESOLVED, that this Board hold a public hearing pursuant to Section 209.141(4) of the Laws of Westchester County on Local Law Intro. No. ____ - 2021, entitled “A LOCAL LAW amending the Laws of Westchester County by adding a new Chapter 186 creating the Independent Office of Assigned Counsel.” The public hearing will be held at __.m. on the ____ day of _____, 2021 in the Chambers of the Board of Legislators, 8th Floor, Michaelian Office Building, White Plains, New York. The Clerk of the Board shall cause notice of the time and date of such hearing to be published at least once in one or more newspapers published in the County of Westchester and selected by the Clerk of the Board for that purpose in the manner and time required by law.

LOCAL LAW INTRO. NO. 2021

A LOCAL LAW amending the Laws of Westchester County by adding a new Chapter 186 relating to the creation of the Independent Office of Assigned Counsel.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. A new Chapter 186 is hereby added to the Laws of Westchester County to read as follows:

Chapter 186

INDEPENDENT OFFICE OF ASSIGNED COUNSEL

Sec. 186.11. Short Title

Sec. 186.21 Purpose

Sec. 186.31. Definitions.

Sec. 186.41. Board of Directors, Membership

Sec. 186.51. Board of Directors, Powers and Duties.

Sec. 186.61. Assigned Counsel Administrator, Appointment, Term.

Sec. 186.71. Administrator, Powers and Duties.

Sec. 186.81. Operation of Program

Sec. 186.91, Rules and Regulations

Sec. 186.101. Severability

Sec. 186.11 Short Title.

This Chapter shall be known as and cited as “The Independent Office of Assigned Counsel.”

Sec. 186.21 Establishment, Purpose

There shall be an Office of Assigned Counsel, which shall operate as an independent office of the County, the purpose of which is to maintain an Assigned Counsel Program in the County by establishing protocols and policies for assigning attorneys to indigent public defense clients to ensure the provision of professional, skilled, ethical and client centered legal representation of such indigent public defense clients. The Assigned Counsel Program shall operate in compliance with the Standards for Establishing and Administering Assigned Counsel Programs promulgated by the New York State Office of Indigent Legal Services pursuant to

New York State Executive Law section 832 (“Standards”).

Sec. 186.31. Definitions

a. Administrator. The person who administers the Assigned Counsel Program in the County and ensures that the Standards are met;

b. Assigned Counsel. A private attorney or attorneys, other than an attorney or attorneys employed by an institutional provider, paid by the government to represent public defense clients;

c. Assigned Counsel Program. An entity that sets forth protocols and policies for assigning attorneys to public defense clients and ensures that those attorneys provide quality representation;

d. Clients. Persons entitled to representation in criminal defense and family law matters under New York State County Law Article 18-B;

e. County. The County of Westchester;

f. Independent. Freedom from improper influence and control by an outside entity, to ensure that the Assigned Counsel Program and assigned counsel make decisions based solely on the interests of clients;

g. Judge. Judges, magistrates, and any other persons with adjudicative powers over clients eligible for mandated representation;

h. Mandated Representation. Government-funded legal representation that is constitutionally or statutorily required including, but not limited to, representation in criminal matters pursuant to New York State County Law Article 18-B, family court proceedings, and appellate representation, regardless of the client’s party status;

i. Mentor or Mentoring Attorney. An experienced attorney who provides training, consultation, and guidance to less experienced attorneys on the Panel;

j. Office of Assigned Counsel. The office responsible to administer the Assigned Counsel program in Westchester County;

k. Panel. The Assigned Counsel Panel’s list of attorneys eligible to receive assignments in the County, which should be limited to those in good standing and with the requisite skills and training;

l. Quality Representation. Representation of clients in a professional, skilled, ethical, and client-centered manner;

m. Standards. Standards for Establishing and Administering Assigned Counsel Program's in New York State promulgated by the New York State Office of Indigent Legal Services pursuant to New York State Executive Law section 832.

Sec. 186.41. Assigned Counsel Board of Directors

a. There shall be an Assigned Counsel Board of Directors which shall consist of eleven (11) members. Nine (9) members shall be appointed by the County Executive subject to confirmation by the Westchester County Board of Legislators. One member shall be a former magistrate judge who served for at least two (2) years on a Town or Village Court located within Westchester County. One member shall be chosen from among several recommended by the Westchester Women's Bar Association. One member shall be chosen from among several recommended by the Westchester Black Bar Association. Two members shall be chosen from several recommended by the Board of Directors of the Westchester County Bar Association. Two members shall be chosen from qualified members of the general public who are not members of the legal profession and who reside in Westchester County. Two members shall be attorneys in good standing, who are active members of the Westchester County Bar Association's 18-B panel, chosen from several recommendations made by the Westchester County Bar Association. In no event shall the majority of the Board of Directors be composed of members who are current or former Judges;

b. Two members of the Board of Directors shall be ex-officio members as follows: (1) the Supervising Judge of the Criminal Courts of the Ninth Judicial District provided that if the Supervising Judge is not a resident of Westchester County, then a Judge of the Westchester County Court selected by the Chief Administrative Judge of the Ninth Judicial District; and (2) a Westchester County Family Court Judge recommended by the Chief Administrative Judge of the Ninth Judicial District. The two ex-officio members of the Board of Directors shall not vote on matters coming before the Board of Directors;

c. No member of the Board of Directors shall hold a position as a prosecutor, a member of law enforcement or any other government official whose duties may be adversarial to mandated representation;

d. The first Chair of the Board of Directors shall be chosen from among the members of the Board of Directors upon a majority vote and shall serve for a three (3) year term. Thereafter alternating members of the Board of Directors may serve as Chair upon majority vote of the Board of Directors to serve a three (3) year term. No ex-officio members or judge shall serve as Chair of the Board of Directors. Immediately upon selecting a Chair, the Board shall notify the County Executive in writing, who shall have 21 days to approve or disapprove of the selection. If the County Executive approves of such selection or fails to act within 21 days, the selected person shall commence his or her term as Chair of the Board. If the County Executive does not approve the selection of a Chair within 21 days, another member

shall be chosen as Chair by majority vote of the Board of Directors and written notification of such selection shall be sent to the County Executive for approval or disapproval as provided for in this subdivision.

e. Of the members of the Board of Directors first appointed, four (4) shall be appointed for one year; four (4) shall be appointed for two (2) years and five (5) shall be appointed for three (3) years. Every attempt shall be made to choose members of the Board of Directors from differing constituencies in each of the staggered terms. Upon the expiration of the term of office of any member of the Board of Directors, his or her successor shall be appointed to membership on such Board for a term of three (3) years and shall be chosen in the same manner as the predecessor;

f. No person shall serve as a member of the Board of Directors for more than two (2) consecutive three (3) year terms;

g. Any member chosen to fill a vacancy created otherwise than by expiration of term shall be appointed for the unexpired term of the member whom he or she is to succeed;

h. A majority of the Board of Directors shall constitute a quorum for the transaction of business.

i. No member of the Board of Directors shall be compensated for the services to be provided but may be reimbursed for any reasonable expenses that may be incurred in the conduct of their official duties of such members.

Sec. 186.51. Board of Directors, powers and duties

The Board of Directors shall have the following powers and duties:

a. Provide guidance and advice on the operation of the Office of Assigned Counsel and Assigned Counsel Program in the County;

b. Appoint the Assigned Counsel Administrator in consultation with the New York State Office of Indigent Legal Services;

c. Study and review the existing program under Article 18-B of the New York State County Law for provision of indigent representation in the Criminal and Family Courts in the County and recommend any appropriate modifications to the program;

d. Establish and implement uniform rules and regulations in compliance with the

Standards for creation and administration of an Assigned Counsel program to enable the effective provision of indigent legal services in Westchester County;

e. Review and approve the annual Budget request from the Assigned Counsel Administrator for submission to the County Budget Director in compliance with County Budgetary law and procedures;

f. Review and approve contracts recommended by the Assigned Counsel Administrator for operation of the Assigned Counsel program prior to submission to the appropriate board for approval by the County;

g. Consult with the New York State Office of Indigent Legal Services, the Judiciary and community groups regarding provision of indigent legal services in the County;

h. Prepare an Annual Report for submission to the County Executive and County Board of Legislators by December 31st of each year regarding the services provided by the Office of Assigned Counsel including but not limited to: numbers and types of cases, attorney caseloads and Office expenditures.

Sec. 186.61. Assigned Counsel Administrator; appointment, qualifications, term

a. The Board of Directors shall appoint an Assigned Counsel Administrator subject to the approval of the County Executive and confirmation of the Board of Legislators. Any person so appointed shall be an attorney in good standing, licensed in the State of New York, possess administrative experience, skill in the representation of criminal defendants and/or adults in Family law matters, and demonstrate integrity and commitment to quality representation of public defense clients;

b. The Administrator shall serve full time and shall not engage in the private practice of law during their appointment;

c. The Administrator shall serve a term of four (4) years subject to reappointment at the discretion of the Board of Directors;

d. The Administrator may be removed for cause by the Board of Directors, after notice and an opportunity to be heard pursuant to procedures established by the Board of Directors.

Sec. 186.71. Assigned Counsel Administrator; Powers and Duties

a. The Administrator shall be the administrative head of the office, and shall have the duty to ensure that all indigent persons are provided with quality legal

representation as soon as feasible after arrest, detention or request for counsel in a criminal case and at the earliest possible stage of a state intervention case in Family Court;

b. Develop and monitor program policies, standards and operational procedures of the Assigned Counsel Program regarding qualifications for appointment to the panel, recruitment of attorneys to serve on the panel, limitations on attorney caseloads, guidelines for the administrative responsibilities of panel attorneys and supervision and review of attorney caseloads and quality of legal representation;

c. Maintain a panel of attorneys eligible to receive assignments for indigent representation based upon sufficient knowledge and experience;

d. Establish qualifications and standards for certification of attorneys to become members of the panel, pursuant to a certification program managed by the Westchester County Bar Association. Upon review of applications for certification and any other relevant information provided, the Westchester County Bar Association shall make recommendations to the Assigned Counsel Administrator regarding all applications for certification. All determinations on applications for certification to the panel shall be made by the Assigned Counsel Administrator. Any Attorney aggrieved by the determination of the Assigned Counsel Administrator may seek review of the determination by the Board of Directors;

e. Establish procedures and standards for a recertification program managed by the Westchester County Bar Association whereby every three (3) years attorneys must reapply to remain on the panel. Upon review of recertification applications and any other relevant information provided, the Westchester County Bar Association shall make recommendations to the Assigned Counsel Administrator regarding all applications. All determinations regarding applications for recertification to the panel shall be made by the Assigned Counsel Administrator. Any Attorney aggrieved by the determination of the Assigned Counsel Administrator may seek review of the determination by the Board of Directors;

f. Ensure adequate attorney participation on the panel and that training for assigned counsel is provided;

g. Oversee the rotation and coordination of panel attorneys, implement a fair and prompt process for assignments, ensure that the ability, training and experience of panel attorneys are matched to the complexity of the cases to which they are assigned and provide for timely assignments of counsel to indigent clients as soon as feasible after arrest, detention or request for counsel in a criminal case and at the earliest possible stage of a state intervention case in Family Court;

h. Review all vouchers for services provided through the Assigned Counsel program including attorney vouchers to ensure proper payment for services

performed;

i. Appoint a Deputy Assigned Counsel Administrator following consultation with the Board of Directors and such assistants and other administrative staff for the Office of Assigned Counsel as may be necessary, subject to the amounts appropriated therefor and pursuant to New York State Civil Service law and County hiring rules and regulations;

j. Prepare an annual Budget proposal for the Office of Assigned Counsel for review by the Board of Directors for submission to the County Budget Department pursuant to County law and policy;

k. Maintain records of accounts and expenditures of the Office of Assigned Counsel in compliance with all applicable law and County policy;

l. Serve as an information resource;

m. Establish procedures for submission, investigation and resolution of complaints from clients, client family members, co-counsel, opposing counsel and the Judiciary regarding legal representation;

n. Conduct a periodic evaluation and review of the Assigned Counsel Program budget and communicate the fiscal and programmatic needs of the program to New York State Office of Indigent Legal Services to obtain state funding;

o. Prepare contracts with appropriate legal organizations such as the Westchester County Bar Association upon the approval of the Board of Directors and review by the Law Department, to perform certain services required by the Assigned Counsel Program as enumerated in this Chapter in compliance with all legal and budgetary mandates;

p. Attend meetings of the Board of Directors and provide periodic reports as requested by the Board of Directors on the Assigned Counsel Program which shall include numbers of cases assigned, attorneys assigned, services provided to the Panel and Office of Assigned Counsel expenditures;

q. Ensure compliance with County laws, policies and procedures;

r. Approve requests by panel attorneys of use of funding issued by the New York State Office of Indigent Legal Services for any non-attorney professional services such as investigative, expert witness, social work, interpreter, mental health, supervised visitation or any other professional service, as required to provide quality representation;

s. Remove, or suspend for a definite period of time, an attorney from the panel for cause, upon notice and after an opportunity to be heard, subject to review by the Board of Directors pursuant to procedures established by the

Board of Directors;

- t. Make application for other sources of state and federal funding to meet the budgetary and programmatic needs of the Assigned Counsel program;
- u. Any other duties necessary to carry out the purposes of this Chapter.

Sec. 186.81. Operations; Responsibilities of Assigned Counsel Program

- a. The Assigned Counsel Program shall ensure that attorneys on the Panel have access to non-attorney professional services such as investigative, expert witness, social work, interpreter, mental health, supervised visitation or any other professional service, as required to provide quality representation;
- b. The work of assigned counsel shall be periodically evaluated based upon objective criteria published by the Assigned Counsel Program;
- c. Each attorney new to the representation of indigent clients shall receive a mentor to assist the attorney to provide quality representation;
- d. All assigned counsel shall have access to appropriate substantive, procedural and practical training programs through the Westchester County Bar Association and any other organizations that provide legal training;
- e. Ensure creation of a “Second-Chair Program” for the panel whereby a less experienced attorney is paired with a more knowledgeable attorney to obtain necessary trial experience;
- f. Undertake efforts to ensure provision of adequate facilities for client meetings, equipment and legal research programs for panel attorneys. The Office of Assigned Counsel may work in conjunction with the courts, law enforcement agencies and the Westchester County Bar Association to provide these services;
- g. Develop appropriate resources for panel attorneys who may be handling complex litigation including matters requiring forensic expertise;
- h. Ensure that any attorney seeking appointment to the Panel through initial certification or recertification carry malpractice insurance.

Sec. 186.91. Rules and Regulations

The Administrator, with the approval of the Board of Directors, shall establish rules and regulations for the administration of the Assigned Counsel Program.

Sec. 186.101. Severability

If any clause, sentence, paragraph, subdivision, section, or part of this ordinance or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this ordinance, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

§2. This Local Law shall take effect six (6) months after enactment.

LOCAL LAW INTRO. NO. 2021

A LOCAL LAW amending the Laws of Westchester County by adding a new Chapter 186 relating to the creation of the Independent Office of Assigned Counsel.

BE IT ENACTED by the County Board of the County of Westchester as follows:

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This Chapter shall be known as and cited as “The Independent Office of Assigned Counsel.”

Sec. 186.21 Establishment, Purpose

There shall be an Office of Assigned Counsel, which shall operate as an independent office of the County, the purpose of which is to maintain an Assigned Counsel Program in the County by establishing protocols and policies for assigning attorneys to indigent public defense clients to ensure the provision of professional, skilled, ethical and client centered legal representation of such indigent public defense clients. The Assigned Counsel Program shall operate in compliance with the Standards for Establishing and Administering Assigned Counsel Programs promulgated by the New York State Office of Indigent Legal Services pursuant to

New York State Executive Law section 832 (“Standards”).

Sec. 186.31. Definitions

a. Administrator. The person who administers the Assigned Counsel Program in the County and ensures that the Standards are met;

b. Assigned Counsel. A private attorney or attorneys, other than an attorney or attorneys employed by an institutional provider, paid by the government to represent public defense clients;

c. Assigned Counsel Program. An entity that sets forth protocols and policies for assigning attorneys to public defense clients and ensures that those attorneys provide quality representation;

d. Clients. Persons entitled to representation in criminal defense and family law matters under New York State County Law Article 18-B;

e. County. The County of Westchester;

f. Independent. Freedom from improper influence and control by an outside entity, to ensure that the Assigned Counsel Program and assigned counsel make decisions based solely on the interests of clients;

g. Judge. Judges, magistrates, and any other persons with adjudicative powers over clients eligible for mandated representation;

h. Mandated Representation. Government-funded legal representation that is constitutionally or statutorily required including, but not limited to, representation in criminal matters pursuant to New York State County Law Article 18-B, family court proceedings, and appellate representation, regardless of the client’s party status;

i. Mentor or Mentoring Attorney. An experienced attorney who provides training, consultation, and guidance to less experienced attorneys on the Panel;

j. Office of Assigned Counsel. The office responsible to administer the Assigned Counsel program in Westchester County;

k. Panel. The Assigned Counsel Panel’s list of attorneys eligible to receive assignments in the County, which should be limited to those in good standing and with the requisite skills and training;

l. Quality Representation. Representation of clients in a professional, skilled, ethical, and client-centered manner;

m. Standards. Standards for Establishing and Administering Assigned Counsel Program's in New York State promulgated by the New York State Office of Indigent Legal Services pursuant to New York State Executive Law section 832.

Sec. 186.41. Assigned Counsel Board of Directors

a. There shall be an Assigned Counsel Board of Directors which shall consist of eleven (11) members. Nine (9) members shall be appointed by the County Executive subject to confirmation by the Westchester County Board of Legislators. One member shall be a former Westchester County City Court Judge or former magistrate judge who served for at least two (2) years on a Town or Village Court located within Westchester County. One member shall be chosen from among several recommended by the Westchester Women's Bar Association. One member shall be chosen from among several recommended by the Westchester Black Bar Association. One member shall be chosen from among several recommended by the Hudson Valley Hispanic Bar Association who is a resident of Westchester County. One member shall be chosen from several recommended by the Board of Directors of the Westchester County Bar Association. Two members shall be chosen from qualified members of the general public who are not members of the legal profession and who reside in Westchester County. Two members shall be attorneys in good standing who are active members of the Westchester County Bar Association's 18-B panel, one who practices in the Criminal Court and one who practices in Family Court, chosen from several recommendations made by the Westchester County Bar Association. No member of the Board of Directors of the Legal Aid Society of Westchester County shall serve on the Assigned Counsel Board of Directors. In no event shall the majority of the Board of Directors be composed of members who are current or former Judges;

b. Two members of the Board of Directors shall be ex-officio members as follows: (1); the Supervising Judge of the Criminal Courts of the Ninth Judicial District provided that if the Supervising Judge is not a resident of Westchester County, then a Judge of the Westchester County Court selected by the Chief Administrative Judge of the Ninth Judicial District; and (2) a Westchester County Family Court Judge recommended by the Chief Administrative Judge of the Ninth Judicial District. The two ex-officio members of the Board of Directors shall not vote on matters coming before the Board of Directors;

c. No member of the Board of Directors shall hold a position as a prosecutor, a member of law enforcement or any other government official whose duties may be adversarial to mandated representation;

d. The first Chair of the Board of Directors shall be chosen from among the members of the Board of Directors upon a majority vote and shall serve for a three (3) year term. Thereafter alternating members of the Board of Directors may serve as Chair upon majority vote of the Board of Directors to serve a three (3) year term. No ex-

officio members or judge shall serve as Chair of the Board of Directors. Immediately upon selecting a Chair, the Board shall notify the County Executive in writing, who shall have 21 days to approve or disapprove of the selection. If the County Executive approves of such selection or fails to act within 21 days, the selected person shall commence his or her term as Chair of the Board. If the County Executive does not approve the selection of a Chair within 21 days, another member shall be chosen as Chair by majority vote of the Board of Directors and written notification of such selection shall be sent to the County Executive for approval or disapproval as provided for in this subdivision. The Chair of the Board of Directors shall be an attorney.

d. Of the members of the Board of Directors first appointed, four (4) shall be appointed for one year; four (4) shall be appointed for two (2) years and three (3) shall be appointed for three (3) years. Every attempt shall be made to choose members of the Board of Directors from differing constituencies in each of the staggered terms. Upon the expiration of the term of office of any member of the Board of Directors, his or her successor shall be appointed to membership on such Board for a term of three (3) years and shall be chosen in the same manner as the predecessor;

e. No person shall serve as a member of the Board of Directors for more than two (2) consecutive three (3) year terms;

f. Any member chosen to fill a vacancy created otherwise than by expiration of term shall be appointed for the unexpired term of the member whom he or she is to succeed;

g. A majority of the Board of Directors shall constitute a quorum for the transaction of business.

h. No member of the Board of Directors shall be compensated for the services to be provided but may be reimbursed for any reasonable expenses that may be incurred in the conduct of their official duties of such members.

Sec. 186.51. Board of Directors, powers and duties

The Board of Directors shall have the following powers and duties:

a. Provide guidance and advice on the operation of the Office of Assigned Counsel and Assigned Counsel Program in the County;

b. Appoint the Assigned Counsel Administrator in consultation with the New York State Office of Indigent Legal Services;

- c. Study and review the existing program under Article 18-B of the New York State County Law for provision of indigent representation in the Criminal and Family Courts in the County and recommend any appropriate modifications to the program;
- d. Establish and implement uniform rules and regulations in compliance with the Standards for creation and administration of an Assigned Counsel program to enable the effective provision of indigent legal services in Westchester County;
- e. Review and approve the annual Budget request from the Assigned Counsel Administrator for submission to the County Budget Director in compliance with County Budgetary law and procedures;
- f. Review and approve contracts recommended by the Assigned Counsel Administrator for operation of the Assigned Counsel program prior to submission to the appropriate board for approval by the County;
- g. Consult with the New York State Office of Indigent Legal Services, the Judiciary and community groups regarding provision of indigent legal services in the County;
- h. Prepare an Annual Report for submission to the County Executive and County Board of Legislators by December 31st of each year and appear before the Board of Legislators to answer questions regarding the Annual Report. The Annual Report shall include regarding the services provided by the Office of Assigned Counsel including but not limited to: numbers and types of cases, attorney caseloads and Office expenditures.

Sec. 186.61. Assigned Counsel Administrator; appointment, qualifications, term

- a. The Board of Directors shall appoint an Assigned Counsel Administrator subject to the approval of the County Executive and confirmation of the Board of Legislators. Any person so appointed shall be an attorney in good standing, licensed in the State of New York and admitted to practice for at least ten (10) years, who possesses administrative experience, skill in the representation of criminal defendants and/or adults in Family law matters, and who demonstrates integrity and commitment to quality representation of public defense clients;
- b. The Administrator shall serve full time and shall not engage in the private practice of law during their appointment;
- c. The Administrator shall serve a term of four (4) years subject to reappointment at the discretion of the Board of Directors;

d. The Administrator may be removed for cause by the Board of Directors, after notice and an opportunity to be heard pursuant to procedures established by the Board of Directors.

Sec. 186.71. Assigned Counsel Administrator; Powers and Duties

a. The Administrator shall be the administrative head of the office, and shall have the duty to ensure that all indigent persons are provided with quality legal representation as soon as feasible after arrest, detention or request for counsel in a criminal case and at the earliest possible stage of a state intervention case in Family Court;

b. Develop and monitor program policies, standards and operational procedures of the Assigned Counsel Program regarding qualifications for appointment to the panel, recruitment of attorneys to serve on the panel, limitations on attorney caseloads, guidelines for the administrative responsibilities of panel attorneys and supervision and review of attorney caseloads and quality of legal representation;

c. Maintain a panel of attorneys eligible to receive assignments for indigent representation based upon sufficient knowledge and experience;

d. Establish qualifications and standards for certification of attorneys to become members of the panel, pursuant to a certification program managed by the Westchester County Bar Association. Upon review of applications for certification and any other relevant information provided, the Westchester County Bar Association shall make recommendations to the Assigned Counsel Administrator regarding all applications for certification. All determinations on applications for certification to the panel shall be made by the Assigned Counsel Administrator. Any Attorney aggrieved by the determination of the Assigned Counsel Administrator may seek review of the determination by the Board of Directors;

e. Establish procedures and standards for a recertification program managed by the Westchester County Bar Association whereby every three (3) years attorneys must reapply to remain on the panel. Upon review of recertification applications and any other relevant information provided, the Westchester County Bar Association shall make recommendations to the Assigned Counsel Administrator regarding all applications. All determinations regarding applications for recertification to the panel shall be made by the Assigned Counsel Administrator. Any Attorney aggrieved by the determination of the Assigned Counsel Administrator may seek review of the determination by the Board of Directors;

f. Ensure adequate attorney participation on the panel and that training for assigned counsel is provided;

- g. Oversee the rotation and coordination of panel attorneys, implement a fair and prompt process for assignments, ensure that the ability, training and experience of panel attorneys are matched to the complexity of the cases to which they are assigned and provide for timely assignments of counsel to indigent clients as soon as feasible after arrest, detention or request for counsel in a criminal case and at the earliest possible stage of a state intervention case in Family Court;
- h. Review all vouchers for services provided through the Assigned Counsel program including attorney vouchers to ensure proper payment for services performed;
- i. Appoint a Deputy Assigned Counsel Administrator following consultation with the Board of Directors and such assistants and other administrative staff for the Office of Assigned Counsel as may be necessary, subject to the amounts appropriated therefor and pursuant to New York State Civil Service law and County hiring rules and regulations;
- j. Prepare an annual Budget proposal for the Office of Assigned Counsel for review by the Board of Directors for submission to the County Budget Department pursuant to County law and policy;
- k. Maintain records of accounts and expenditures of the Office of Assigned Counsel in compliance with all applicable law and County policy;
- l. Serve as an information resource;
- m. Establish procedures for submission, investigation and resolution of complaints from clients, client family members, co-counsel, opposing counsel and the Judiciary regarding legal representation;
- n. Conduct a periodic evaluation and review of the Assigned Counsel Program budget and communicate the fiscal and programmatic needs of the program to New York State Office of Indigent Legal Services to obtain state funding;
- o. Prepare contracts with appropriate legal organizations including but not limited to the Westchester County Bar Association upon the approval of the Board of Directors and review by the Law Department, to perform certain services required by the Assigned Counsel Program as enumerated in this Chapter in compliance with all legal and budgetary mandates;
- p. Attend meetings of the Board of Directors and provide periodic reports as requested by the Board of Directors on the Assigned Counsel Program which shall include numbers of cases assigned, attorneys assigned, services provided to the Panel and Office of Assigned Counsel expenditures;
- q. Ensure compliance with County laws, policies and procedures;

- r. Approve requests by panel attorneys of use of funding issued by the New York State Office of Indigent Legal Services for any non-attorney professional services such as investigative, expert witness, social work, interpreter, mental health, supervised visitation or any other professional service, as required to provide quality representation;
- s. Remove, or suspend for a definite period of time, an attorney from the panel for cause, upon notice and after an opportunity to be heard, subject to review by the Board of Directors pursuant to procedures established by the Board of Directors;
- t. Make application for other sources of state and federal funding or from any other funding resources to meet the budgetary and programmatic needs of the Assigned Counsel program;
- u. Any other duties necessary to carry out the purposes of this Chapter.

Sec. 186.81. Operations; Responsibilities of Assigned Counsel Program

- a. The Assigned Counsel Program shall ensure that attorneys on the Panel have access to non-attorney professional services such as investigative, expert witness, social work, interpreter, mental health, supervised visitation or any other professional service, as required to provide quality representation;
- b. The work of assigned counsel shall be periodically evaluated based upon objective criteria published by the Assigned Counsel Program;
- c. Each attorney new to the representation of indigent clients shall receive a mentor to assist the attorney to provide quality representation;
- d. All assigned counsel shall have access to appropriate substantive, procedural and practical training programs through the Westchester County Bar Association and any other organizations that provide legal training;
- e. Ensure creation of a “Second-Chair Program” for the panel whereby a less experienced attorney is paired with a more knowledgeable attorney to obtain necessary trial experience;
- f. Undertake efforts to ensure provision of adequate facilities for client meetings, equipment and legal research programs for panel attorneys. The Office of Assigned Counsel may work in conjunction with the courts, law enforcement agencies and the Westchester County Bar Association to provide these services;
- g. Develop appropriate resources for panel attorneys who may be handling complex litigation including matters requiring forensic expertise;

h. Ensure that any attorney seeking appointment to the Panel through initial certification or recertification carry malpractice insurance.

Sec. 186.91. Rules and Regulations

The Administrator, with the approval of the Board of Directors, shall establish rules and regulations for the administration of the Assigned Counsel Program.

Sec. 186.101. Severability

If any clause, sentence, paragraph, subdivision, section, or part of this ordinance or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this ordinance, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

§2. This Local Law shall take effect six (6) months after enactment.