



STATE OF NEW YORK  
**OFFICE OF INDIGENT LEGAL SERVICES**

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**Improving the Quality of Mandated Representation Throughout the State of New York**

**ILS STATEWIDE REFORM MEETING  
AGENDA**

**New York State Bar Association, Great Hall**

**Tuesday, May 2, 2017 (11:30 a.m. – 2:30 p.m.)**

- |                          |   |
|--------------------------|---|
| 11:30 a.m. to 12:30 p.m. | Registration and lunch  |
| 12:30 p.m. to 1:00 p.m.  | Welcome and Opening Remarks:<br><br>First Assistant Counsel to Governor Cuomo, Sandi Toll<br>NYSBA President-Elect, Sharon Stern Gerstman<br>ILS Director, William Leahy  |
| 1:00 p.m. to 1:20 p.m.   | Overview of Legislation and ILS Mandate<br><br>ILS Director, William Leahy  |
| 1:20 p.m. to 2:00 p.m.   | Status of HH Settlement Implementation and Overview of<br>Statewide Reform Implementation Plans<br><br>ILS Chief Hurrell-Harring Implementation Attorney, Patricia Warth<br>ILS Counsel, Joseph Wierschem,<br>ILS Director of Research, Andrew Davies |
| 2:00 p.m. to 2:20 p.m.   | Question/Answer Period  |
| 2:20 p.m. to 2:30 p.m.   | Closing Remarks<br>ILS Director, William Leahy  |

## Reforming Public Defense in New York State: Study, Litigation, Legislation, Agency Action

### Chronology

**2006:** Kaye Commission report condemns New York's "fragmented system of county-operated and largely county-financed indigent defense services [that] fails to satisfy the state's constitutional and statutory obligations to protect the rights of the indigent accused." Recommends statewide public defender system, and state assumption of the cost of providing counsel.

**2007:** NYCLU files class action litigation *Hurrell-Harring v. The State of New York*.

**2009:** Legislation directs Chief Court Administrator to set weighted caseload standards for New York City: 150 felony/400 misdemeanor limit (i.e., 1973 NAC standard). These standards were established in 2010, and fully implemented by 2014.

**2010:** Enactment of Executive Law sections 832, creating the Office of Indigent Legal Services (ILS) and section 833, the Indigent Legal Services Board (ILSB). Decision by NY Court of Appeals in *Hurrell-Harring*, 15 NY 3d 8 (2010) reverses lower court dismissal and allows case to proceed to trial on theory of constructive denial of the state's responsibility to provide counsel.

**2011:** ILS begins operations in February with hiring of its Director. Issues first distribution of quality improvement funding to counties and New York City.

**2012:** ILSB issues *Standards and Criteria for the Provision of Mandated Representation in Cases Involving a Conflict of Interest*, effective July 1 and extended to all trial level representation as of January 1, 2013.

**2013:** ILS contracts with 25 upstate counties to provide state-funded counsel at first appearance, and issues its first annual *Estimate of the Cost of Compliance with National Maximum Caseload Limits*.

**2014:** ILS contracts with 47 upstate counties to provide state-funded caseload relief and quality improvements. ILS Board adopts statewide weighted caseload standard of 367, contingent on state funding. Board approves *ILS Appellate Standards and Best Practices*, effective as of January 5, 2015

**2012-2015:** Average weighted caseload per attorney in the 57 upstate counties is reduced by 22%, from 719 in 2012 to 561 in 2015. Still far above NYC and NAC standards.

**2015:** The October, 2014 settlement of the *Hurrell-Harring* case ("HH") is approved by the Court and goes into effect on March 11, 2015. See **Stipulation and Order of Settlement** in your conference materials. State funding is provided for ILS to create a *Hurrell-Harring* Implementation Unit.

**November 12:** ILS files its Final Plans for implementing Counsel at Arraignment and Quality Improvement Initiatives in the five HH counties, pursuant to sections III and V of the HH settlement.

**December 1:** ILS *Standards for Parental Representation in State Intervention Matters* are effective as of December 1, 2015.

The Brooklyn Study ([Indigent Defense Reforms in Brooklyn, New York](#)) demonstrates reduction of caseloads and improvements in representation in one NYC borough due to state-funded caseload relief.

**2016:** **April 1:** State budget includes \$10.4 million for caseload relief to help the five HH counties reach the ILSB standard of 367 weighted cases; and millions for counsel at arraignment and quality improvement initiatives in those counties.

**April 4:** ILS issues its Criteria and Procedures for Determining Assigned Counsel Eligibility, pursuant to section VI of the HH Settlement.

**June 17:** NY Senate and Assembly pass Public Defense Mandate Relief Act (PDMRA) also known as the Justice Equality Act (JEA) by unanimous votes. The Act would expand HH reforms statewide at state expense, and would provide full state reimbursement for local cost of providing mandated representation.

**July 6:** ILS announces creation of six **Regional Immigration Assistance Centers**, providing comprehensive statewide immigration consequences training and advice to providers of mandated representation.

**November 11:** The five HH counties meet the Settlement's deadline to have programs in place for full arraignment coverage.

**November 29:** Governor Cuomo signs into law Chapter 492, authorizing the creation of Centralized Arraignment Parts to facilitate the appearance of counsel at arraignment.

**December 8:** ILS delivers its caseload/workload standards to the parties, pursuant to section IV (B) of the HH Settlement Agreement.

**December 31:** Governor Cuomo vetoes the PDMRA/JEA, and instead proposes statewide, state-funded application of *Hurrell-Harring* reforms in his January, 2017 Executive Budget proposal.

**2017:** **January 6:** ILS issues its second Counsel at First Appearance (CAFA) Request for Proposals. Fifty-two counties are eligible to apply. (CAFA already in effect in NYC and the five HH counties). Thirty-seven counties apply by the February 24 deadline.

**January 17:** Executive budget proposal includes \$23.8 million for HH settlement costs in the five counties, including \$19 million for implementation of the new caseload limits established by ILS. Proposal also authorizes ILS to submit plans for extension of the HH caseload limits, counsel at arraignment and quality improvements statewide by December 1, 2017; and funds a new Statewide Implementation Unit for that purpose.

**March:** Assembly and Senate budget proposals concur word for word with Governor's proposal, but delete provision for DOB approval of the ILS plans.

ILS issues RFP for first-ever Model Upstate Parental Representation Office. Proposals are due by May 12, 2017.

**April 9:** Governor and Legislature agree on a state budget that includes statutory authority for ILS to develop and implement plans to extend HH reforms (counsel at arraignment, caseload relief and quality improvement initiatives) statewide. Plans are due by December 1, 2017. Full implementation, fully state funded, is due by April 1, 2023.

**Chapter 59 of the Laws of 2017, Part VVV, §11-13**

§ 11. Section 722-e of the county law, as added by chapter 878 of the laws of 1965, is amended to read as follows:

§ 722-e. Expenses. All expenses for providing counsel and services other than counsel hereunder shall be a county charge or in the case of a county wholly located within a city a city charge to be paid out of an appropriation for such purposes. **Provided, however, that any such additional expenses incurred for the provision of counsel and services as a result of the implementation of a plan established pursuant to subdivision four of section eight hundred thirty-two of the executive law, including any interim steps taken to implement such plan, shall be reimbursed by the state to the county or city providing such services. Such plans shall be submitted by the office of indigent legal services to the director of the division of budget for review and approval. However, the director's approval shall be limited solely to the plan's projected fiscal impact of the required appropriation for the implementation of such plan, and his or her approval shall not be unreasonably withheld. The state shall appropriate funds sufficient to provide for the reimbursement required by this section.**

**§ 12. Section 832 of the executive law is amended by adding a new subdivision 4 to read as follows:**

**4. Additional duties and responsibilities. The office shall, in consultation with the indigent legal services board established pursuant to section eight hundred thirty-three of this article, have the following duties and responsibilities, and any plan developed pursuant to this subdivision shall be submitted by the office to the director of the division of budget for review and approval, provided, however that the director's approval shall be limited solely to the plan's projected fiscal impact of the required appropriation for the implementation of such plan and his or her approval shall not be unreasonably withheld:**

**(a) Counsel at arraignment. Develop and implement a written plan to ensure that each criminal defendant who is eligible for publicly funded legal representation is represented by counsel in person at his or her arraignment; provided, however, that a timely arraignment with counsel shall not be delayed pending a determination of a defendant's eligibility.**

**(i) For the purposes of the plan developed pursuant to this subdivision, the term "arraignment" shall mean the first appearance by a person charged with a crime before a judge or magistrate, with the exception of an appearance where no prosecutor appears and no action occurs other than the adjournment of the criminal process and the unconditional release of the person charged (in which event "arraignment" shall mean the person's next appearance before a judge or magistrate).**

**(ii) The written plan developed pursuant to this subdivision shall be completed by December first, two thousand seventeen and shall include interim steps for each county and the city of New York for achieving compliance with the plan.**

**(iii) Each county and the city of New York shall, in consultation with the office, undertake good faith efforts to implement the plan and such plan shall be fully implemented and adhered to in each county and the city of New York by April first, two thousand twenty-three. Pursuant to section seven hundred twenty-two-e of the county law, the state shall reimburse each county and the city of New York for any costs incurred as a result of implementing such plan.**

**(iv) The office shall, on an ongoing basis, monitor and periodically report on the implementation of, and compliance with, the plan in each county and the city of New York.**

**(b) Caseload relief. Develop and implement a written plan that establishes numerical caseload/workload standards for each provider of constitutionally mandated publicly funded representation in criminal cases for people who are unable to afford counsel.**

**(i) Such standards shall apply to all providers whether public defender, legal aid society, assigned counsel program or conflict defender in each county and the city of New York.**

**(ii) The written plan developed pursuant to this subdivision shall be completed by December first, two thousand seventeen and shall include interim steps for each county and the city of New York for achieving compliance with the plan. Such plan shall include the number of attorneys, investigators and other non-attorney staff and the amount of in-kind resources necessary for each provider of mandated representation to implement such plan.**

**(iii) Each county and the city of New York shall, in consultation with the office, undertake good faith efforts to implement the caseload/workload standards and such standards shall be fully implemented and adhered to in each county and the city of New York by April first, two thousand twenty-three. Pursuant to section seven hundred twenty-two-e of the county law, the state shall reimburse each county and the city of New York for any costs incurred as a result of implementing such plan.**

**(iv) The office shall, on an ongoing basis, monitor and periodically report on the implementation of, and compliance with, the plan in each county and the city of New York.**

**(c) Initiatives to improve the quality of indigent defense. (i) Develop and implement a written plan to improve the quality of constitutionally mandated publicly funded representation in criminal cases for people who are unable to afford counsel and ensure that attorneys providing such representation: (A) receive effective supervision and training; (B) have access to and appropriately utilize investigators, interpreters and expert witnesses on behalf of clients; (C) communicate effectively with their clients; (D) have the necessary qualifications and experience; and (E) in the case of assigned counsel attorneys, are assigned to cases in accordance with article eighteen-b of the county law and in a manner that accounts for the attorney's level of experience and caseload/workload.**

**(ii) The office shall, on an ongoing basis, monitor and periodically report on the implementation of, and compliance with, the plan in each county and the city of New York.**

**(iii) The written plan developed pursuant to this subdivision shall be completed by December first, two thousand seventeen and shall include interim steps for each county and the city of New York for achieving compliance with the plan.**

**(iv) Each county and the city of New York shall, in consultation with the office, undertake good faith efforts to implement the initiatives to improve the quality of indigent defense and such initiatives shall be fully implemented and adhered to in each county and the city of New York by April first, two thousand twenty-three. Pursuant to section seven hundred twenty-two-e of the county law, the state shall reimburse each county and the city of New York for any costs incurred as a result of implementing such plan.**

**(d) Appropriation of funds. In no event shall a county and a city of New York be obligated to undertake any steps to implement the written plans under paragraphs (a), (b) and (c) of this subdivision until funds have been appropriated by the state for such purpose.**

§ 13. This act shall take effect immediately; provided, however, that sections one and two of this act shall take effect April 1, 2018 and shall apply to confessions, admissions or statements made on or after such effective date; provided, further sections three through ten of this act shall take effect July 1, 2017.

**FY 2017-18 Final Budget**  
**Office of Indigent Legal Services (ILS) (Office)**

	<b>FY 2016-17 Final Budget</b>	<b>Executive Budget Request</b>	<b>Senate Proposal</b>	<b>Assembly Proposal</b>	<b>Final Budget</b>
<b>State Operations</b>	\$3.2 million	\$4.83 million*	\$4.83 million	\$4.83 million	\$4.83 million
<b>Aid to Localities</b>	\$96.2 million	\$104.81 million	\$104.81 million	\$104.81 million	\$104.81million
<b>All Funds</b>	\$99.4 million	\$109.64 million	\$109.64 million	\$109.64 million	\$109.64 million

\*The Executive Aid to Localities proposal provided that "\$4,830,000 . . . shall be transferred to state operations."

**State Operations:**

- **Office Operations (A.3000-D/S.2000-D):**
  - Of the \$4.83 million State Ops appropriation in the FY 2017-18 Final Budget, \$2.31 million is allocated for general office operations; \$1.27 million for implementation of the *Hurrell-Harring* settlement; and \$1.25 million for implementation of plans for statewide expansion of *Hurrell-Harring* reforms.

**Aid to Localities:**

- **ILS Distributions and Grants/Hurrell-Harring Settlement (A.3003-D/S.2003-D):**
  - Of the \$104.81 million Aid to Localities appropriation in the FY 2017-18 Final Budget, \$81.0 million is allocated to fund ILS distributions and grants and \$23.81 million is allocated for implementation of the *Hurrell-Harring* settlement. The \$23.81 million for the *Hurrell-Harring* settlement is allocated as follows:
    - \$19.01 million for the five settlement counties to add staff and other resources needed to comply with caseload/workload standards determined by ILS.
    - \$2.0 million to further implement the written plan developed by ILS to improve the quality of indigent defense in the five settlement counties; and
    - \$2.8 million to further implement the written plan developed by ILS to provide in person representation of eligible defendants at all arraignments in the five settlement counties.

**Article VI language:**

- **Statewide Expansion of Hurrell-Harring Reforms (A.3009-C/S.2009-C, Part VVV, §§ 11-13)**
  - The FY 2017-18 Final Budget language requires the Office to develop and complete written plans, no later than December 1, 2017, to extend *Hurrell-Harring* reforms statewide, with the "projected fiscal impact of the required appropriation for the implementation of such plan" subject to the approval of the Director of the Budget. The plans shall include interim steps for each county and city of New York for achieving compliance by April 1, 2023. County expenditures to implement these plans would be fully reimbursable by the state. The written plans are:
    - **Counsel at Arraignment.** This plan would ensure that each criminal defendant eligible for publicly funded legal representation is represented by counsel in person at his or her arraignment.
    - **Caseload Relief.** This plan would establish numerical caseload/workload standards for each provider of constitutionally mandated representation in criminal cases.
    - **Quality Initiatives.** This plan would improve the quality of constitutionally mandated publicly funded representation in criminal cases by ensuring, *inter alia*, effective supervision and training, adequate access to investigators and experts, and properly qualified and experienced attorneys.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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	:	
KIMBERLY HURRELL-HARRING, et al., on	:	
Behalf of Themselves and All Others Similarly	:	
Situating,	:	
	:	
Plaintiffs,	:	Index No. 8866-07
	:	(Connolly, J.)
	:	
-against-	:	
	:	
THE STATE OF NEW YORK, et al.,	:	
	:	
Defendants.	:	
	:	
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**STIPULATION AND ORDER OF SETTLEMENT**

**WHEREAS**, Plaintiffs, on behalf of the Plaintiff Class, as defined by the Appellate Division, Third Department (“Plaintiffs”), commenced and are pursuing a class action lawsuit entitled *Hurrell-Harring, et al. v. State of New York, et al.*, Index No. 8866-07, in New York Supreme Court, Albany County, seeking declaratory and prospective injunctive relief for, among other things, the alleged deprivation by the State of New York and the Governor of the State of New York (the “State Defendants”) of Plaintiffs’ right to counsel in the counties of Onondaga, Ontario, Schuyler, Suffolk, and Washington (together the “Five Counties” and each a “County”) guaranteed to Plaintiffs by the Sixth and Fourteenth Amendments to the United States Constitution, Article I, § 6 of the New York State Constitution, and various statutory provisions; and

**WHEREAS**, the parties have been engaged in litigation since November 2007 and the New York Court of Appeals has determined that Plaintiffs may proceed with their claims for actual and constructive denial of counsel, *Hurrell-Harring v. State of New York*, 15 NY3d 8 (2010); and

**WHEREAS**, the Appellate Division, Third Department determined that Plaintiffs could pursue

the litigation as a class action in accordance with Article 9 of the New York State Civil Procedure Law and Rules (“CPLR”), *Hurrell-Harring v. State of New York*, 81 AD3d 69 (3d Dept. 2011); and

**WHEREAS**, in 2010, the State established the Office of Indigent Legal Services (“ILS”) and the Indigent Legal Services Board (“ILSB”) (Executive Law Section 832 and Section 833, respectively) to, among other things, improve the quality of the delivery of legal services throughout the State for indigent criminal defendants; and

**WHEREAS**, the parties have conducted extensive fact and expert discovery, and have engaged in motion practice before the Court, and the Court has set the matter down for trial; and

**WHEREAS**, the parties have negotiated in good faith and have agreed to settle this Action on the terms and conditions set forth herein; and

**WHEREAS**, the parties agree that the terms of this settlement are in the public interest and the interests of the Plaintiff Class and that this settlement upon the order of the Court is the most appropriate means of resolving this action; and

**WHEREAS**, the parties understand that, prior to such Court order, the Court shall conduct a fairness hearing in accordance with CPLR Article 9 to determine whether the settlement contained herein should be approved as in the best interests of the Plaintiff Class; and

**WHEREAS**, ILS and the ILSB have the legal authority to monitor and study indigent legal services in the state, to recommend measures to improve those services, to award grant monies to counties to support their indigent representation capability, and to establish criteria for the distribution of such funds; and

**WHEREAS**, the parties agree that ILS is best suited to implementing, on behalf of the State, certain obligations arising under this Agreement; and

**WHEREAS**, the ILSB has reviewed those obligations contemplated under this Agreement for implementation by ILS and has directed ILS to implement such obligations in accordance with  
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the terms of this Agreement, and this direction is reflected in the *Authorization of the Indigent Legal Services Board and the New York State Office of Indigent Legal Services Concerning Settlement of the Hurrell-Harring Lawsuit*, appended hereto as Exhibit A and incorporated by reference herein; and

**WHEREAS**, ILS is legally required to execute this direction from the ILSB; and

**WHEREAS**, the Plaintiff Class entered into a settlement agreement with Ontario County dated June 20, 2014, and the Court approved the settlement and dismissed the Plaintiff Class's claims against Ontario County on September 2, 2014; and

**WHEREAS**, the Plaintiff Class entered into a settlement agreement with Schuyler County on September 29, 2014, which is currently scheduled for a fairness hearing on November 3, 2014; and

**WHEREAS**, Plaintiffs and the State intend that the terms and measures set forth in this Settlement Agreement will ensure counsel at arraignment for indigent defendants in the Five Counties, provide caseload relief for attorneys providing Mandated Representation in the Five Counties, improve the quality of Mandated Representation in the Five Counties, and lead to improved eligibility determinations;

**NOW, THEREFORE, IT IS HEREBY STIPULATED, AGREED, AND ORDERED** as follows:

**I. PARTIES TO THIS AGREEMENT**

The parties to this Settlement Agreement are the parties named in the Second Amended Complaint in the Action, which are the Plaintiff Class, the State of New York, Governor Andrew Cuomo, Onondaga County, Ontario County, Schuyler County, Suffolk County, and Washington County. If a County fails to execute the Agreement, it shall not be considered a party to this Agreement.

## II. DEFINITIONS

As used in this Agreement:

**Action** means *Hurrell-Harring v. State of New York*, Case No. 8866-07 (Supreme Court, Albany County), filed on November 8, 2007.

**Agreement** and **Settlement Agreement** mean this Stipulation and Order of Settlement dated as of October 21, 2014 between and among Plaintiffs, the State Defendants, and the Five Counties.

**Arraignment** means the first appearance by a person charged with a crime before a judge or magistrate, with the exception of an appearance where no prosecutor appears and no action occurs other than the adjournment of the criminal process and the unconditional release of the person charged (in which event Arraignment shall mean the person's next appearance before a judge or magistrate).

**Effective Date** means the date of entry of the order of Supreme Court, Albany County approving this Settlement Agreement.

**Executive** means the Office of the Governor.

**Five Counties** means Ontario, Onondaga, Schuyler, Suffolk, and Washington Counties, each of which was named as a defendant in the Second Amended Complaint filed on August 26, 2008 in *Hurrell-Harring v. State of New York*. Each of the Five Counties may also be referred to as a **County** in this Agreement.

**Mandated Representation** means constitutionally mandated publicly funded representation in criminal cases for people who are unable to afford counsel.

**Plaintiffs** or **Plaintiff Class** means the class of individuals certified by the Appellate Division on January 6, 2011 in *Hurrell-Harring v. State of New York*.

**III. COUNSEL AT ARRAIGNMENT**

(A) (1) The State of New York (the “State”) shall ensure, within 20 months of the Effective Date and continuing thereafter, that each criminal defendant within the Five Counties who is eligible for publicly funded legal representation (“Indigent Defendant”) is represented by counsel in person at his or her Arraignment. A timely Arraignment with counsel shall not be delayed pending a determination of a defendant’s eligibility.

(2) Within 6 months of the Effective Date, the New York State Office of Indigent Legal Services (“ILS”), in consultation with the Executive, the Five Counties, and any other persons or entities it deems appropriate, shall develop a written plan to implement the obligations specified above in paragraph III(A)(1), which plan shall include interim steps for achieving compliance with those obligations. That plan shall be provided to the parties, who shall have 30 days to submit comments. Within 30 days of the end of such comment period (which will be no later than 8 months after the Effective Date), ILS shall finalize its plan and provide it to the parties. Starting within 6 months of finalization of the plan, the State shall undertake good faith efforts to begin implementing the plan, subject to legislative appropriations.

(3) The parties acknowledge that the State may seek to satisfy the obligations set forth in paragraph III(A)(1) by ensuring the existence and maintenance within each of the Five Counties of an effective system for providing each Indigent Defendant with representation by counsel in person at his or her Arraignment. Nothing in this provision alters the State’s obligations set forth in paragraph III(A)(1).

(4) Incidental or sporadic failures of counsel to appear at Arraignments within a County shall not constitute a breach of the State’s obligations under paragraph III(A)(1).

- (B) The Executive shall coordinate and work in good faith with the Office of Court Administration (“OCA”) to ensure, on an ongoing basis, that each judge and magistrate within the Five Counties, including newly appointed judges and magistrates, is aware of the responsibility to provide counsel to Indigent Defendants at Arraignments, and, subject to constitutional and statutory limits regarding prompt arraignments, to consider adjustments to court calendars and Arraignment schedules to facilitate the presence of counsel at Arraignments. If, notwithstanding the Executive’s satisfaction of the terms of this paragraph III(B), lack of cooperation from OCA prevents the provision of counsel at some Arraignments, the State shall not be deemed in breach of the settlement for such absence of counsel at those Arraignments.
- (C) In accordance with paragraph IX(B), the State shall use \$1 million in state fiscal year 2015/2016 for the purposes of paying any costs associated with the interim steps described in paragraph III(A)(2). The State shall use these funds in the first instance to pay the Five Counties for the costs, if any, incurred by them in connection with the interim steps described in paragraph III(A)(2), and thereafter any remaining amounts shall be used to pay costs incurred by ILS.
- (D) ILS, in consultation with the Executive, OCA, the Five Counties, and any other individual or entity it deems appropriate, shall, on an ongoing basis, monitor the progress toward achieving the purposes set forth in paragraph III(A)(1) above. Such monitoring shall include regular, periodic reports regarding: (1) the sufficiency of any funding committed to those purposes; (2) the effectiveness of any system implemented in accordance with paragraph III(A)(3) in ensuring that all Indigent Defendants are represented by counsel at Arraignment; and (3) any remaining barriers to ensuring the representation of all Indigent Defendants at Arraignment. Such reports shall be made available to counsel for the Plaintiff Class and the public.

- (E) In no event shall the Five Counties be obligated to undertake any steps to implement the State's obligations under Section III until funds have been appropriated by the State for paragraph III(A)(1) or paragraph III(A)(2). Nothing in this paragraph shall alter the Five Counties' obligations under Section VII.

**IV. CASELOAD RELIEF**

- (A) Within 6 months of the Effective Date, ILS shall ensure that the caseload/workload of each attorney providing Mandated Representation in the Five Counties can be accurately tracked and reported on at least a quarterly basis, including private practice caseloads/workloads. In accordance with paragraph IX(B), the State shall provide \$500,000 in state fiscal year 2015/2016 to ILS for the purposes of paying any costs associated with the obligations contained in this paragraph IV(A), and ILS shall use those funds for such purposes. To the extent practicable, and subject to the specific funding commitments in this Agreement, the tracking system developed by ILS should be readily deployable across the state.

- (B) (1) Within 9 months of the Effective Date, ILS, in consultation with the Executive, OCA, the Five Counties, and any other persons or entities ILS deems appropriate, shall determine:

(i) the appropriate numerical caseload/workload standards for each provider of mandated representation, whether public defender, legal aid society, assigned counsel program, or conflict defender, in each County, for representation in both trial- and appellate-level cases; (ii) the means by which those standards will be implemented, monitored, and enforced on an ongoing basis; and (iii) to the extent necessary to comply with the caseload/workload standards, the number of additional attorneys (including supervisory attorneys), investigators, or other non-attorney staff, or the amount of other in-kind resources necessary for each provider

of Mandated Representation in the Five Counties.

(2) In reaching these determinations, ILS shall take into account, among other things, the types of cases attorneys handle, including the extent to which attorneys handle non-criminal cases; the private practice caseloads/workloads of attorneys; the qualifications and experiences of the attorneys; the distance between courts and attorney offices; the time needed to interview clients and witnesses, taking into account travel time and location of confidential interview facilities; whether attorneys work on a part-time basis; whether attorneys exercise supervisory responsibilities; whether attorneys are supervised; and whether attorneys have access to adequate staff investigators, other non-attorney staff, and in-kind resources.

(3) In no event shall numerical caseload/workload standards established under paragraph IV(B)(1) or paragraph IV(E) be deemed appropriate if they permit caseloads in excess of those permitted under standards established for criminal cases by the National Advisory Commission on Criminal Justice Standards and Goals (Task Force on Courts, 1973) Standard 13.12.

- (C) Starting within 6 months of ILS having made the caseload/workload determinations specified above in paragraph IV(B), the State shall take tangible steps to enable providers of Mandated Representation to start adding any staff and resources determined to be necessary to come into compliance with the standards.
- (D) (1) Within 21 months of ILS having made the caseload/workload determinations specified above in paragraph IV(B) (which shall be no later than 30 months from the Effective Date) (the "Implementation Date") and continuing thereafter, the State shall ensure that the caseload/workload standards are implemented and adhered to by all providers of Mandated Representation in the Five Counties.

(2) The parties acknowledge that the State may delegate to ILS the primary responsibility for overseeing the implementation, monitoring, and enforcement of the caseload/workload standards required hereunder, provided, however, that nothing in this provision alters the State's obligations set forth in this Section IV.

(3) The parties acknowledge that the State may seek to satisfy the obligation in paragraph IV(D)(1) by ensuring the existence and maintenance within each of the Five Counties of an effective system for implementing and enforcing any caseload/workload standards adopted under this Section IV. Nothing in this provision alters the State's obligations set forth in this Section IV.

(E) Beginning approximately 18 months after the Implementation Date, and no less frequently than annually thereafter, ILS shall review the appropriateness of any such standards in light of any change in relevant circumstances in each of the Five Counties. Immediately following any such review, ILS shall recommend to the Executive whether and to what extent the established caseload/workload standards should be amended on the basis of changed circumstances. Any proposed change to a caseload/workload standard implemented hereunder by ILS shall be submitted by ILS for approval by the Executive, provided, however, that such approval shall not be unreasonably withheld. Nothing in this provision shall limit the authority of ILS or the ILSB pursuant to Executive Law Article 30, Sections 832 and 833.

(F) Incidental or sporadic noncompliance with the caseload/workload standards by individual attorneys providing Mandated Representation shall not constitute a breach of the State's obligations under this Section IV.

**V. INITIATIVES TO IMPROVE THE QUALITY OF INDIGENT DEFENSE**

- (A) No later than 6 months following the Effective Date, ILS, in consultation with the Five Counties, the providers of Mandated Representation in the Five Counties, and any other individual or entity ILS deems appropriate, shall establish written plans to ensure that attorneys providing Mandated Representation in criminal cases in each of the Five Counties: (1) receive effective supervision and training in criminal defense law and procedure and professional practice standards; (2) have access to and appropriately utilize investigators, interpreters, and expert witnesses on behalf of clients; (3) communicate effectively with their clients (including by conducting in-person interviews of their clients promptly after being assigned) and have access to confidential meeting spaces; (4) have the qualifications and experience necessary to handle the criminal cases assigned to them; and (5) in the case of assigned counsel attorneys, are assigned to cases in accordance with County Law Article 18-B and in a manner that accounts for the attorney's level of experience and caseload/workload. At a minimum, such plans shall provide for specific, targeted progress toward each of the objectives listed in this paragraph V(A), within defined timeframes, and shall also provide for such monitoring and enforcement procedures as are deemed necessary by ILS.
- (B) ILS shall thereafter implement the plans developed in accordance with paragraph V(A). To address costs associated with implementing these plans, ILS shall provide funding within each County through its existing program for quality improvement distributions, provided, however, that ILS shall take all necessary and appropriate steps to ensure that any distributions intended for use in accomplishing the objectives listed in paragraph V(A) are used exclusively for that purpose.
- (C) In accordance with paragraphs IX(B) and IX(E), respectively, the State shall provide to ILS \$2 million in each of state fiscal year 2015/2016 and state fiscal year 2016/2017 for the purposes of accomplishing the objectives set forth in



paragraph V(A), and ILS shall use such funds for those purposes. No portion of such funds shall be attributable to ILS's operating budget but shall instead be distributed by ILS to the Five Counties.

- (D) The Five Counties may, but shall not be obligated to, pay all or a portion of the funds identified in paragraph V(C) to ILS to provide services designed to effectuate the objectives set forth in paragraph V(A), provided such services are rendered in state fiscal years 2015/2016 and 2016/2017 and pursuant to a written agreement between ILS and the relevant County.

## VI. ELIGIBILITY STANDARDS FOR REPRESENTATION

- (A) ILS shall, no later than 6 months following the Effective Date, issue criteria and procedures to guide courts in counties outside of New York City in determining whether a person is eligible for Mandated Representation. ILS may consult with OCA to develop and distribute such criteria and procedures. ILS shall be responsible for ensuring the distribution of such criteria and procedures to, at a minimum, every court in counties outside of New York City that makes determinations of eligibility (and may request OCA's assistance in doing so) and every provider of mandated representation in the Five Counties. The Five Counties shall undertake best efforts to implement such criteria and procedures as developed by ILS. Nothing in this paragraph otherwise obligates the Five Counties to develop such criteria and procedures.
- (B) At a minimum, the criteria and procedures shall provide that: (1) eligibility determinations shall be made pursuant to written criteria; (2) confidentiality shall be maintained for all information submitted for purposes of assessing eligibility; (3) ability to post bond shall not be considering sufficient, standing alone, to deny eligibility; (4) eligibility determinations shall take into account the actual cost of retaining a private attorney in the relevant jurisdiction for the category of crime charged; (5) income needed to meet the reasonable living expenses of the

applicant and any dependent minors within his or her immediate family, or dependent parent or spouse, should not be considered available for purposes of determining eligibility; and (6) ownership of an automobile should not be considered sufficient, standing alone, to deny eligibility where the automobile is necessary for the applicant to maintain his or her employment. In addition, ILS shall set forth additional criteria or procedures as needed to address: (7) whether screening for eligibility should be performed by the primary provider of Mandated Representation in the county; (8) whether persons who receive public benefits, cannot post bond, reside in correctional or mental health facilities, or have incomes below a fixed multiple of federal poverty guidelines should be deemed presumed eligible and be represented by public defense counsel until that representation is waived or a determination is made that they are able to afford private counsel; (9) whether (a) non-liquid assets and (b) income and assets of family members should be considered available for purposes of determining eligibility; (10) whether debts and other financial obligations should be considered in determining eligibility; (11) whether ownership of a home and ownership of an automobile, other than an automobile necessary for the applicant to maintain his or her employment, should be considered sufficient, standing alone, to deny eligibility; and (12) whether there should be a process for appealing any denial of eligibility and notice of that process should be provided to any person denied counsel.

- (C) ILS shall issue an annual report regarding the criteria and procedures used to determine whether a person is eligible to receive Mandated Representation in each of the Five Counties. Such report shall, at a minimum, analyze: (1) the criteria used to determine whether a person is eligible; (2) who makes such determinations; (3) what procedures are used to come to such determinations; (4) whether and to what extent decisions are reconsidered and/or appealed; and (5) whether and to what extent those criteria and procedures comply with the criteria and procedures referenced in paragraph VI(A). The first such report shall

be issued no later than 12 months following the establishment of the criteria and procedures discussed in paragraph VI(A).

**VII. COUNTY COOPERATION**

The Five Counties shall use best efforts to cooperate with the State and ILS to the extent necessary to facilitate the implementation of the terms of this Agreement. This obligation is in no way subject to or conditioned upon any obligations undertaken by Ontario and Schuyler Counties by virtue of their separate agreements to settle this Action. Such cooperation shall include, without limitation: (1) the timely provision of information requested by the State or ILS; (2) compliance with the terms of the plans implemented pursuant to paragraphs III(A)(2), IV(B)(1), and V(A); (3) assisting in the distribution of the eligibility standards referenced in part VI(A); (4) assisting in the monitoring, tracking, and reporting responsibilities set forth in parts III(D), IV(A), and VI(C); (5) ensuring that the providers of Mandated Representation and individual attorneys providing Mandated Representation in the Five Counties provide any necessary information, compliance, and assistance; (6) undertaking best efforts to ensure the passage of any legislation and/or legislative appropriations contemplated by this Agreement; and (7) any other measures necessary to ensure the implementation of the terms of this Agreement. County failure to cooperate does not relieve the State of any of its obligations under this Settlement Agreement.

**VIII. MONITORING AND REPORTING**

In order to permit Plaintiffs to assess compliance with all provisions of this Agreement, the State shall:

- (A) Promptly provide to Plaintiffs copies of the following documents upon their finalization and subsequent to any amendment thereto:
  - (1) The plan(s) concerning counsel at arraignment referenced in paragraph III(A)(2);

- (2) The reports concerning counsel at arraignment referenced in paragraph III(D);
  - (3) The determinations regarding caseload/workload referenced in paragraph IV(B)(1) and any changes proposed or made pursuant to paragraph IV(E);
  - (4) The plan(s) for quality improvement referenced in paragraph V(A);
  - (5) The eligibility criteria referenced in paragraph VI(A);
  - (6) The reports regarding eligibility determinations referenced in paragraph VI(C);
  - (7) The relevant portions of each Executive Budget submitted during the term of this Agreement.
- (B) Provide written reports to Plaintiffs concerning the State's efforts to carry out its obligations under this Agreement and the results thereof, including, without limitation:
- (8) Ensuring counsel at arraignment pursuant to paragraph III(A)(1);
  - (9) Coordinating with OCA pursuant to paragraph III(B);
  - (10) Implementing the tracking system referenced in paragraph IV(A);
  - (11) Implementing the caseload/workload standards referenced in paragraph IV(B) or paragraph IV(E) and ensuring that those caseload/workload standards are adhered to;
  - (12) Implementing the plans referenced in paragraph V(A).

Within 90 days of the Effective Date, the State and Plaintiffs shall meet and confer in good faith to identify the content and frequency of the specific reports

identified above that will be provided to Plaintiffs pursuant to this Section VIII.

**IX. BEST EFFORTS AND APPROPRIATIONS**

- (A) The parties shall use their best efforts to obtain the enactment of all legislative measures necessary and appropriate to implement the terms of the Settlement Agreement.
- (B) The Executive shall include in an Executive budget appropriation bill submitted to the Legislature for state fiscal year 2015/2016 sufficient appropriation authority to fund \$3.5 million for purposes of implementing paragraphs III(C), IV(A), and V(C) of this Agreement.
- (C) In order to prevent the obligation to provide counsel at Arraignment as set forth in Section III from imposing any additional financial burden on any County, the Executive shall include in an Executive budget appropriation bill submitted to the Legislature for the state fiscal year 2016/2017, and for each state fiscal year thereafter, sufficient appropriation authority for such funds that it, in consultation with ILS, OCA, the Five Counties, and any other individual or entity the Executive deems appropriate, determines, in its sole discretion, are necessary to accomplish the purposes set forth in Section III.
- (D) In order to prevent the caseload/workload standards implemented under Section IV from imposing an additional financial burden on any County, the Executive shall include in an Executive budget appropriation bill submitted to the Legislature for the state fiscal year 2016/2017, and for each state fiscal year thereafter, sufficient appropriation authority for such funds that it, in consultation with ILS, OCA, the Five Counties, and any other individual or entity it deems appropriate, determines, in its sole discretion, are necessary to accomplish the purposes set forth in Section IV. In the absence of such funds, the Five Counties shall not be required to implement the caseload/workload standards referenced in

Section IV; provided, however, that nothing in this provision alters the State's obligation to ensure that caseload/workload standards are implemented and adhered to.

- (E) The Executive shall include in an Executive budget appropriation bill submitted to the Legislature for the state fiscal year 2016/2017 sufficient appropriation authority to fund \$2 million to ILS for the purposes of implementing paragraph V(C).
- (F) The Executive shall use best efforts to seek and secure the funding described in paragraphs IX(B), IX(C), IX(D), and IX(E), as well as any other funding or resources necessary, as determined in the sole discretion of the Executive, to implement the terms of this Agreement including, without limitation, funding and resources sufficient for ILS to carry out its responsibilities under the Agreement. Consistent with the State Constitution and the State Finance Law, this Agreement is subject to legislative appropriation of such funding. The State shall perform its obligations under this Agreement in each fiscal year for the term of the Agreement to the extent of the enacted appropriation therefor.
- (G) Except as provided in paragraph XIII(A), nothing herein shall be construed to obligate the Five Counties to provide funding to implement any of the obligations under this Agreement.

**X. LEGISLATIVE PROCESS AND OUTCOMES**

- (A) Upon the Effective Date, this Action shall be conditionally discontinued only as to the parties that execute this Agreement, pending the enactment of the budget for the state fiscal year 2015/2016 and, if required, the completion of the meet-and-confer process described in paragraph X(B) below.

(1) No later than 21 days after the enactment of the 2015/2016 budget, the State shall provide Plaintiffs with written notice stating whether or not the

State believes that it can fully implement its obligations under this Agreement in light of the amount of funding appropriated by the Legislature.

(2) If the written notice provided under X(A)(1) sets forth the State's determination that the State can fully implement all of its obligations under this Agreement, then this Action shall be discontinued with prejudice only as to the parties that execute this Agreement. Such discontinuance shall not preclude Plaintiffs from commencing any new action pursuant to paragraph X(C)(2) below.

- (B) If at any time the State believes it cannot fully implement one or more of its obligations under this Agreement in light of the Legislature's action, the State shall notify Plaintiffs in writing of that fact and the parties shall meet and confer to determine whether they can mutually resolve the issue(s). If the parties are unable to resolve the matter within 45 days of the written notice provided by the State, the State within 10 days shall notify Plaintiffs in writing which obligation(s) the State is unable to fully implement. If the State notifies Plaintiffs that it cannot fully implement one or more of its obligations in Section III, Plaintiffs may pursue, as specified in paragraph X(C)(1) or X(C)(2), as appropriate, judicial remedies on their claims for actual denial of counsel. If the State notifies Plaintiffs that it cannot fully implement one or more of its obligations in Section IV or V of this Agreement, Plaintiffs may pursue, as specified in paragraph X(C)(1) or X(C)(2), as appropriate, judicial remedies on their claims for constructive denial of counsel. The State shall remain obligated to comply with the relevant affected provision(s) of the Agreement to the extent it has funding to do so and shall remain obligated to implement all provisions not affected by legislative action unless the State notifies Plaintiffs within 90 days of enactment of the 2015/2016 budget that it can implement no provision of Sections III, IV, and V of the Agreement, in which case the entire Agreement

shall be deemed null and void, and the relevant parties shall be restored to the same positions in the litigation that they had immediately prior to October 21, 2014.

(C) (1) State Fiscal Year 2015/2016. If the State, pursuant to paragraph X(B), notifies Plaintiffs within 90 days of enactment of the 2015/2016 budget that it cannot fully implement one or more of its obligations under the Agreement, Plaintiffs may pursue judicial remedies as allowed under paragraph X(B) by restoring this Action to the trial calendar by serving written notice upon the Court and the relevant parties that have signed the Agreement within 30 days after receiving such notice from the State, in which case the relevant parties shall be restored to the same positions in the litigation that they had immediately prior to October 21, 2014, with respect to the restored claim(s).

(2) State Fiscal Year 2016/2017 to the Expiration of this Agreement. In accordance with any notice pursuant to paragraph X(B) with respect to the 2016/2017 state fiscal year or any later state fiscal year through the expiration of this Agreement, Plaintiffs may pursue judicial remedies as allowed under paragraph X(B) only by filing a new action for declaratory and prospective injunctive relief. Nothing in the Stipulation of Discontinuance filed in this Action is intended to bar or shall have the effect of barring, by virtue of the doctrine of res judicata or other principles of preclusion, any new action as allowed under paragraph X(B) or any claims within such action. Neither the State nor any other defendant shall assert or argue that any such action or claim asserted therein is barred by virtue of the prior discontinuance of this Action.

(3) Nothing in this paragraph shall be construed to alter the parties' rights under paragraph XIII(S).



**XI. DISPUTE RESOLUTION**

- (A) If Plaintiffs believe that the State is not in compliance with a provision of this Settlement Agreement, Plaintiffs shall give notice to all parties in writing, and shall state with specificity the alleged non-compliance. Upon receipt of such notice by the State, Plaintiffs and the State will promptly engage in good-faith negotiations concerning the alleged non-compliance and appropriate measures to cure any non-compliance. Any party may request the participation of ILS in such negotiations. If Plaintiffs and the State have not reached an agreement on the existence of the alleged non-compliance and curative measures within forty-five (45) days after receipt of such notice of alleged non-compliance, Plaintiffs may seek all appropriate judicial relief with respect to such alleged non-compliance, upon ten (10) days' prior notice in accordance with the Escalation Notice terms set forth in paragraph XI(B). The State and Plaintiffs may extend these time periods by written agreement. Nothing said by either party or counsel for either party during those meetings may be used by the other party in any subsequent litigation, including, without limitation, litigation in connection with this Agreement, for any purpose whatsoever.
- (B) Plaintiffs shall provide notice ("Escalation Notice") to the individuals identified in paragraph XIII(G)(2) at least ten (10) business days before seeking judicial relief as described in paragraph XI(A), which notice shall inform such individuals that Plaintiffs intend to seek judicial relief and shall attach the notice provided under paragraph XI(A).
- (C) Notwithstanding the dispute resolution procedures set forth above, if exigent circumstances arise, Plaintiffs shall be able to seek expedited judicial relief against the State based upon an alleged breach of this Agreement, upon five (5) business days' prior notice to the individuals identified in paragraphs XIII(G)(1) and XIII(G)(2).

- (D) Plaintiffs shall not seek to enforce any provision of this Agreement against any County. No provision of this Agreement shall form the basis of any cause of action by Plaintiffs against any County. In no event shall County action or inaction relieve the State of any of its obligations under this Agreement.
- (E) If the State believes that a County is not meeting its obligations under this Agreement, it may seek relief following the same procedures as set out above in paragraphs XI(A), XI(B), and XI(C).
- (F) Venue over any disputes concerning enforcement of this Agreement (1) between Plaintiffs and the State, (2) involving all the parties to this Agreement, or (3) between the State and more than one County shall be in a court of competent jurisdiction in Albany County. Venue over any disputes concerning enforcement of this Agreement between the State and a single County shall be in a court of competent jurisdiction in that County.

**XII. ATTORNEYS' FEES AND COSTS**

- (A) The State agrees to make a payment to Plaintiffs' counsel, the New York Civil Liberties Union Foundation and Schulte Roth & Zabel LLP, in the aggregate amount of \$5.5 million, as follows:
  - (1) The sum of \$2.5 million (Two Million Five Hundred Thousand Dollars) for which an I.R.S. Form 1099 shall be issued to the New York Civil Liberties Foundation, and the sum of \$3.0 million (Three Million Dollars) for which an I.R.S. Form 1099 shall be issued to Schulte Roth & Zabel LLP in full and complete satisfaction of any claims against the State and the Five Counties for attorneys' fees, costs, and expenditures incurred by Plaintiffs for any and all counsel who have at any time represented Plaintiffs in the Action through the Effective Date.

- (2) The payment of \$2.5 million referred to in this paragraph shall be made payable and delivered to “New York Civil Liberties Union Foundation,” 125 Broad Street, 19<sup>th</sup> Floor, New York, New York 10004. The payment of \$3.0 million referred to in this paragraph shall be made payable and delivered to “Schulte Roth & Zabel LLP,” 919 Third Avenue, New York, New York 10022.
- (B) Any taxes on payments and/or interest or penalties on taxes on the payments referred to in paragraph XII(A) of this Agreement shall be the sole responsibility of the New York Civil Liberties Union Foundation and Schulte Roth & Zabel LLP, respectively, and Plaintiffs’ attorneys shall have no claim, right, or cause of action against the State of New York or any of its agencies, departments, or subdivisions on account of such taxes, interests, or penalties.
- (C) Payment of the amounts recited in paragraph XII(A) above will be made (1) after the filing of a stipulation of discontinuance as set forth in paragraph XIV(A), upon complete discontinuance of this Action, or paragraph XIV(B), in the case of a partial restoration of this Action, and (2) subject to the approval of all appropriate New York State officials in accordance with Section 17 of the New York State Public Officers Law. Plaintiffs’ counsel agree to execute and deliver promptly to counsel for the State all payment vouchers and other documents necessary to process such payments, including, without limitation, a statement of the total attorney hours expended on this matter and the value thereof and all expenditures. Counsel for the State shall deliver promptly to the Comptroller such documents and any other papers required by the Comptroller with respect to such payments. Pursuant to CPLR 5003a(c), payment shall be made within ninety (90) days of the Comptroller’s determination that all papers required to effectuate the settlement have been received by him. In the event that payment in full is not made within said ninety-day period, interest shall accrue on the outstanding balance at the rate set forth in CPLR 5004, beginning on the ninety-first day after

the Comptroller's determination.

- (D) Upon receipt of and in consideration of the payment of the sums set forth in paragraph XII(A), Plaintiffs shall (1) in the case of a complete discontinuance of this Action pursuant to paragraph XIV(A), waive, release, and forever discharge the State Defendants, including the State of New York, and the Five Counties and each of their respective current and former employees in their individual capacities, and their heirs, executors, administrators, and assigns from any and all claims for attorneys' fees, costs, and expenditures incurred in connection with this Action through the Effective Date; or (2) in the case of a partial discontinuance of this Action pursuant to paragraph XIV(B), waive, release, and forever discharge the State Defendants, including the State of New York, and the Five Counties and each of their respective current and former employees in their individual capacities, and their heirs, executors, administrators, and assigns from any and all claims for attorneys' fees, costs, and expenditures incurred in connection with this Action through the Effective Date, it being specifically understood that, upon such restoration, Plaintiffs shall also be free to seek reimbursement for their attorneys' fees, costs, and expenditures incurred after the Effective Date.
- (E) Plaintiffs' counsel agree to maintain their billing records and documents evidencing payment of expenses relating to this Action for the term of this Agreement.
- (F) In the event that this Agreement becomes null and void pursuant to paragraph X(B) or Section XVI, then (1) the State shall be under no obligation to make the payments referred to in paragraph XII(A); and (2) Plaintiffs shall be free to seek reimbursement of their full attorneys' fees, costs, and expenditures incurred in connection with this Action (including those incurred both before and after the date of this Agreement).

**XIII. GENERAL PROVISIONS**

- (A) Supplementation of Funds. State funds received by a County pursuant to this settlement shall be used to supplement and not supplant any local funds that such County currently spends for the provision of counsel and expert, investigative, and other services pursuant to County Law Article 18-B. All such state funds received by a County shall be used to improve the quality of Mandated Representation services provided pursuant to County Law Article 18-B.
- (B) Modification. This Agreement may not be modified without the written consent of the parties and the approval of the Court. However, the parties agree that non-material modifications of this Settlement Agreement can be made, with the written consent of the parties, without approval of the Court. For purposes of this paragraph, written consent from a County shall be deemed to exist with respect to a modification of any provision of this Agreement other than Section VII if such County (1) has been notified in writing that Plaintiffs and the State have agreed upon such modification; and (2) does not, within ten (10) business days of receipt of such notice, object in writing to such modification.
- (C) Expiration of Agreement. This Agreement shall expire 7.5 years after the Effective Date.
- (D) Entire Agreement. This Agreement contains all the terms and conditions agreed upon by the parties with regard to the settlement contemplated herein, and supersedes all prior agreements, representations, statements, negotiations, and undertakings (whether oral or written) with regard to settlement, provided, however, that nothing herein shall be deemed to abrogate or modify the separate settlement agreements entered into between Plaintiffs and Ontario County, dated June 20, 2014, and between Plaintiffs and Schuyler County, dated September 29, 2014.

(E) Interpretation. The parties acknowledge that each party has participated in the drafting and preparation of this Agreement; consequently, any ambiguity shall not be construed for or against any party.

(F) Time Periods. If any of the dates or periods of time described in this Agreement fall or end on a public holiday or on a weekend, the date or period of time shall be extended to the next business day. A “day” shall mean a calendar day unless otherwise specifically noted.

(G) Notice.

(1) All notices required under or contemplated by this Agreement shall be sent by U.S. mail and electronic mail as follows (or to such other address as the recipient named below shall specify by notice in writing hereunder):

If to the State Defendants:

Adrienne Kerwin Assistant Attorney General The Capitol Albany, New York 12224 Adrienne.Kerwin@ag.ny.gov	Seth H. Agata Acting Counsel to the Governor New York State Capitol Building Albany, New York 12224 Seth.Agata@exec.ny.gov
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If to Plaintiffs:

Corey Stoughton New York Civil Liberties Union Foundation 125 Broad Street New York, New York 10004 cstoughton@nyclu.org	Kristie M. Blase Schulte Roth & Zabel LLP 919 Third Avenue New York, New York 10022 kristie.blase@srz.com
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If to Onondaga County:

Gordon Cuffy  
Onondaga County Attorney  
Department of Law  
John H. Mulroy Civic Center  
421 Montgomery Street, 10th Floor  
Syracuse, New York 13202  
GordonCuffy@ongov.net

If to Ontario County:

Michael Reinhardt  
Ontario County Courthouse  
27 North Main Street  
Canandaigua, New York 14424  
Michael.Reinhardt@co.ontario.ny.us

If to Schuyler County:

Geoffrey Rossi  
Schuyler County Attorney  
105 9th Street  
Unit 5  
Watkins Glen, New York 14891  
grossi@schuyler.co.ny

If to Suffolk County:

Dennis Brown  
Suffolk County Attorney  
H. Lee Dennison Building  
100 Veterans Memorial Highway  
P.O. Box 6100, 6th Floor  
Hauppauge, New York 11788  
dennis.brown@suffolkcountyny.gov

If to Washington County:

William A. Scott  
Fitzgerald Morris Baker Firth P.C.  
16 Pearl Street  
Glens Falls, New York 12801  
WAS@fmbf-law.com

If to ILS:

Joseph Wierschem  
Counsel  
Office of Indigent Legal Services  
Alfred E. Smith Building, 29th Floor  
80 South Swan Street  
Albany, New York 12224  
Joseph.Wierschem@ils.ny.gov

(2) Any Escalation Notice shall be sent as follows:

If to the State Defendants:

<p>Meg Levine Deputy Attorney General Division of State Counsel Office of the Attorney General The Capitol Albany, New York 12224 Meg.Levine@ag.ny.gov</p>	<p>Seth H. Agata Acting Counsel to the Governor New York State Capitol Building Albany, New York 12224 Seth.Agata@exec.ny.gov</p>
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(3) Each party shall provide notice to the other parties of any change in the individuals or addresses listed above within thirty (30) days of such change, and the new information so provided will replace the notice listed herein for such party.

(H) No Admission. Nothing in this Agreement shall be construed as an admission of law or fact or acknowledgement of liability, wrongdoing, or violation of law by the State or any Ratifying County regarding any of the allegations contained in the Second Amended Complaint in this Action, or as an admission or



acknowledgment by the State or any other defendant concerning whether Plaintiffs are the prevailing party in the Action by virtue of this settlement.

- (I) Precedential Value. This Agreement and any Order entered thereon shall have no precedential value or effect whatsoever, and shall not be admissible, in any other action or proceeding as evidence or for any other purpose, except in an action or proceeding to enforce this Agreement.
- (J) No Waiver for Failure to Enforce. Failure by any party to enforce this entire Agreement or any provision thereof with respect to any deadline or other provision herein shall not be construed as a waiver of its right to enforce deadlines or provisions of this Agreement.
- (K) Unforeseen Delay. If an unforeseen circumstance occurs that causes the State or ILS to fail to timely fulfill any requirement of this Agreement, the State shall notify the Plaintiff in writing within twenty (20) days after the State becomes aware of the unforeseen circumstance and its impact on the State's ability to perform and the measures taken to prevent or minimize the failure. The State shall take all reasonable measures to avoid or minimize any such failure. Nothing in this paragraph shall alter any of the State's obligations under this Agreement or Plaintiffs' remedies for a breach of this Agreement.
- (L) No Third-Party Beneficiaries. No person or entity other than the parties hereto (a "third party") is intended to be a third-party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action, and accordingly, no such third party may assert any claim or right as a beneficiary or protected class under this Agreement. This Agreement is not intended to impair or expand the rights of any third party to seek relief against the State, any County, or their officials, employees, or agents for their conduct; accordingly, this Agreement does not alter legal standards governing any such claims, including those under New York law.

- (M) Ineffectiveness Claims Unimpaired. Nothing in this Agreement is intended to, or shall be construed to, impair, curtail, or operate as a waiver of the rights of any current or former member of the Plaintiff Class with respect to such member's individual criminal case, including, without limitation, any claim based on ineffective assistance of counsel.
- (N) Confidential Information Relating to Plaintiff Class Members. The parties acknowledge that privileged and confidential information of Plaintiff Class members, including documents and deposition testimony designated as confidential, information protected by the attorney-client privilege and/or work product doctrine, and documents revealing individuals' social security numbers, private telephone numbers, financial information, and other private and sensitive personal information, was disclosed and obtained during the pendency of this Action. None of the State Defendants or the Five Counties shall use or disclose to any person such documents or information except as required by law. If any of the State Defendants or the Five Counties receives a subpoena, investigative demand, formal or informal request, or other judicial, administrative, or legal process (a "Subpoena") requesting such confidential information, that party shall (1) give notice and provide a copy of the request to Plaintiffs as soon as practicable after receipt and in any case prior to any disclosure; (2) reasonably cooperate in any effort by Plaintiffs to move to quash, move for protective order, narrow the scope of, or otherwise obtain relief with respect to the Subpoena; and (3) refrain from disclosing any privileged or confidential information before Plaintiffs' efforts to obtain relief have been exhausted.
- (O) Binding Effect on Successors. The terms and conditions of this Agreement, and the commitments and obligations of the parties, shall inure to the benefit of, and be binding upon, the successors and assigns of each party.

- (P) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflicts of law provisions thereof.
- (Q) Signatories. The undersigned representative of each party to this Agreement certifies that each is authorized to enter into the terms and conditions of this Agreement and to execute and bind legally such party to this document.
- (R) Counterparts. This Stipulation may be executed in counterparts, and each counterpart, when executed, shall have the full efficacy of a signed original. Photocopies and PDFs of such signed counterparts may be used in lieu of the originals for any purpose.
- (S) Covenant Not to Sue. Plaintiffs agree not to sue the State Defendants during the duration of this Agreement on any cause of action based upon any statutory or constitutional claim set forth in the Second Amended Complaint, except that Plaintiffs retain their rights to (1) restore this Action pursuant to paragraph X(C)(1); (2) commence a new action pursuant to paragraph X(C)(2); and (3) enforce the terms of this Agreement.
- (T) Authority of ILS. The parties acknowledge that the New York Office of Indigent Legal Services and the Board of Indigent Legal Services have the authority to monitor and study indigent legal services in the state, award grant money to counties to support their indigent representation capability, and establish criteria for the distribution of such funds.
- (U) ILS as Signatory to this Agreement. ILS is a signatory to this Agreement for the limited purpose of acknowledging and accepting its responsibilities under this Agreement.

**XIV. DISCONTINUANCE WITH PREJUDICE**

- (A) Without delay after the State provides the notice specified by paragraph X(A)(2), a Stipulation and Order of Discontinuance substantially in the form attached hereto as Exhibit B, shall be executed by counsel for Plaintiffs, the State Defendants, and the relevant Ratifying Counties, and filed with the Court. Nothing in the Stipulation and Order of Discontinuance so filed is intended to bar or shall have the effect of barring, including by virtue of the doctrine of res judicata or other principles of preclusion, a new action, as permitted by paragraph X(C)(2), or any claims within that action. Nor shall anything in the Stipulation and Order of Discontinuance prevent any party from enforcing this Agreement.
- (B) In the event that the Action is partially restored pursuant to paragraph X(C)(1), without delay after Plaintiffs provide notice as required by paragraph X(C)(1), the relevant parties shall confer and draft a stipulation of discontinuance that discontinues with prejudice all claims that are not restored pursuant to paragraph X(C)(1). Such stipulation shall be executed by counsel for Plaintiffs, the State Defendants, and the relevant Ratifying Counties, as appropriate, and filed with the Court. Nothing in such stipulation is intended to bar or shall have the effect of barring, including by virtue of the doctrine of res judicata or other principles of preclusion, a new action, as permitted by paragraph X(C)(2), or any claims within that action. Nor shall anything in such stipulation prevent any party from enforcing this Agreement.

**XV. COUNTY APPROVAL**

This Agreement shall not be binding on any County unless and until the required legislative approval in that County has been obtained and the Agreement has been signed on behalf of the County (in which case, a County may be referred to as a “Ratifying County”). In the event that any County’s legislature does not approve this Agreement (a “Non-Ratifying County”) and, as a result, one or more of the Counties does not become a party to this Agreement, the Agreement

shall nonetheless remain in effect and binding upon all the parties that have signed it, each of which shall perform all obligations hereunder owed to the other parties that have signed the Agreement. In the event a Non-Ratifying County fails to become a party to this Agreement, (1) this Action shall not be discontinued as against any Non-Ratifying County and Plaintiffs shall be free to pursue any claims they may have against such Non-Ratifying County and seek any and all relief to which Plaintiffs may be entitled, except insofar as such claims have been or may be dismissed pursuant to Plaintiffs' separate settlement agreements with Ontario County and Schuyler County; (2) any stipulation of discontinuance filed hereunder (including the Stipulation and Order of Discontinuance attached as Exhibit B) shall be modified to exclude any Non-Ratifying County and make clear that Plaintiffs' claims against such Non-Ratifying County are not discontinued; (3) each Non-Ratifying County shall be considered a third party pursuant to paragraph XIII(L) for purposes of this Agreement; and (4) the releases in paragraph XII(D) shall be ineffective as to such Non-Ratifying County. For the avoidance of doubt, as between Plaintiffs and the State: (a) the benefits of this Agreement, including, without limitation, the releases referred to in Section XII and the covenant not to sue referred to in paragraph XIII(S), shall accrue to the State and Plaintiffs, and (b) the State's and ILS's obligations relating to Sections III, IV, V, and VI shall remain in effect as to all Five Counties independent of County ratification of this Agreement.

#### **XVI. COURT REVIEW AND APPROVAL**

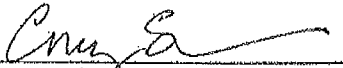
This Settlement Agreement is subject to approval by the Court pursuant to CPLR 908. In the event that the Court does not approve the Settlement Agreement, then the parties shall meet and confer for a period of 30 days to determine whether to enter into a modified agreement prior to the resumption of litigation. If the parties have not entered into a modified agreement within such 30-day period, then this Agreement shall become null and void, and the relevant parties shall request the case be restored to the trial calendar and shall be restored to the same positions in the litigation that they had immediately prior to October 21, 2014.

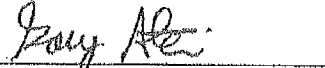
EXECUTION COPY

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*Attorneys for Plaintiffs*

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NEW YORK CIVIL LIBERTIES UNION  
FOUNDATION

Dated: 10/21/2014

Dated: 10/21/2014

*Attorneys for Defendant New York State and  
Governor Andrew M. Cuomo*

*For Defendant Governor Andrew M. Cuomo*

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Attorney General for the State of New York

ANDREW M. CUOMO,  
Governor of the State of New York

By:   
ADRIENNE J. KERWIN, *Assistant  
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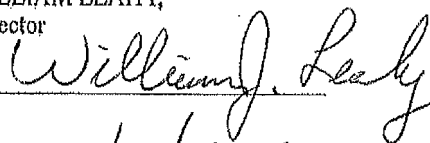
By:   
SETH H. AGATA, *Acting Counsel to  
the Governor*

Dated: 10/21/2014

Dated: 10/21/2014

*New York State Office of Indigent Legal Services*

WILLIAM LEAHY,  
Director



Dated: 10/21/2014

**EXECUTION COPY**

*Attorneys for Defendant Onondaga County*

GORDON J. CUFFY, County Attorney

\_\_\_\_\_

Dated: \_\_\_\_\_

*For Defendant Washington County*

JAMES T. LINDSAY,  
Chairman of the Board of Supervisors

\_\_\_\_\_

Dated: \_\_\_\_\_

*Attorneys for Defendant Suffolk County*

DENNIS M. BROWN, County Attorney

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Dated: \_\_\_\_\_

*Attorneys for Ontario County*

JOHN PARK, County Attorney

By: \_\_\_\_\_

MICHAEL REINHARDT

Dated: \_\_\_\_\_

*Attorneys for Schuyler County*

GEOFFREY ROSSI, County Attorney

\_\_\_\_\_

Dated: \_\_\_\_\_

So Ordered.

Dated: \_\_\_\_\_

\_\_\_\_\_

HON. GERALD W. CONNOLLY

STIPULATION AND ORDER OF SETTLEMENT  
EXHIBIT A

**AUTHORIZATION OF THE INDIGENT LEGAL SERVICES BOARD  
AND THE NEW YORK STATE OFFICE OF INDIGENT LEGAL  
SERVICES CONCERNING SETTLEMENT OF THE  
HURRELL-HARRING V. STATE OF NEW YORK LAWSUIT**

Pursuant to New York State Executive Law §832, the Office of Indigent Legal Services (“ILS”) has the authority to act in pursuit of its statutory responsibility to make efforts to improve the quality of mandated legal representation in the state of New York. See §832 (1) and (3) (a) through (k). ILS has the further responsibility under §832 (3) (l) “to make recommendations for consideration by the indigent legal services board.” (“the Board”). The Board has the authority “to accept, reject or modify recommendations made by the office[.]” §833 (7) (c); and once it has done so, the Office has a duty under §832 (3) (m) to execute its decisions. The Board and ILS have reviewed the agreement settling the action of Hurrell-Harring, et al. v. State of New York, et al., Index No. 8866-07 (“the Agreement”), and the State’s obligations contained therein that are expressly intended for implementation by ILS. The Board and ILS acknowledge that those obligations constitute measures that, once implemented, will improve the quality of indigent legal services. Consequently, the Board accepts the recommendation of ILS that ILS implement the obligations under the Agreement and hereby authorizes and directs ILS to implement those obligations in accordance with the terms of the Agreement. The Board represents and warrants that it is authorized to take this action. Moreover, ILS represents and warrants that it has reviewed the obligations contained in the Agreement, and agrees to implement the obligations identified in the Agreement. The Board hereby authorizes ILS to sign the Agreement.

Dated: October 21, 2014

Dated: October 21, 2014

INDIGENT LEGAL SERVICES BOARD

OFFICE OF INDIGENT LEGAL SERVICES

By: 

By: 

JOHN DUNNE, Board Member

WILLIAM LEAHY, Director