

**CRIMINAL JUSTICE & PUBLIC SAFETY COMMITTEE**  
**PUBLIC DEFENDER**  
**AGENDA**  
**JUNE 22, 2016**

Committee Members: Supervisors Wood, Dickinson, Girard, Frasier, Brock, Seeber, Simpson, Vanselow, Montesi, Braymer, MacDonald

- I. Committee meeting called to order by Chairman
- II. Motion to approve the minutes of the prior meeting
- III. Action Agenda/New Business Items:
  1. Request: to request authorization to hire additional staff of 2 attorneys and 1 secretary

Rationale: to authorize request for additional staff due to the anticipated increase in cases due to new lower application standards for clients along with the addition of a new family court judge.

IV. Referrals/Pending Items:  
None

V. Discussion Items:  
None

VI. Privilege of the floor to discuss any additional item to come before the Committee

VII. Motion to adjourn

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Attachments:

Letter to Criminal Justice Committee

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SIXTH ASSISTANT

JAMES E. CARUSO  
INVESTIGATOR

June 15, 2016

Dear Criminal Justice Committee Member,

I have requested time on the June 22, 2016 Criminal Justice Committee meeting to discuss with you issues that will affect this office starting in October 2016.

As you are aware, this office receives funding from the Office of Indigent Legal Services (OILS). The funding is via grants that include, but are not limited to, providing full funding for one attorney (the 6<sup>th</sup> APD), a secretary, books, computers, cell phones, continuing education classes, camera, office equipment, membership fees, electronic office equipment, training, internet jet packs, furniture, appeals and retention stipends. These grants are for 3 years and are potentially renewable. The grant funding is also for the Assigned Counsel Office and the Legal Aid Society of Northeastern New York. The amounts of the grants and the purpose of the grants are set by OILS. We have applied for every grant that OILS offered. I am happy to report that we have never been turned down for a grant. In addition, we just received the 6<sup>th</sup> grant contract and it is awaiting signatures by the required parties and review by the Office of the Comptroller in the normal course of the grant process.

In the near future three significant challenges will occur that will have a monumental effect on this office and will inhibit this office's ability to adequately and ethically provide appropriate legal representation for our clients.

I

The current income test for a person to apply for an attorney to be assigned to them (in a criminal matter and /or in a family court matter) is if their net income falls at or below 125% of the federal poverty guidelines, with reasonable deductions, including FICA expense and child support payments. There are additional qualification questions including the number of persons living in the household, the age of children under the age of 21 along with an asset tests. This standard is not changing in October of 2016 for a family court matter but it will change for a criminal matter.

As you have been advised by the Assigned Counsel Office, OILS has modified the application process and requirements for criminal cases. The modifications go into effect in October 2016. The new standard to have an attorney assigned to an indigent person in a criminal court matter is if the applicant's net income is at or below 250% of the federal poverty guidelines. There is also an asset test that in the event that the client has liquid assets readily available as cash in excess of \$5,000.00, said client shall not be eligible for an assigned counsel if the liquid assets put the applicant's net income above the 250% of the federal poverty guidelines.

I have discussed these modifications with the Assigned Counsel Administrator and the County Attorney. We all believe that the modification will have a negative effect on this office. We all believe the number of cases will increase but we cannot predict the number of new cases. We all believe the number of new cases will be significant.

These cases, as with all cases, need to be handled professionally and immediately. In many cases there are statutory requirements and legal time frames in which actions must occur. This requires timely and /or immediate communication with clients, especially those incarcerated.

Further, there are national workload guidelines which are supported by the NY State Office of Court Administration, OILS and the NY State Bar Association as to the number of cases an attorney can handle each year based on the type of case(s). These guidelines have significant ramifications for this office and this County since we are required not to accept excessive workloads. It is the obligation of this office to take appropriate steps to preclude having an excessive work load including declining to take additional cases and obtaining additional funding to hire additional attorney and support staff.

If this office has an excessive case load, I am ethically obligated to decline cases, and this will have a direct effect on the Assigned Counsel Office. That office would be required to hire attorneys to handle the matters that this office cannot accommodate. That would directly adversely affect the operating costs of the Assigned Counsel Office and in turn Warren County.

It is my belief that the cost of a full time attorney in this office is more cost effective to the County than hiring attorneys at the statutory hourly rate for each case that is above the workload standard.

## II

In addition, in January 2017 there will be a new family court judge sitting in this building. This will also affect this office.

At the present time, we have one sitting family court judge with one court room. Since the addition of the temporary family court courtroom, we have had a visiting judge use the temporary family courtroom for cases. Prior to the existence of the temporary court room, this office would handle multiple family court cases scheduled at the same time. There was no problem with this since there was only one judge and one court room in which to hear the cases. That has changed with the existence of the temporary court room. Now we have had a visiting judge handle a family court matter at the same time as Judge Kershko is on the bench. This has had a negative effect on our staffing issues. We have had to move attorneys into alternative assignments which can cause significant issues. If one attorney has been working with 2 different clients in family court cases and both cases are on at the same time in front of 2 different judges the attorney can only appear with one client at time. In general, judges do not want to be kept waiting for attorneys.

### III

The final factor that has been significant this past year is the Harrell-Hurring decision that requires attorneys to be present at arraignments. I have been very creative with my staffing to accommodate this issue for weekends and nights but at the expense of staff being present in the office on 2 days of the week. The Harrell-Hurring decision now has affected the arraignments in the daytime as well. In addition to covering all the court appearances on the regularly scheduled dates we have to cover arraignments in all courts during the daytime. In May 2016 we covered 40 additional arraignments during the daytime. This means we are not working on currently assigned cases. Many of these arraignments require immediate additional work to occur on the matter as well as travel. This is the classic example of a mandate being placed on the County by NYS without funding to cover the cost thereof and without a full understanding of the impact on a large rural county where some courts are nearly an hour away from our office.

As a result of all of these factors, I am respectfully requesting the addition of 2 new attorneys and 1 new secretary to handle these additional issues that have occurred. One attorney would be assigned exclusively to family court and the other attorney would be handling the increased case load. The secretary would be handling the related increase in paperwork associated with the increased case load.

I do not have funding in my budget to pay for the increase in staff. There is no OILS grant funding that I can apply for to pay for this increase in staff.

I understand that the services provided by my office are required by the state and the services we provide are unfunded mandates that can place a strain on the County budget. I would be remiss in my duties if I did not provide you with this information and make the request for additional staffing. I have always endeavored to provide the clients with the best possible legal representation and I believe that the staffing increase is needed to comply with legal and ethical requirements of this office.

### IV Statistics

In 2015 we were assigned 1,937 new cases.

From January 1, 2015 to May 31, 2015 we were assigned 818 new cases.

From January 1, 2016 to May 31, 2016 we were assigned 1,112 new cases.

Respectfully submitted,  
OFFICE OF THE PUBLIC DEFENDER

Marcy I. Flores  
Public Defender

MIF/mif  
C.c.: Brian Reichenbach