

Criminal Justice
Warren County Assigned Counsel
AGENDA
January 22, 2020

Committee Members: SEEBER, Leggett, Beaty, Diamond, Driscoll, McDevitt and Shepler

- I. Committee meeting called to order by Chairman
- II. Motion to approve minutes of prior committee meeting
- III. Action Agenda/New Business
 1. **Request: Replace the Warren County Assigned Counsel Plan previously approved by Resolution No. 481 of 2013 with the attached and Resolution No. 27 of 2019.**
Rationale: To have same adopted by Committee and submitted to the Warren County Bar Association and the State of New York (OILS) for approval.
 2. **Request: Introduction of Assigned Counsel Supervising Attorney, Robert Gregor, Esq.**
Rationale: To provide the newest committee members with a brief overview of the origin of this office, office operations and summary of his duties pursuant to the directives of the NYS Office of Indigent Legal Services.
- IV. Referral/Pending Items: None
- V. Information for Discussion/Review:
- VI. Privilege of the Floor to discuss any additional items to come before the Committee
- VII. Motion to adjourn

Attachments

#1 Resolution Request Form #20

RESOLUTION REQUEST FORM NO. 20

MISCELLANEOUS

**Please List All Other Requests Not Covered by Previous Resolution Request Forms Here.
Please attach any backup information available and be as detailed as possible.*

DEPARTMENT NAME: Assigned Counsel

DATE: 1/22/2020

- (a) Purpose of Request: **To update/replace current Warren County Assigned Counsel Plan**

- (b) Details: **All Pertain to Section V:**
 - Add "or assigned client" in paragraph 4**
 - Add "or as required by statute" in paragraph 6**
 - Remove "meet" and add "communicate" in first sentence of paragraph 8 and add "criminal" in front of the word clients. Add "and family court clients" after non-incarcerated clients.**
 - Remove "recommended" and add "required" in paragraph 11**

- (c) Previous Resolution Number: **481 of 2013**

- (d) Where are the Funds (if required)? List Budget Code, Object Code, Full Title* and Amount: **None required**

Sample: A.8021 470 Planning & Community Development – Contract

* as listed in budget and LOGOS

Warren County Board of Supervisors

RESOLUTION NO. 27 OF 2019

RESOLUTION INTRODUCED BY SUPERVISORS LEGGETT, GERAGHTY, SIMPSON, WILD, MAGOWAN, SOKOL, HOGAN, BRAYMER, DRISCOLL, MERLINO AND VACANT

APPROVING THE WARREN COUNTY ASSIGNED COUNSEL PLAN WHICH REPLACES THE ASSIGNED COUNSEL PLAN AUTHORIZED BY RESOLUTION NO. 481 OF 2013

WHEREAS, pursuant to the requirements of New York County Law Article 18-B §722, the County has developed a plan for the provision of legal services for the eligible indigent of Warren County, and

WHEREAS, the attached plan will replace the Assigned Counsel Plan previously approved by Resolution No. 481 of 2013, now, therefore, be it

RESOLVED, that the Warren County Board of Supervisors hereby approves the attached Warren County Assigned Counsel Plan, and be it further

RESOLVED, that upon receipt of final approval of the Warren County Bar Association and approval of the Administrative Judge from the Office of Court Administration, the attached plan shall become effective.

WARREN COUNTY ASSIGNED COUNSEL PLAN

I. THE WARREN COUNTY ASSIGNED COUNSEL PROGRAM

1. The Assigned Counsel Program ("Program") is a cooperative effort between Warren County and the Warren County Bar Association that provides high quality legal representation to all financially-eligible persons in Warren County who are entitled by law to counsel, thereby protecting society's interest in the fair administration of justice. The Program represents those who are unable to afford a lawyer in criminal, Family Court, parole-related, and appellate cases.

2. The purpose of this Assigned Counsel Plan is to establish procedures for the provision of counsel and other investigative, expert, and related services to eligible persons when the Warren County Assigned Counsel Program accepts or assigns a case. The Plan shall establish panels of qualified attorneys for each type of case for which assigned counsel is available and shall set forth the procedures and requirements for administration of the Program by the Assigned Counsel Administrator and Advisory Board.

II. ASSIGNED COUNSEL ADMINISTRATOR

1. *Appointment and qualifications.* An Assigned Counsel Administrator ("Administrator") shall be appointed by the Warren County Board of Supervisors to be the Department Head of the Assigned Counsel Office. The Administrator shall possess demonstrable skill and experience in criminal defense and Family Court representation and shall also demonstrate a commitment to the quality representation of all clients who are eligible for mandated representation.

2. *Powers and duties.* The Administrator is responsible for qualifying applicants financially as well as the assignment of the appropriate public defender, conflict defender, or assigned counsel attorney, if a judge has not already assigned an attorney in the matter. The Administrator's responsibilities also include:

- a) setting policies and procedures for the Program;
- b) determining financial eligibility for assigned counsel representation pursuant to the criteria and standards issued by the Office of Indigent Legal Services and incorporated in this Plan;
- c) administering the application process for assigned counsel attorneys and managing the enrollment of each assigned counsel panel;
- d) preparing and furnishing to the courts in Warren County a list of attorneys qualified to represent indigent defendants;
- e) making rotational assignments of assigned counsel attorneys;
- f) reviewing vouchers submitted by assigned counsel attorneys for administrative and calculation errors and to assess the quality of practice;
- g) overseeing and managing the Program's budget;
- h) enforcing caseload standards in accordance with standards issued by the Office of Indigent Legal Services and incorporated in this Plan;
- i) reviewing the performance of assigned counsel attorneys and working with the Advisory Board to resolve complaints and violations;

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- j) maintaining records and data as necessary and preparing and submitting required reports to the Warren County Board of Supervisors and the Office of Indigent Legal Services; and
- k) facilitating, to the extent practicable, programs attorney training, mentoring, and continuing legal education.

III. ASSIGNED COUNSEL ADVISORY BOARD

1. *Composition.* The Assigned Counsel Advisory Board shall consist of three attorneys to be selected by the Administrator and approved by the Warren County Bar Association. Members of the Advisory Board shall have substantial experience and knowledge in criminal defense and Family Court representation and shall also demonstrate a commitment to the quality representation of all clients who are eligible for mandated representation.

2. *Powers and duties.* The Advisory Board shall assist the Administrator in reviewing attorney applications and handling complaints regarding assigned counsel attorneys. The Advisory Board may also provide advice regarding conflicts of interest and determine whether particular types of cases are eligible for mandatory representation.

IV. ATTORNEY APPLICATIONS

1. *General requirements.* To participate in the Program, attorneys must meet the following eligibility requirements:
 - (a) attorneys must be admitted to practice law in New York State and in good standing;
 - (b) attorneys must maintain a mailing address in Warren County and be available to meet with clients in Warren County in an appropriate office setting; and
 - (c) attorneys must maintain professional liability insurance in the amounts of \$500,000 per occurrence and \$1,000,000 aggregate, with Warren County named as an additional insured, and all coverage must be issued by an insurance company authorized to do business in New York State. Attorneys shall submit proof of such insurance at any time upon request by the Administrator.

2. *Application process.*
 - (a) Attorneys must apply to the Program using an application form provided by the Administrator. In addition to the completed application form, all applicants must submit the following:
 - i. Certificate of Good Standing issued within the previous 90 days;
 - ii. Professional resume;
 - iii. Contact information for two professional references;
 - iv. Cover letter and/or personal statement (not to exceed two pages)
 - (b) Interviews may be required at the discretion of the Administrator and/or the Advisory Board and further information may be requested as deemed necessary for proper review of the application.
 - (c) Applications will be reviewed by the Administrator and the Advisory Board based on the eligibility requirements for each Assigned Counsel Panel as set forth in this Plan; provided, however, that the Administrator and the Advisory Board shall have the discretion to accept or reject applications based

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on their assessment of applicants' experience or their character and fitness, and they may also consider programmatic limitations not related to an attorney's qualifications.

V. STANDARDS OF CONDUCT FOR ASSIGNED ATTORNEYS

1. Attorneys shall at all times conduct themselves with the utmost professionalism and in accordance with the Rules of the Appellate Division, Third Department and the New York Rules of Professional Conduct. Attorneys should also be guided by the New York State Bar Association Revised Standards for Providing Mandated Representation, the American Bar Association Criminal Justice Standards for the Defense Function, and any other applicable standards of practice.
2. Attorneys must promptly disclose any legal or ethical conflicts of interest and recuse themselves from any representation as requested by the Administrator or Advisory Board to avoid the appearance of impropriety.
3. Attorneys must comply with caseload standards issued by the New York State Office of Indigent Legal Services and incorporated in this Plan.
4. Attorneys shall maintain a separate file for each assigned matter or assigned client and shall maintain such files for at least seven years.
5. Attorneys are prohibited from accepting private retainers, gifts, or payments from any client assigned to them by the court or the Program.
6. Once assigned to a case, the assigned attorney shall remain the attorney of record unless and until specifically relieved by the court, the case is completed, or the attorney and the client agree in writing and a new attorney is assigned by the Administrator or as required by statute.
7. Attorneys must make every effort to attend all court appearances themselves and they shall promptly notify the Administrator and the court of any substitutions and/or requests for adjournment.
8. Attorneys must make every effort to meet/communicate with clients as soon as practicable following their assignment, but in any case they must meet with incarcerated criminal clients within 48 hours and communicate with non-incarcerated criminal clients and family court clients within two business days, provided that such contact may be by phone or email. If the criminal client is incarcerated, the assigned attorney should discuss bail with the client at the initial meeting. To the extent practicable, attorneys should thereafter meet with clients in advance of every court appearance and shall communicate with client within a reasonable period of time after each such appearance if the client was not in attendance. Attorneys at all times during representation shall be responsive and communicate regularly with clients.

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9. Assigned attorney shall assess the need for investigatory, expert, and other non-attorney support services in all cases and apply to the court for approval of such expenses where reasonably required.
10. Clients shall be timely notified of their right to appeal and notices of appeal shall be filed, as appropriate, as soon as possible after the conclusion of a matter.
11. It is ~~recommended~~ required that attorneys become or remain members of the Warren County Bar Association. It is also recommended that attorneys become or remain members of the New York State Defenders Association, the New York State Association of Criminal Defense Lawyers, and/or the New York State Bar Association Criminal Justice or Family Law Sections.

VI. ATTORNEY DISQUALIFICATION AND COMPLAINTS

1. Attorney disqualification.

- (a) Attorney participation in the Warren County Assigned Counsel Program is a privilege, not a right, and attorneys may be removed from the Program at any time if they fail to comply with any provision of this Plan. Attorneys may be removed or suspended from the Program for any of the following reasons:
 - i. substantial failure to comply with any provision of this Plan or the New York Rules of Professional Conduct;
 - ii. the intentional submission of materially incorrect information, applications, vouchers, or other submissions;
 - iii. substantial failure to provide competent representation; or
 - iv. any disbarment, suspension from practice, or failure to maintain attorney registration in good standing.
- (a) If the Administrator determines that an attorney should be suspended or disqualified, the Administrator shall notify the attorney in writing and refer the matter to the Advisory Board to determine an appropriate response. Any decision of the Advisory Board to suspend or remove an attorney from the Program shall be considered a final decision.
- (b) Attorneys who have been disqualified may reapply to the Program after a period of one year.

2. Complaints.

- (a) The Administrator shall notify attorneys in writing of any complaints regarding their conduct or performance. Prior to issuing any decision, the Administrator shall meet with the attorney to discuss the matter and shall provide at least ten days time for the attorney to submit a written response to the allegations. Pending complaints shall be kept confidential in order to protect the parties' private personal information.
- (b) If the Administrator determines that the conduct alleged in a complaint may have violated this Plan, the New York Rules of Professional Conduct, or any other applicable statutory or regulatory requirement, the Administrator shall refer the complaint to the Advisory Board to determine an appropriate response.

VII. ASSIGNED COUNSEL PANELS

1. General provisions

- (a) The Administrator shall maintain several panels of attorneys for assignments involving different types of cases. The requirements for attorneys participating in each of these panels are set forth in this section.
- (b) Attorneys may apply to any or all of the panels upon their initial application to the Program. After being accepted into the Program, attorneys may request to advance to a higher level panel upon meeting the applicable requirements for that panel.
- (c) Attorneys who do not meet the requirements for a panel may request acceptance based on their other abilities, knowledge, or experience which is sufficient to provide competent legal representation. Such requests shall be made in writing and shall be approved at the discretion of the Administrator and the Advisory Board.
- (d) Attorneys who are denied acceptance to a panel by the Administrator may request a review of such denial by the Advisory Board. The decision of the Advisory Board in such cases shall be final and subsequent applications will not be considered for a period of one year following the denial.
- (e) When it has been determined that an attorney may participate in one or more panels contingent upon successful completion of certain training or other requirements, the Administrator must communicate such determination to the attorney in writing and set a specific time frame for completing the training or other requirements.

2. Family Court Panel.

- (a) Attorneys on the Family Court Panel may accept assignments to matters brought in Family Court, including but not limited to custody and visitation, abuse, neglect, termination of parental rights, violation of support orders, and paternity.
- (b) Requirements for the Family Court Panel are as follows:
 - i. Attorneys must be knowledgeable regarding the substantive and procedural laws applicable to Family Court matters.
 - ii. Attorneys must have strong trial skills, including but not limited to counseling and communicating with clients, conducting appropriate motion practice, witness examination, and written and oral advocacy.
 - iii. Attorneys must have experience in at least three prior Family Court matters which included a full hearing and disposition.
 - iv. Notwithstanding the requirements for the Family Court Panel as set forth above, attorneys who demonstrate such other ability, knowledge, or experience sufficient to provide competent legal representation may be accepted onto the Family Court Panel at the discretion of the Advisory Board.

3. Misdemeanor Panel.

- (a) Attorneys on the Misdemeanor Panel may accept assignments in misdemeanor and violation cases.

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(b) Requirements for the Misdemeanor Panel are as follows:

- i. Attorneys must be knowledgeable regarding the substantive and procedural laws applicable in misdemeanor and violation cases.
- ii. Experience in prior misdemeanor and violation prosecutions is preferred, but attorneys with any level of experience sufficient to provide competent legal representation may be accepted onto the Misdemeanor Panel at the discretion of the Advisory Board.

4. Lower Felony Panel.

(a) Attorneys on the Lower Felony Panel may accept assignments in Class D and E level felony matters, as well as any misdemeanor and violation cases.

(b) Requirements for the Lower Felony Panel are as follows:

- i. Attorneys must have engaged in the actual practice of law for at least three years.
- ii. Attorneys must possess experience and skill in representing criminal defendants, including but not limited to counseling and communicating with clients, negotiating with prosecutors, conducting appropriate motion practice, written and oral advocacy, examination of witnesses, and jury trial practice.
- iii. Attorneys must have court experience in at least 30 criminal cases through disposition within the past three years, including at least: (1) one jury trial in a criminal case which proceeded to verdict; (2) two bench trials in a criminal case which proceeded to verdict; (3) second chairing at least three felony matters from commencement to final resolution; (4) three suppression hearings in criminal cases in which oral testimony was taken and a ruling on the hearing was rendered; or (5) any combination of the above requirements at the discretion of the Advisory Board.

5. Major Felony Panel.

(a) Attorneys on the Major Felony Panel may accept assignments in criminal matters involving any class of felony, misdemeanor, or violation, with the exception of homicide and predatory sexual abuse cases.

(b) Requirements for the Major Felony Panel are as follows:

- i. Attorneys must have engaged in the actual practice of law for at least five years.
- ii. Attorneys must possess superior experience and skill in representing criminal defendants, including but not limited to counseling and communicating with clients, negotiating with prosecutors, conducting appropriate motion practice, written and oral advocacy, examination of witnesses, and jury trial practice.
- iii. Attorneys must have substantial experience in the handling of felony matters and court experience in at least 50 criminal cases through disposition within the past five years, including at least: (1) fifteen felony cases; (2) ten hearings in criminal cases, including at least five felony cases, in which oral testimony was taken and an opinion on the hearing was rendered; (3) five criminal jury trials which proceeded to verdict, including at least two felony trials; or (4) any combination of the above requirements at the discretion of the Advisory Board.

6. *Homicide/Predatory Sexual Abuse Panel.*

- (a) Attorneys on the Homicide/Predatory Sexual Abuse Panel may accept assignments in cases involving any criminal matter.
- (b) Requirements for the Homicide/Predatory Sexual Abuse Panel are as follows:
 - i. Attorneys must have engaged in the actual practice of law for at least seven years.
 - ii. Attorneys must possess superior experience and skill in representing criminal defendants, including but not limited to counseling and communicating with clients, negotiating with prosecutors, conducting appropriate motion practice, written and oral advocacy, examination of witnesses, and jury trial practice.
 - iii. Attorneys must demonstrate high-quality legal writing skills through the submission of a post-indictment motion filed in a class A, B, or C felony case.
 - iv. Attorneys must have substantial experience in the handling of homicides and/or sexual predatory assault cases and court experience in at least 50 criminal cases through disposition within the past five years, including a minimum of 20 felony cases, and involving at least: (1) five felony jury trials which proceeded to verdict; (2) ten hearings in criminal cases, including at least eight felony cases, in which oral testimony was taken and an opinion on the hearing was rendered; (3) cross examination during trial of at least four expert witnesses offering testimony regarding undercover police investigations, fingerprints, ballistics and/or firearms, medical opinions, or forensic science; or (4) any combination of the above requirements at the discretion of the Advisory Board.

VIII. ASSIGNMENT PROCEDURES

1. *Order of assignment.*

- (a) The Warren County Public Defender Office has primary responsibility for providing indigent legal services for defendants in criminal matters, except for cases where a judge has already assigned an attorney.
- (b) In the event that the Public Defender is determined to have a conflict, counsel may be assigned:
 - i. (1) pursuant to a contract with a particular law firm or attorney qualified to provide conflict representation; or
 - ii. (2) to any assigned counsel attorney pursuant to the provisions of this Plan.
- (c) In the event that the appropriate assigned counsel panel lacks a suitable attorney able to take a case, the Administrator shall make an assignment from the next highest level panel. In the event that the Program is unable to provide suitable representation, the Administrator shall assign a qualified member of the Warren County Bar Association to provide representation. In such cases, the requirements and procedures set forth in this Plan shall apply.

2. *Timing; counsel at arraignment.*

- (a) Assignment of counsel shall be accomplished so that an indigent defendant will be represented at all critical phases of the prosecution, including arraignment. The Administrator shall make assignments within 48 hours of the qualification of an indigent person for such services, and if

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necessary to ensure representation at arraignment, the Administrator may make provisional assignments pending qualification.

- (b) Attorneys may be asked to accept assignments in emergencies or on very short notice. While acceptance of such assignments is not required, it is strongly encouraged.

3. *Manner of assignment.* The Administrator shall make assignments on a rotating basis from a list of all eligible participating attorneys. In assigning counsel, due regard shall be given to the following factors:

- (a) Potential conflicts of interest;
- (b) Geographic proximity;
- (c) Prior representation (continuity of counsel);
- (d) Attorney caseload; and
- (e) Attorney skill and experience with the type of case involved.

4. *Second chair assignments.* The Administrator may assign an attorney to serve as either the lead attorney in a case or as a second chair. Attorneys may also request the assignment of a second chair and are encouraged to do so in violent and/or complex felony cases. Less experienced attorneys may also request that a more experienced attorney be assigned as their second chair.

IX. CASELOAD STANDARDS

1. The New York State Office of Indigent Legal Services issued caseload standards in December 2016 as required pursuant to the *Hurrell-Harring* settlement. The purpose of these standards is to ensure that public defense lawyers and assigned attorneys have sufficient time in every client’s case to protect their clients’ constitutional rights and handle their cases in a professional and respectful manner.

2. The Administrator shall monitor attorney caseloads and enforce the maximum annual assignment limits set forth in the table below. The average number of hours per case is advisory only, not a strict requirement, and individual cases may take more or less time.

Case Type	Maximum Annual Assignments	Minimum Average Hours
Violent Felonies	50	37.5
Non-Violent Felonies	100	18.8
Misdemeanors and Violations	300	6.3
Post-Disposition (including Probation Revocation)	200	9.4
Parole Revocation	200	9.4
Appeals of Verdicts	12	156.3
Appeals of Guilty Pleas	35	53.6

X. ASSIGNED COUNSEL COMPENSATION AND EXPENSES

1. *Payment rates.* Attorneys shall be paid at the rates and fee levels specified in County Law §722-b.

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2. *Voucher forms.* The Administrator shall provide voucher forms to all participating attorneys and shall develop procedures as necessary to oversee the voucher submission and payment process. Vouchers shall be reviewed by the Administrator and if approved they shall be signed by the Administrator as Department Head of the Warren County Assigned Counsel Office and then forwarded to the presiding judge or justice for further review and signature pursuant to N.Y. County Law § 722. When approved by the presiding judge or justice vouchers shall be submitted to the Warren County Auditor for payment.

3. *Voucher submission deadlines.* To obtain payment, attorneys must submit completed voucher forms to the Administrator within 90 days following the conclusion of representation in each case. Attorneys must also submit year-end interim vouchers on or before December 31 for any case continuing past the end of the calendar year. Such year-end interim vouchers must include an estimate as to the cost of the remaining representation and an interim accounting of the amount outstanding to date. All work completed in any calendar year shall be submitted not later than January 15 of the following calendar year. Attorneys who fail to submit vouchers within these time periods may be required to submit payment requests to the Board of Supervisors.

4. *Billing increments and records.* Attorney billing and payments shall be made according to a decimal system of 1/10th hour increments, such that six minutes shall equal .1, thirty minutes shall equal .5, sixty minutes shall equal 1.0, etc. Increments shall be stated to the nearest 1/10th hour (i.e., .2 not .23 or .19). Attorneys shall maintain accurate contemporaneous time records for each assigned matter and such records shall be made available to the Administrator, the Warren County Auditor, or the presiding judge or justice upon reasonable demand. Attorneys shall bill, and may be paid, only for reasonable and necessary services and expenses. Time spent billing, preparing vouchers, or discussing the bill with the Administrator or any judicial officer or auditor may not be billed and shall not be paid.

5. *Travel expenses.* Attorneys may bill time spent traveling to and from courts and travel time to and from jail as out of court time only, and attorneys shall be reimbursed for mileage in accordance with County rules regarding travel. When multiple cases are handled on the same trip, attorneys must apportion the time actually spent traveling for each case between or among such clients.

6. *Non-attorney expenses.* Investigative, expert, and other non-attorney services which are necessary for an adequate defense shall be paid by the County as provided by County Law §722-c or through the Program if such resources are available. Assigned attorneys are expected to assess the need for such non-attorney supports, including but not limited to, investigative, expert, interpreting, social work, and sentencing advocate services. If non-attorney services are found to be necessary, assigned attorneys shall apply to the court for such services as provided by County Law §722-c.

XI. CRITERIA AND PROCEDURES FOR DETERMINING ASSIGNED COUNSEL ELIGIBILITY

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1. An applicant shall be eligible for assignment of counsel when the applicant's current available resources are insufficient to pay for a qualified attorney, release on bond, the expenses necessary for a competent defense, and the reasonable living expenses of the applicant and any dependents.

(a) Whether an applicant is eligible for assignment of counsel shall be determined in accordance with the criteria and procedures set forth below.

(b) Counsel shall be assigned unless the applicant is conclusively ineligible.

2. To streamline the eligibility determination process, there shall be presumptions of eligibility. A presumption of eligibility is rebuttable only where there is compelling evidence that the applicant has the financial resources sufficient to pay for a qualified attorney and the other expenses necessary for a competent defense.

(a) Applicants are presumptively eligible for assignment of counsel if their net income is at or below 250% of the Federal Poverty Guidelines.

(b) Applicants who are incarcerated, detained, or who are confined to a mental health institution shall be presumed eligible for assignment of counsel.

(c) Applicants who are currently receiving, or have recently been deemed eligible pending receipt of, need-based public assistance, including but not limited to Family Assistance (TANF), Safety Net Assistance (SNA), Supplemental Nutrition Assistance (SNAP), Supplemental Security Income (SSI)/New York State Supplemental Program (SSP), Medicaid, or Public Housing assistance, shall be deemed presumptively eligible for assignment of counsel.

(d) Applicants who have, within the past six months, been deemed eligible for assignment of counsel in another case in that jurisdiction or another jurisdiction shall be presumed eligible. Appellate courts shall assign appellate counsel to appellants who were deemed eligible for assigned counsel by their trial court.

3. Ability to post bond shall not be sufficient, standing alone, to deny eligibility for assignment of counsel.

4. The resources of a third party shall not be considered available to the applicant unless the third party expressly states a present intention to pay for counsel, the applicant gives informed consent to this arrangement, and the arrangement does not interfere with the representation of the applicant or jeopardize the confidentiality of the attorney-client relationship.

(a) The resources of a spouse shall not be considered available to the applicant, subject to the above exception.

(b) The resources of a parent shall not be considered as available to minor applicants, subject to the above exception.

5. Non-liquid assets shall not be considered unless such assets have demonstrable monetary value and are readily convertible to cash without impairing applicants' ability to provide for the reasonable living expenses of themselves and their dependents.

(a) Ownership of a vehicle shall not be considered where such vehicle is necessary for basic life activities.

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- (b) An applicant's primary residence shall not be considered unless the fair market value of the home is significant, there is substantial equity in the home, and the applicant is able to access the equity in a time frame sufficient to retain private counsel promptly.
- 6. Any income from receipt of child support or need-based public assistance shall not be considered as available to applicants in determining eligibility for assignment of counsel.
- 7. Debts and other financial obligations, including the obligation to provide reasonable living expenses for the applicant and his or her dependents, shall be considered in determining eligibility for assignment of counsel.
- 8. Eligibility determinations shall take into account the actual cost of retaining a private attorney in the relevant jurisdiction for the category of crime charged.
- 9. These criteria and procedures shall be applied uniformly, consistently, and with transparency.
- 10. Courts have the ultimate authority to determine eligibility, but may delegate the responsibility for screening and making an eligibility recommendation.
 - (a) Entities responsible for screening and making a recommendation should be independent and conflict-free.
 - (b) Where there is no entity that is independent and conflict-free, courts may delegate the screening responsibility to the provider of mandated representation.
- 11. The confidentiality of all information applicants provide during the eligibility determination process shall be preserved.
 - (a) The eligibility screening process, whether done by another entity or the court, shall be done in a confidential setting and not in open court.
 - (b) Any entity involved in screening shall not make any information disclosed by applicants available to the public or other entities (except the court).
 - (c) Any documentation submitted to the court shall be submitted *ex parte* and shall be ordered sealed from public view.
- 12. Counsel shall be assigned at the first court appearance or immediately following the request for counsel, whichever is earlier.
 - (a) Eligibility determinations shall be done in a timely fashion so that assignment of counsel is not delayed.
 - (b) Counsel shall be provisionally appointed for applicants whenever they are not able to obtain counsel prior to a proceeding which may result in their detention, or whenever there is an unavoidable delay in the eligibility determination.

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13. The eligibility determination process shall not be unduly burdensome or onerous.
 - (a) Applicants shall not be required to attest under penalty of perjury to the truth of the information provided as part of the eligibility determination process.
 - (b) Applicants shall not be denied assignment of counsel for minor or inadvertent errors in the information disclosed during the eligibility determination process.
 - (c) Applicants shall not be required to produce unduly burdensome documentation to verify the financial information provided; nor shall they be denied assignment of counsel solely for the failure to produce documentation where they have demonstrated a good faith effort to produce requested documentation.
 - (d) Applicants shall not be required to demonstrate that they were unable to retain private counsel to be deemed eligible for assignment of counsel.

14. The determination that applicants are ineligible for assignment of counsel shall be in writing and shall explain the reasons for the ineligibility determination. Applicants shall be provided an opportunity to request reconsideration of this determination or appeal it, or both.
 - (a) Screening entities shall promptly inform applicants of their eligibility recommendation. If their recommendation is that the applicant be denied assignment of counsel, they shall provide the reason for the denial in writing along with written notice that the applicant can ask the screening entity to reconsider or can appeal to the court, or both.
 - (b) If a court determines that an applicant is ineligible for assignment of counsel, the court shall inform the applicant of this decision in writing with an explanation as to the reason for the denial. The court shall also entertain an applicant's request to reconsider a decision that the applicant is ineligible for assignment of counsel.

15. A determination of eligibility for assignment of counsel shall not be re-examined absent a substantial change of circumstances such that the defendant can pay for a qualified attorney and the expenses necessary for a competent defense.
 - (a) County Law § 722-d shall be used only after an assignment of counsel has been made, only if prompted by defense counsel, and only after a finding of a substantial change in the defendant's financial circumstances.
 - (b) Counsel shall not be assigned contingent upon a requirement that the defendant make partial payments to the provider of mandated representation or to the county.

16. Procedure regarding data maintenance
 - (a) Data shall be maintained regarding the:
 - i. number of applicants who apply for assignment of counsel;
 - ii. number of applicants found eligible;
 - iii. number of applicants found ineligible and the reasons for the ineligibility determination;
 - iv. number of reconsiderations and appeals requested;
 - v. results of these reconsiderations and appeals;

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- vi. number of reports made pursuant to County Law § 722-d regarding the assignment of counsel;
and
 - vii. number of orders issued for partial payment or termination of the assignment of counsel under County Law § 722-d.
- (b) To ensure the confidentiality of information submitted during the eligibility determination process, the data shall be made available in aggregate form only, meaning that no individual applicant can be identified in the data itself.

XIII. SEVERABILITY

In the event that any part of this plan shall be determined to be inconsistent with the provisions of any statute relating to the representation of indigent defendants or respondents, the statute shall prevail. Any matters which are not provided for in this plan shall be governed by the applicable statutes.

XIV. EFFECTIVE DATE

This plan shall not take effect until it has been approved by the Office of Court Administration, the Warren County Bar Association and by resolution adopted by the Warren County Board of Supervisors. When approved, this plan shall become effective immediately and shall continue in effect until such time as the Warren County Board of Supervisors shall, by resolution, adopt an alternate plan for representation of indigent defendants, petitioners or respondents. If amended, the same approval process as set forth above is to be followed.