

Warren County Board of Supervisors

RESOLUTION NO. 241 OF 2007

Resolution introduced by Supervisors Tessier, Bentley, O'Connor, Stec, Kenny, Mason and VanNess

ADOPTION AND IMPLEMENTATION OF ASSIGNED COUNSEL PROGRAM

RESOLVED, that the Warren County Board of Supervisors hereby approves and adopts the Assigned Counsel Program attached hereto and presented at this meeting, and authorizes implementation of said policies as of April 20, 2007, and be it further

RESOLVED, that this is in addition to the Assigned Counsel Plan Policies adopted by Resolution No. 733 of 2006.

WARREN COUNTY ASSIGNED COUNSEL PROGRAM

2007

PLAN FOR WARREN COUNTY ASSIGNED COUNSEL PROGRAM

The Warren County Board of Supervisors, with frequent referral to the Warren County Bar Association, has during the past few years put into effect a revised plan for the voluntary assignment of counsel to indigent defendants, petitioners and/or respondents. The plan for representation of indigent defendants, petitioners and/or respondents in Warren County has been amended considerably since its inception in 1964.

The current Assigned Counsel Plan for Warren County provides two separate services: The entire program is run daily by the Assigned Counsel Administrator, Joy LaFountain, who is under the direct supervision of the Criminal Justice Committee of the Warren County Board of Supervisors. She was appointed by resolution of the Board of Supervisors. The Administrator is responsible for qualifying applicants financially as well as the assignment of the appropriate Public Defender, Conflict Defender or Assigned Counsel attorney once a person has been determined indigent, if a Judge has not already assigned an attorney in the matter. This is accomplished by reference to an alphabetical list of the attorneys available for indigent representation should the Public Defender or a Conflict Defender not be available for the matter. When legal questions arise, they are referred to Assistant County Attorney, Amy C. Bartlett. There is a close working relationship between the Assigned Counsel's office and the County Attorney's office.

The administrator prepares and furnishes to the Supreme Court Judge, the County Court and Surrogate Court Judge, the Family Court Judge and the judges for the City of Glens Falls, the Town of Queensbury, the Village of Lake George and to each town justice for Warren County a list of qualified and experienced attorneys. The attorneys on this list are members in good standing with Warren County Bar Association and have indicated in writing their willingness to represent indigent defendants, petitioners or respondents in Warren County. Such list shall be amended from time to time by additions and deletions as the Administrator shall determine. The Administrator shall, to the extent practicable, assist the courts in the assignment of counsel for indigent defendants, petitioners or respondents.

Following the initial qualification process, each particular matter is assigned to an attorney - the three distinct components which make up the

Assigned Counsel Program currently in effect in Warren County, pursuant to New York State County Law §722(4), are listed below in the order they are used:

1. **Public Defender Office** - This office was established in 2003, following posting of a Request for Qualifications with the Warren County Bar Association and disseminated in their newsletter. The office is made up of five attorneys, a confidential secretary and one part-time investigator. All cases for indigent representation pursuant to the Assigned Counsel Plan are initially assigned to the Public Defender's Office. Members of this office are Warren County employees. However, due to frequent conflicts, which may result from numerous issues, including but not limited to prior representation, representation on other matters as well as multiple parties or co-defendants to be represented, the Assigned Counsel office refers the matter to a Conflict Defender or refers to the assigned counsel list to secure representation for that indigent individual.

2. **Conflict Defenders** – This service commenced in May 2006. We currently have in place two separate Conflict Defender contracts. The first is for representation of indigents in Family Court should there be a conflict with the Public Defender's Office. These Conflict Defenders, as well as any other applicants for contractual legal representation of indigents, apply for said work in response to a Request for Qualifications set forth in the Warren County Bar Association's monthly newsletter. The Legal Aid Society of Northern New York (LASNNY) contracts for Conflict Defender work in Family Court and that contract is set for renewal in May of 2007. Two other contracts for Conflict Defender which are for representation of indigents who appear in Queensbury Town Court or Glens Falls City Court, respectively. These contracts are with O'Dell and O'Dell for Queensbury Town Court and the Stancliff Law Firm for the northern justice courts - this would include Lake George, Bolton, Johnsburg, Chester, Warrensburg, Hague, Stony Creek, Lake Luzerne, Horicon, and Thurman. Another prospective contract for Conflict Defender representation would be for matters in the Glens Falls City Court. To date there is no contract in place for that Court. It is, however, the expectation of the Warren County Board of Supervisors, Criminal Justice Committee and the Assigned Counsel Office that all courts will eventually have contractual Conflict Defenders.

3. **Assigned Counsel** –The list of attorneys qualified to represent indigents are accessed by the Assigned Counsel Administrator, Joy LaFountain in alphabetical order. Said attorneys, twenty-five attorneys at present, are members in good standing with the Warren County Bar Association and practice regularly in Warren County Courts. These attorneys have agreed in writing to represent indigent defendants or respondents who are to appear before Courts in Warren County. In the event that the Public Defender's Office

has a conflict with a particular party and no Conflict Defender is currently in place, the administrator refers to said list to provide counsel for that particular party. That list is utilized when a conflict exists for a Conflict Defender as well. Additionally, the Courts of Warren County are furnished with this list and use such to appoint attorneys from the bench. However, it is planned that once all courts are covered contractually by Conflict Defenders, the individual Conflict Defenders will cross cover courts when the contracted Conflict Defender is unable to represent an indigent. Even with that eventuality, there may be instances in the case of multiple defendants where the list would need to be accessed.

Assigned counsel under this plan shall receive from Warren County compensation for their services at the rates set forth in Section 722-b of the County Law of New York State and shall also be reimbursed for actual and necessary expenses. Investigative, expert or other services on behalf of the indigent defendant or respondent must first be approved by an Order of the presiding judge. The assigned counsel prepares a voucher on a pre-printed form, which is first submitted to the presiding Judge for his review and signature and then is submitted to the Administrator for payment. The Administrator's responsibility at this point is to check the math and ensure that all requested monies are reasonable and accurate and conform to the records of the Assigned Counsel's office. Questions regarding the reasonableness of the requested payment are referred to the County Attorney's office. If a mathematical change is made by the Administrator, it is resubmitted to the presiding Judge for his signature prior to proceeding to payment.

If the indigent defendant, petitioner or respondent indicates that they would like to appeal the judgment of the Court, it is the duty of the assigned attorney to discuss such matter with their client and ensure that the necessary paperwork is filed with all appropriate persons and in a timely fashion. The Appellate Division decides whether or not that applicant is indigent and then contacts the Assigned Counsel office for recommendations of those attorneys available to provide the services requested.

The Assigned Counsel Administrator is obligated to prepare and submit a detailed report regarding the representation of indigent defendants and respondents in Warren County on an annual basis. Said report is due to the New York State Office of Court Administration on March 1st of each year. In addition, the Administrator is responsible for preparation for the proposed annual budget, which is submitted to the Warren County Board of Supervisors, Criminal Justice Committee, in August of each year. Additionally, the Administrator appears

regularly at meetings of the Criminal Justice Committee of the Warren County Board of Supervisors and reports on assigned counsel matters.

The Administrator shall have the power to designate an acting administrator to perform the duties of the office in the absence or illness of the Administrator.

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.

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.