

By Legislators Dondorfer and Smith

Intro. No. \_\_\_\_

RESOLUTION NO. \_\_\_\_ OF 2023

**AUTHORIZING MONROE COUNTY/MONROE COUNTY BAR ASSOCIATION PLAN  
REGARDING CONFLICT DEFENDER'S OFFICE AND ASSIGNED COUNSEL PROGRAM  
AND AUTHORIZING ONE POSITION UPGRADE**

BE IT RESOLVED BY THE LEGISLATURE OF THE COUNTY OF MONROE, as follows:

Section 1. The Monroe County Legislature hereby authorizes the Monroe County/Monroe County Bar Association Plan regarding the Conflict Defender's Office and Assigned Counsel Program pursuant to Section 722 of the New York State County Law.

Section 2. The County Executive, or his designee, is hereby authorized to upgrade the Assigned Counsel Administrator position from a Group 21 to a Group 23.

Section 3. Funding for this position is included in the 2023 operating budget of the Department of Public Safety, general fund 9300, funds center 2402010000, Legal Representation.

Section 4. This resolution shall take effect in accordance with Section C2-7 of the Monroe County Charter.

Public Safety Committee; February 28, 2023 - CV: 8-0  
Ways and Means Committee; February 28, 2023 - CV: 11-0  
File No. 23-0055

ADOPTION: Date: \_\_\_\_\_ Vote: \_\_\_\_\_

**ACTION BY THE COUNTY EXECUTIVE**

APPROVED: \_\_\_\_\_ VETOED: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

EFFECTIVE DATE OF RESOLUTION: \_\_\_\_\_

**THE MONROE COUNTY/MONROE COUNTY  
BAR ASSOCIATION PLAN REGARDING THE  
CONFLICT DEFENDER'S OFFICE AND  
ASSIGNED COUNSEL PROGRAM**

## **INTRODUCTION**

The Monroe County/Monroe County Bar Association Plan Regarding the Conflict Defender's Office and Assigned Counsel Program ("the Plan") is a cooperative effort between Monroe County ("the County") and the Monroe County Bar Association ("the Bar" or "the Bar Association") for the provision of high quality legal services to eligible public defense clients. Eligible public defense clients are individuals who possess a constitutional or statutory right to assigned counsel pursuant to Article 18-B of the County Law, Section 262 of the Family Court Act, Section 407 of the Surrogate's Court Procedure Act, Section 259-i(3)(f)(v) of the Executive Law or any other current or subsequently enacted statutory provisions conferring the right to assigned counsel.

## **GOAL OF THE PLAN**

The goal of this Plan is for the Conflict Defender's Office and Assigned Counsel Program to provide high quality legal representation to eligible public defense clients.

## **OBJECTIVES OF THE PLAN**

The objectives of this Plan are to:

- provide high quality legal representation to eligible public defense clients;
- ensure cost accountability of services; and
- provide increased efficiency for the courts by making qualified attorneys more readily available to handle cases.

### **HISTORY**

The Monroe County Assigned Counsel Program began operation in all courts in Monroe County in 1992. In 2003 pursuant to County Law 722(3)(a), the Monroe County Conflict Defender's Office was created by agreement between Monroe County, the Monroe County Bar Association and New York State. At that time, the Monroe County Assigned Counsel Program became part of the Conflict Defender's Office. The Conflict Defender's Office began operating in Rochester City Court, Monroe County Family Court and the appellate courts in Monroe County. The combined offices have continued to be one office, organized under a single administrator, the Monroe County Conflict Defender.

In 2019, the New York State Office of Indigent Legal Services adopted Standards for Establishing and Administering Assigned Counsel Programs. These "Black Letter Standards" recommend that assigned counsel programs "not be part of a ... Conflict Defender office." The settlement of

the lawsuit in *Hurrell-Harring v. The State of New York* and the passage of New York State Executive Law § 832 has allowed for State funding to be used to adopt the ILS Black Letter Standards including effectuating the split of the Monroe County Conflict Defender's Office and the Monroe County Assigned Counsel Program into separate offices.

### **COUNTY RESPONSIBILITIES**

It is the responsibility of Monroe County, along with New York State, to deliver high quality legal services to eligible public defense clients in all of the courts of Monroe County.

The County agrees that the Assigned Counsel Administrator and Conflict Defender will not be the same person and that the Offices will be separate and independent. The County agrees to comply with standards and performance criteria for Assigned Counsel and Conflict Defense Offices as established by the New York State Office of Indigent Legal Services.

The County agrees to maintain a Conflict Defender's Office to represent eligible public defense clients in Monroe County Family Court, Rochester City Court, the appellate courts, and for the purpose of continuity of representation in County or Supreme Court when the matter has been transferred from Family Court or when an ancillary proceeding is initiated as part of an appellate process. The County agrees to appoint a full-time

Conflict Defender to administer the Conflict Defender's Office in accordance with this Plan and applicable law.

The County shall authorize the Conflict Defender to hire attorney staff as well as clerical, investigative, and support staff to implement the terms of this Plan and effectuate the goal of providing high quality defense services to eligible defendants and other litigants. The County shall authorize the Conflict Defender to hire experts, including social workers and forensic experts, as needed to assist attorneys in representing clients.

The County agrees to maintain an Assigned Counsel Program Office to administer the assignment of counsel to public defense clients when the Public Defender's Office and Conflict Defender's Office are unable to represent the client. The County agrees to appoint a full-time Assigned Counsel Administrator (the "Administrator") to administer the Assigned Counsel Program in accordance with the terms of this Plan and applicable law. The County shall authorize the Assigned Counsel Administrator to hire sufficient staff to implement the terms of this Plan and ensure high quality representation of clients by Assigned Counsel Panel attorneys.

The County will, in the annual budget process, allocate sufficient resources to ensure high quality legal representation to the County's public defense clients.

## **BAR ASSOCIATION RESPONSIBILITIES**

Under this Plan, the Monroe County Bar Association will assume the following responsibilities:

- Recruitment of Attorneys for the Assigned Counsel Program –  
The Bar, in conjunction with the Administrator, will assist in the recruitment of private lawyers willing to accept Article 18-b assignments.
- Recruitment of Attorneys for the Conflict Defender – If requested, the Bar shall assist the Conflict Defender to develop a plan to recruit, train and retain attorneys.
- Continuing Legal Education – The Bar will recommend continuing legal education standards for panel attorneys. The Bar will also conduct at least one continuing legal education course a year in the areas of Family Court practice, local criminal court practice, felony court practice, and appellate practice unless the Appellate Division elects to conduct an appellate practice program.
- Criteria for Attorney Selection – The Assigned Counsel Program Advisory Committee of the Bar, in conjunction with

the Administrator, will recommend minimum criteria for panel membership.

- Assigned Counsel Program Advisory Committee – The Bar will maintain an Assigned Counsel Program Advisory Committee. The Advisory Committee shall meet at least quarterly to ensure that the objectives of this Plan are met. The Advisory Committee shall respond to requests from the Administrator for information or for recommendations.
- Upon request, a Conflict Defender Advisory Committee – If requested by the Conflict Defender, the Bar shall establish a Conflict Defense Advisory Committee which shall be available to advise and assist the Conflict Defender, particularly regarding recruitment, training and retention of attorneys.

### **CONFLICT DEFENDER**

In accordance with the provisions of Article 18-B of the County Law of the State of New York, there shall be an Office of Conflict Defender, the head of which shall be the Conflict Defender.

The Conflict Defender shall be an attorney duly licensed to practice law in the State of New York and admitted to practice in all courts within the scope of the Plan. The Conflict Defender shall have a minimum of ten



years' experience as an attorney in the practice of criminal law or family law. The Conflict Defender shall possess administrative experience and sufficient experience and skill in the representation of criminal defendants, parents in family law matters or appeals of criminal defense or Family Court matters. The Conflict Defender must have a demonstrated history of commitment to high quality representation of public defense clients.

The Conflict Defender shall be selected through a merit selection process. The Conflict Defender shall be appointed by the County Executive from a list of three names provided to the County Executive by the Monroe County Bar Association, subject to applicable civil service requirements and confirmation by the Monroe County Legislature. The Conflict Defender shall be subject to reconfirmation every two years. The Legislature shall act upon the Conflict Defender's reconfirmation by the end of February of each odd numbered year. The County Executive shall have the right to remove the Conflict Defender in accordance with applicable law.

The Conflict Defender must have an ability to communicate effectively with clients, judges, lawyers who practice in all courts within the scope of this Plan, court administrators, other persons within the court system and county officials.

The Conflict Defender must have an ability to effectively manage staff attorneys and other employees of the Conflict Defender's Office.

The Conflict Defender shall be compensated at the same pay group as the Assigned Counsel Administrator.

The Conflict Defender shall not be allowed to engage in the private practice of law.

The Conflict Defender shall be prohibited from engaging in political activities. The Conflict Defender shall not directly or indirectly engage in any political activity except (i) as otherwise authorized by this section or by law, (ii) to vote and to identify himself or herself as a member of a political party, and (iii) on behalf of measures to improve law, the legal system or the administration of justice.

Prohibited political activity shall include:

(1) Being a member of a political organization other than enrollment and membership in a political party;

(2) Being a member of any other group the principal purpose of which is to further the election or appointment of candidates to political office;

(3) Participating in any political campaign for any office or permitting his or her name to be used in connection with any activity of a political organization;

(4) Publicly endorsing or publicly opposing a candidate for public office;

(5) Making speeches on behalf of a political organization or another

candidate;

(6) Attending political gatherings;

(7) Soliciting funds for or making a contribution to a political organization or candidate; or

(8) Purchasing tickets for politically sponsored dinners or other functions.

### **CONFLICT DEFENDER'S RESPONSIBILITIES**

The Conflict Defender shall have the powers and duties set forth in the laws of the State of New York, including the County Law, the Family Court Act, the Surrogates Court Procedure Act and other laws applicable to the provision of public defense services by a Conflict Defender. Such powers and duties shall include but shall not be limited to the following:

- To represent financially eligible criminal defendants in misdemeanor and violation level offenses in Rochester City Court, without charge, as defined in § 722-a of the County Law.
- To represent, without charge, in a proceeding in Family Court or Surrogate's Court in the County of Monroe, any person entitled to counsel pursuant to § 262 and § 1120 of the Family Court Act, and § 407 of the Surrogate's Court Procedure Act,

who is financially unable to obtain counsel, in accordance with this Plan.

- When necessary or appropriate, to obtain information regarding a potential client's eligibility for public defense services.
- To engage in planning and policy decisions with the County, the Bar Association, the New York State Office of Indigent Legal Services , office staff and public defense clients.
- To develop and execute County and other office policies;
- To prepare, subject to necessary County approval, the program budget;
- To recruit, train, supervise and evaluate attorney and non-attorney staff;
- To ensure that attorneys, when appropriate and necessary, have access to and utilize non-attorney professionals, such as investigators, expert witnesses, social workers, paralegals, mitigation specialists, mental health professions and language interpreters;
- To ensure that all attorneys have access to legal research services and an up-to-date motion and brief bank;
- To implement guidelines created by the New York State Office of Indigent Legal Services relative to the maximum

- recommended number of cases assigned to each attorney;
- To develop and implement a procedure to address client and community complaints;
  - To act as a spokesperson for the Conflict Defender's Office in matters regarding policy and operation of the Office;
  - To engage in outreach and public education to the various communities in the County interested in and impacted by the criminal justice, family justice and appellate systems, and address matters that arise for the Conflict Defender's Office in relation to the criminal justice and family justice systems;
  - To maintain such statistics and make such reports as may be required by the County Executive, the County Legislature or the New York State Office of Indigent Legal Services;
  - To perform such other duties as may be set forth in the Administrative Code and as may be required by other laws.

### **CONFLICT DEFENDER'S OFFICE STAFF ATTORNEYS**

The Conflict Defender shall recruit, train, evaluate and supervise staff attorneys in accordance with this Plan and as authorized by the County to represent eligible public defense clients in Monroe County Family Court, Rochester City Court, the appellate courts, and for the purpose of continuity

of representation in County or Supreme Court when the matter has been transferred from Family Court or when an ancillary proceeding is initiated as part of an appellate process.

Pursuant to Article II, §C2-6, paragraph C, subparagraph (6) of the Monroe County Charter the staff attorneys shall be compensated at the same pay group as assistant public defenders performing similar work in the Public Defender's Office.

The Conflict Defender's Office staff attorneys shall not be allowed to engage in the private practice of law.

### **ASSIGNED COUNSEL ADMINISTRATOR**

The Assigned Counsel Administrator shall be an attorney duly licensed to practice law in the State of New York and admitted to practice in all courts within the scope of the Plan. The Administrator shall have a minimum of ten years' experience as an attorney in the practice of criminal law or family law. The Administrator shall possess administrative experience and sufficient experience and skill in the representation of criminal defendants, parents in family law matters or appeals of criminal defense or Family Court matters. The Administrator must have a demonstrated history of commitment to high quality representation of public defense clients.

The Administrator shall be selected through a merit selection process. The Administrator shall be appointed by the County Executive from a list of three names provided to the County Executive by the Monroe County Bar Association, subject to applicable civil service requirements and confirmation by the Monroe County Legislature. The Administrator shall be subject to reconfirmation every two years. The Legislature shall act upon the Administrator's reconfirmation by the end of February of each even numbered year. The County Executive shall have the right to remove the Administrator in accordance with applicable law.

Upon the division of the Conflict Defender's Office and Assigned Counsel Program into separate entities, the current Conflict Defender will assume the role of Assigned Counsel Administrator for the balance of the term to which he was appointed as Conflict Defender and will be eligible for reconfirmation to that position by the Monroe County Legislature in February 2024.

The Administrator must have an ability to communicate effectively with clients, judges, lawyers who practice in all courts within the scope of this Plan, court administrators, other persons within the court system and county officials.

The Administrator shall administer the Assigned Counsel Program in accordance with the terms of this Plan and applicable law.

The Administrator shall be compensated at the same pay grade as the Conflict Defender.

The Administrator shall not be allowed to engage in the private practice of law.

The Administrator may handle any type of case that falls under the scope of this Plan so long as it is commensurate with their experience and consistent with fulfilling the duties of Administrator.

The Assigned Counsel Administrator shall be prohibited from engaging in political activities. The Assigned Counsel Administrator shall



not directly or indirectly engage in any political activity except (i) as otherwise authorized by this section or by law, (ii) to vote and to identify himself or herself as a member of a political party, and (iii) on behalf of measures to improve law, the legal system or the administration of justice.

Prohibited political activity shall include:

- (1) Being a member of a political organization other than enrollment and membership in a political party;
- (2) Being a member of any other group the principal purpose of which is to further the election or appointment of candidates to political office;
- (3) Participating in any political campaign for any office or permitting his or her name to be used in connection with any activity of a political organization;
- (4) Publicly endorsing or publicly opposing a candidate for public office;
- (5) Making speeches on behalf of a political organization or another candidate;
- (6) Attending political gatherings;
- (7) Soliciting funds for or making a contribution to a political organization or candidate; or
- (8) Purchasing tickets for politically sponsored dinners or other

functions.

### **ASSIGNED COUNSEL ADMINISTRATOR'S RESPONSIBILITIES**

The Administrator shall effectuate the goal of providing high quality legal services to public defense clients and ensure the cost accountability of services.

The Administrator shall have the following powers and duties:

- Development and implementation of policies and procedures, in conjunction with the County, the Bar Association, the New York State Office of Indigent Legal Services and other entities, regarding the Assigned Counsel program, assigned lawyers and public defense clients.
- Subject to appropriate County approval, development and execution of operational policies including voucher payment regulations, assignment procedures, and administrative policies that are necessary to effectuate the goals and objectives of the Plan or applicable laws, rules and regulations.
- Subject to necessary County approval, preparation of the program budget.
- In conjunction with the Bar, recruitment of panel attorneys willing to accept assignments.

- In conjunction with the Bar, establishment of minimum criteria for panel membership.
- In conjunction with the Bar, design and development of an attorney program application that all attorneys are required to complete as a condition of accepting an assignment.
- Review of each attorney's panel application and determination of the panel(s) from which an attorney may accept assignments utilizing the criteria established in conjunction with the Bar.
- Compilation and maintenance of a list of panel attorneys who are willing and qualified to accept assignments.
- Design and implementation of a mandatory orientation program, including a mentorship program, for new panel attorneys. Such a program shall include a discussion of the expectations of high quality representation and administrative procedures.
- Design and maintenance of a "second chair" program whereby a less experienced attorney is paired with a more experienced attorney to obtain necessary trial experience.
- Requiring that all panel attorneys receive appropriate substantive, procedural and practical training to enable them to provide high quality representation.
- Maintenance of a motion and brief bank that may be accessed by all

panel attorneys, indexed and kept current.

- Ensuring that all panel attorneys, when appropriate and necessary have access to and utilize non-attorney professionals such as investigators, expert witnesses, paralegals, social workers, mitigation specialists, mental health professionals and language interpreters.
- Ensuring that all panel attorneys have access to legal research services.
- Ensuring that all panel attorneys have the opportunity to consult with other qualified attorneys and experts regarding the handling of a case.
- Ensuring that the representation of all panel attorneys be evaluated based upon objective criteria established by the Administrator and that panel attorneys be given meaningful feedback regarding the quality of the representation that they provide.
- Ensuring high quality representation by periodically requiring attorneys to re-certify their panel membership.
- Maintenance of the following panels:
  - Homicide/Predatory Sexual Offense Panel (any matter involving a death or a potential “life” sentence);
  - ABC Felony Panel excluding homicides and Predatory Sexual Offense cases;
  - DE Felony Panel;

- Misdemeanor Panel;
  - Raise the Age Panel (in conjunction with the Appellate Division, Fourth Department);
  - Appeals Panel (in conjunction with the Appellate Division, Fourth Department);
  - Family Court Panel, including sub-panels requiring different levels of experience and expertise;
  - Parole/Probation Violation Panel;
  - “Other” Panel (such as representation of witnesses);
  - Surrogate’s Court Panel; and
- In conjunction with the Bar or other organizations such as the Appellate Division, creation of any other panels as future circumstances may dictate and creation of minimum criteria for membership on any newly created panel after consultation with the Bar Association Advisory Committee.
  - Selection of attorneys for assignments in accordance with this Plan on a rotating basis.
  - When necessary or appropriate, obtaining information regarding a potential client’s financial eligibility for public defense.
  - Maintenance of a record of all attorneys assigned, whether assigned directly by a judge or assigned by Assigned Counsel Program staff.

- Implementation of guidelines created by the New York State Office of Indigent Legal Services relative to the maximum recommended number of cases to be assigned to individual panel attorneys.
- Development and implementation of a complaint procedure that ensures that all complaints regarding attorney performance on pending cases are addressed.
- Maintenance of a record of all complaints regarding attorney performance, unless a complaint is deemed meritless.
- Review of attorney vouchers prior to submission to the disposition judge including any appropriate recommendations to the judge.
- Development and implementation of standards for attorney billings in accordance with applicable laws, County policy, and the terms of this Plan.
- Maintenance of such statistics and make such reports as may be required by the County Executive, the County Legislature or the New York State Office of Indigent Legal Services.
- Representing the Assigned Counsel program in matters involving policy and the operation of the program.
- Addressing matters that arise regarding the Assigned Counsel program, its attorneys when acting in their capacity as Assigned Counsel panel attorneys, and other actors in the criminal justice and

parental representation systems.

- Outreach and public education to the various communities in the County interested in and impacted by the criminal justice, family justice and appellate systems.
- Institution of a yearly review process of the Plan to determine if the Plan's goals and objectives are being met and whether any changes are needed and the recommendation of such changes. The Administrator shall seek the comments and recommendations of representatives of the Bar, the County, the Judiciary, panel attorneys, and any other individuals or entities the Administrator deems appropriate. Based upon such a review, issue a written Annual Report to the County Executive and President of the Monroe County Bar Association.
- Consultation with the New York State Office of Indigent Legal Services, the Judiciary and community groups regarding provision of indigent legal services in the County and performance of any functions or duties that may be necessary to accomplish the objectives of the Plan and effectuate applicable laws, rules and regulations.

## **ASSIGNED COUNSEL PANEL ATTORNEYS**

Service on an Assigned Counsel Panel is a privilege, not a right. Panel attorneys are not employed by the County, but rather are independent contractors.

Membership on the assigned counsel panels requires zealous representation of clients in a professional, skilled, ethical, holistic client-centered manner and compliance with the rules and expectations set forth herein.

Attorneys must be admitted to practice law before the courts of the State of New York and be in good standing with the New York State Office of Court Administration. Upon request, attorneys must be able to provide proof of current completion of continuing legal education as required to maintain a license to practice in the State of New York.

All panel attorneys must meet the minimum qualifications for panel membership set by the Administrator in conjunction with the Bar Association. Panel members may only accept assigned cases on panels for which they have been approved.

As a condition to being eligible to accept assignments, each attorney must execute an assigned counsel panel membership application which contains the following information:

- Attorney name and firm name;



- Attorney address, phone number and email address;
- Date of admission to practice;
- Social Security number or Tax ID number;
- The number of years in practice;
- The percentage of work devoted to criminal practice, Surrogate Court practice, Family Court practice and appeals;
- If applying for a trial level panel, the number of prior relevant trials conducted by the applicant, and the approximate dates of such trials;
- If applying for the appeals panel, the number of prior relevant appeals conducted by the applicant, and the approximate date of such appeals;
- Other relevant experience in the courts before which assignment is sought;
- Any specialized training regarding the panel(s) being applied to;
- A writing sample;
- Disclosure of whether the attorney has malpractice insurance;
- Disclosure of any prior ethics complaints where discipline was imposed;
- Disclosure of any prior criminal convictions;
- Disclosure of any other matters that could impact the Administrator's decision as to whether the attorney should be on any panels or which panels might be appropriate;

- In his or her application, the panel attorney shall agree to the following terms and conditions of panel participation:
  - The attorney will comply with the terms of the Plan, all standards promulgated by the Administrator, and all applicable laws and regulations;
  - The attorney agrees to immediately notify the trial judge and the Administrator if at any time the attorney believes he or she has a conflict of interest that would affect their representation or is unable to adequately or effectively represent his or her assigned client;
  - The attorney will submit their voucher for final payment to the Administrator prior to submission to the assigning judge and in conformance with all program rules;
  - The attorney will agree to the re-opening of a court order authorizing payment for previously submitted vouchers where subsequent vouchers submitted by the attorney provide reasonable cause for the Administrator to believe a billing error occurred in a previously paid voucher. All vouchers are subject to audit both before and after payment;
  - Subject to the appeal procedure set forth in herein, the attorney agrees to comply with the determination of the Administrator

regarding the level of case for which the attorney will be contacted to handle. An attorney initially denied placement on any particular panel may subsequently reapply for that panel after obtaining additional, qualifying experience;

- Panel members are prohibited from accepting private retainers from any client assigned by the court or the Assigned Counsel program;
- Attorneys must maintain a working e-mail account as a means of receiving information from and providing information to the Administrator or a designee;
- Attorneys must immediately notify the Administrator of any changes to their work telephone number, postal address, or email address;
- Attorneys must cooperate with monitoring, performance evaluations and investigations of any complaints, including billing discrepancies, by the Administrator;
- Attorneys are encouraged to maintain professional liability insurance;
- Once assigned to a case, the attorney agrees to remain as counsel of record for the duration of the case unless and until

specifically relieved by the court with a new attorney being assigned, or the client retains counsel, or the case is completed;

- Panel attorneys agree to consistently and promptly comply with requests for information from the Assigned Counsel program regarding information that is necessary for the functioning of the program, meeting County and State reporting requirements and ensuring quality representation. Panel attorneys will not be required to provide confidential information that would breach the attorney-client privilege or which would jeopardize the attorney-client relationship.

### **ASSIGNMENT PROCEDURE**

All assignments shall be made by the Administrator unless the assignment is made by the presiding judge based on special circumstances as described below. The assigning judge shall have final authority to determine whether the attorney is qualified to handle the matter. The Administrator shall make assignments on a rotating basis from a list of all eligible participating attorneys. In assigning counsel, the Administrator shall whenever possible provide for continuity of counsel based on prior representation or current assignment on a pending case or cases, as long as the attorney is a member of the panel that handles the case being assigned.

The Administrator shall give due regard to the following additional factors:

- Potential conflicts of interest;
- Geographic proximity;
- Attorney caseloads; and
- Attorney skill and experience with the type of case involved.

When the presiding judge assigns an attorney under special circumstances, the judge must select the attorney from the panel that handles the type of case being assigned. If the presiding judge makes the assignment, the court shall promptly notify the Administrator of the assignment of counsel. Upon receipt of a notice from a judge of an in-court assignment, the Administrator shall record the assignment on the panel attorney's record and the assignment shall be treated by the Administrator for rotation purposes, as though the assignment was made by the Administrator.

### **COMPENSATION FOR PANEL ATTORNEYS**

The rate of compensation paid to panel attorneys is set by New York State statute, County Law § 722-b. Pursuant to County Law § 722-b and other applicable laws, rules and regulations, the amount of compensation paid to panel attorneys shall be determined by the disposition judge after an appropriate recommendation by the Administrator.

In accordance with Article 18B of the County Law, and other applicable laws, rules and regulations, panel attorneys shall be reimbursed for expenses reasonably incurred during assigned representation.

The Administrator shall have the authority to develop additional payment requirements in accordance with the applicable law or the requirements of the County's auditors or the State Comptroller.

### **PAYMENT PROCEDURES**

After an attorney has completed an assignment, the attorney shall within 30 calendar days complete and forward to the Administrator a voucher setting forth the amount of time spent on each service, the total amount of all time spent, any expenses incurred (providing receipts when required) and any other information required by the Administrator.

Vouchers may be submitted for good cause after the 30-day time limit.

Vouchers may not be submitted more than 90 days after completion of the case unless in the judgement of the Administrator there are exceptional circumstances.

The Administrator shall review the panel attorney's voucher for accuracy, ensure there are no irregular charges, ensure that all charges reasonably and accurately reflect services provided to clients were necessary to provide high quality legal representation and to ensure all time vouchered

is in accordance with applicable billing guidelines, laws, rules and policies.

After the Administrator's review, the voucher will be forwarded to the disposition judge with an appropriate recommendation to assist the disposition judge in their review of the voucher. The disposition judge is the judge who was presiding over the last substantive act in the case such as a dismissal of the matter, sentencing, issuing a final Order, or referring a matter to the Grand Jury that was subsequently not billed. If the disposition judge is not available due to retirement, death or protracted illness, the voucher shall be forwarded to the appropriate supervising judge of the court or their designee.

If the Administrator has a question regarding a panel attorney's voucher, the Administrator shall contact the attorney and attempt to resolve the problem. If the attorney and the Administrator resolve the problem, the Administrator shall forward the voucher to the disposition judge along with the Administrator's recommendation regarding payment.

If the attorney and the Administrator cannot resolve the dispute, then the Administrator shall offer the attorney an opportunity to object in writing and forward the voucher and written objection to the disposition judge along with a written statement from the Administrator setting forth the Administrator's objections to payment of the voucher. A copy of the Administrator's written statement shall be sent to the attorney. The

disposition judge shall make the final determination regarding the panel attorney's compensation, subject to any applicable appeal rights of the attorney or the Administrator.

The disposition judge may review the attorney's voucher for accuracy, to ensure that all claimed hours were necessary to provide quality legal representation to the client and to consider the Administrator's recommendation. The disposition judge may consult with the Administrator or the attorney for additional information or clarification regarding the voucher.

#### **ASSIGNED COUNSEL PANEL ATTORNEY COMPLAINT AND DISCIPLINE PROCEDURES**

Upon receipt of a complaint regarding a panel attorney's behavior or performance, the Administrator shall investigate such complaint. Each investigation may, in the Administrator's discretion, include speaking to the person making the complaint, speaking to the attorney who is the subject of the complaint, speaking with the client and to any other person with relevant information and reviewing any relevant documentation.

If, at the conclusion of the Administrator's investigation, the complaint is deemed meritless, the Administrator will purge the complaint from the panel attorney's record.

All complaints deemed by the Administrator to be meritorious shall



be maintained as part of the attorney's Assigned Counsel Program record. If the complaint is found meritorious and the attorney's conduct constitutes a violation of the New York Rules of Professional Conduct, the Administrator shall report such conduct to the Attorney Grievance Committee of the Fourth Department.

If the Administrator determines that a complaint is meritorious but not of a serious nature, the Administrator shall resolve the matter after consultation with the attorney and the client, if the client made the complaint.

If the Administrator determines that there is merit to the complaint and the complaint is of a serious nature, the Administrator shall refer the matter for a hearing before the Complaint Resolution Committee. The Administrator may suspend the attorney from panel membership pending a determination of the Complaint Resolution Committee.

The Complaint Resolution Committee shall consist of three members: one member to be designated by the Monroe County Bar Association, one member to be designated by the Administrative Judge of the Seventh Judicial District, and one member to be designated by the County.

A complaint of a serious nature includes, but is not limited to:

- Disbarment, suspension from practice, failure to maintain attorney registration in good standing, or any public censure by

any attorney licensing body;

- A criminal arrest; Panel attorneys are required to notify the Administrator within one business day if they are arrested for a criminal offense;
- Failure to provide competent legal representation in an ethical and professional manner;
- Substantial or continuous violations of Assigned Counsel Program rules or other applicable laws, rules and guidelines issued by the Administrator;
- The intentional submission of materially incorrect information to the Administrator on panel applications, vouchers, or other submissions;
- Billing improprieties; or
- Accepting payment or requesting payment from assigned clients or their family members.

If a complaint is referred to the Complaint Resolution Committee, the following procedures shall apply:

- Charging Document: The Administrator shall send a letter to the attorney outlining the alleged violations of the program rules.

- Representation: The Attorney is entitled to be represented by counsel at his or her own expense. The Administrator is entitled to be represented by counsel.
- Pre-Hearing Procedures: Counsel for the Attorney and Administrator will exchange documentary evidence and witness lists that include a summary of each witness's proposed testimony at least three (3) weeks before the hearing. The documentary evidence and witness lists including the summary of the witness's testimony will be presented to the Complaint Resolution Committee at least two (2) weeks before the hearing. The Attorney will provide a written summary of the attorney's defense at least two (2) weeks prior to the hearing. Upon a review of the witness lists and summary of the witness's testimony, the Complaint Resolution Committee may determine that it does not wish to hear live testimony from a witness, but instead rely upon the summary of their testimony provided by counsel. The Complaint Resolution Committee will notify counsel at least one (1) week before the hearing which witnesses, if any, the Committee wishes to have testify in-person or virtually.

- **Attorney as Witnesses:** The Attorney has the right to testify on the attorney's own behalf. The Attorney may be cross-examined by opposing counsel. The Complaint Resolution Committee will determine the appropriate scope of witness testimony, including the scope of cross-examination.
- **Other Witnesses/Confrontation of Opposing Witnesses:** If the Complaint Resolution Committee determines it will hear in-person testimony from a witness, there will be a formal direct examination by the attorney calling the witness to testify. Direct examination will be followed by cross-examination by the opposing attorney. Whether re-direct examination and re-cross are permitted will be left to the discretion of the Complaint Resolution Committee. The Complaint Resolution Committee will determine the appropriate scope of witness testimony, including the scope of cross-examination. The Complaint Resolution Committee may ask questions of a witness.
- **Rules of Evidence:** New York rules of evidence may be applied, but the Complaint Resolution Committee may waive the rules to provide a full and fair hearing of the matter.

- **Negative Inference:** The Complaint Resolution Committee may draw a negative inference from an attorney's failure to cooperate with the Administrator's investigation into a complaint or the attorney's failure to participate in the hearing before the Committee.
- **Burden of Proof:** To impose discipline upon the attorney, the Complaint Resolution Committee must unanimously determine that the complaint has been established by just cause. If the burden is not met, the Complaint Resolution Committee will direct the Administrator to purge the complaint from the program's records. If the Complaint Resolution Committee determines that the Administrator has met the burden of proof, discipline may be imposed.
- **Discipline:** The Complaint Resolution Committee may impose discipline up to and including permanent removal from the assigned counsel panels, suspension from the panels for up to one year, or any other lesser sanction that the Complaint Resolution Committee deems appropriate under the circumstances. During and after the period of suspension, the Complaint Resolution Committee may impose reasonable conditions on the attorney that provide the opportunity for

counseling or remediation. During the course of remediation, the Complaint Resolution Committee may limit which panel the attorney may participate in or require that a mentoring attorney review the attorney's work product and performance. If, after a hearing, a sanction of suspension or removal from the panels has been made, the Administrator must immediately notify all of the judges that the attorney is no longer eligible to accept assignments. The Administrator will promptly assign new counsel for the clients previously assigned to that attorney. When practicable the complainant, the clients of the attorney, and other relevant parties shall be notified of the final decision.

- **Conduct of Hearing:** The hearing may be held virtually or in-person at the discretion of the Complaint Resolution Committee.
- **Memorializing:** A court reporter will be utilized to memorialize the hearing.
- **Final Decision:** Any decision of the Complaint Resolution Committee shall be considered a final decision.
- A determination made by the Assigned Counsel Administrator or the Complaint Resolution Committee is not a bar to the

filing of a complaint with the appropriate Attorney Grievance Committee.

### **PROCEDURES REGARDING DENIAL OF PANEL MEMBERSHIP**

If the Administrator refuses to grant an attorney membership on a panel, the attorney may seek an administrative review by the Complaint Resolution Committee.

This administrative review will be a de novo review based upon a review of the attorney's application and any other documentary evidence submitted by the attorney or the Administrator. The Complaint Resolution Committee, in its discretion, may grant the attorney and Administrator oral argument on the matter. No testimony will be taken in this administrative review; nor will cross-examination be permitted.

The decision of the Complaint Resolution Committee shall be final.

If the Complaint Resolution Committee upholds the determination of the Administrator and denies the attorney membership on a panel, the attorney may re-apply for the panel with a subsequent application made more than one year after the denial. The attorney should provide new evidence of additional experience which would make them eligible for the panel. Such evidence could include one or more of the following:  
completion of Continuing Legal Education programs specifically applicable

to the panel being applied to, second chair participation or mentorship participation.



### **SUPERSEDING PROVISION**

This Plan supersedes the former plan, The Monroe County Bar Association Sponsored Plan for Conflict Assignments, agreed to by Monroe County and the Monroe County Bar Association on or about April 14, 2003 and subsequently approved by New York State.

### **SEVERABILITY**

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

### **EFFECTIVE DATE**

The terms of this Plan shall go into effect immediately upon approval by the Monroe County Bar Association, Monroe County, and the New York

State Office of Indigent Legal Services.

Upon the confirmation of a Conflict Defender by the Monroe County Legislature in 2023, the Monroe County Conflict Defender's Office and Monroe County Assigned Counsel Program will be considered separate entities under separate leadership.

### **DURATION OF THE PLAN**

The terms of this Plan shall remain in full force and affect unless terminated by either Monroe County or the Monroe County Bar Association. Monroe County or the Monroe County Bar Association may terminate the Plan at any time upon one hundred eighty (180) days written notice to the other. Upon receipt or initiation of a termination notice, the Assigned Counsel Administrator shall notify all judges of the termination.

In the event of Plan termination, the assignment of cases will revert to whatever method of assignment is required by applicable law at the time of termination.

This Plan may not be amended unless mutually agreed to by the Monroe County Bar Association and Monroe County, with the approval of New York State Office of Indigent Legal Services.



# Office of the County Executive

Monroe County, New York

**Adam J. Bello**  
*County Executive*

February 10, 2023

<b>OFFICIAL FILE COPY</b>	
No.	<u>230055</u>
Not to be removed from the Office of the Legislature Of Monroe County	
Committee Assignment	
<b>PUBLIC SAFETY</b>	<b>-L</b>
<b>WAYS &amp; MEANS</b>	

To The Honorable  
Monroe County Legislature  
407 County Office Building  
Rochester, New York 14614

Additional Material on File  
in the Clerk's Office

**Subject:** Authorize the Monroe County/Monroe County Bar Association Plan Regarding the Conflict Defender's Office and Assigned Counsel Program and Authorize One Position Upgrade

Honorable Legislators:

I recommend that Your Honorable Body authorize The Monroe County/Monroe County Bar Association Plan regarding the Conflict Defender's Office and Assigned Counsel Program pursuant to Section 722 of the New York State County Law, and authorize upgrading the Assigned Counsel Administrator position from a Group 21 to a Group 23.

The Monroe County/Monroe County Bar Association Plan Regarding the Conflict Defender's Office and Assigned Counsel Program ("the Plan") is a cooperative effort between Monroe County and the Monroe County Bar Association ("the Bar Association") for the provision of high quality legal services to eligible public defense clients. The Monroe County Assigned Counsel Program began operation in all courts in Monroe County in 1992. In 2003, by agreement between Monroe County, the Bar Association, and New York State, the Monroe County Conflict Defender's Office was created. At that time, the Monroe County Assigned Counsel Program became part of the Conflict Defender's Office. The Conflict Defender's Office and Assigned Counsel Program have continued to operate as one office, under a single administrator, since that time.

In 2019, the New York State Office of Indigent Legal Services ("ILS") adopted Standards for Establishing and Administering Assigned Counsel Programs. These "Black Letter Standards" recommend that assigned counsel programs operate independently of a Conflict Defender's office. Monroe County's funding agreement with ILS contemplates that the Conflict Defender's Office and Assigned Counsel Program will split beginning in 2023. The revised Plan effectuates this split. The ILS Standards and revised Plan also each require that the Assigned Counsel Administrator be an independent office leader at the same grade as the Conflict Defender. Adoption of this referral would upgrade the Assigned Counsel Administrator to the same grade as the Conflict Defender.

The Board of Trustees of the Monroe County Bar Association has approved this revised Bar Plan.

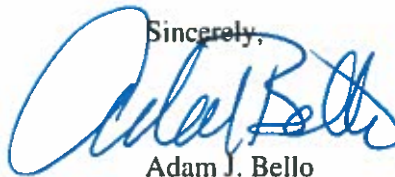
**The specific legislative actions required are:**

1. Authorize the Monroe County/Monroe County Bar Association Plan regarding the Conflict Defender's Office and Assigned Counsel Program pursuant to Section 722 of the New York State County Law.
2. Authorize the County Executive, or his designee, to upgrade the Assigned Counsel Administrator position from a Group 21 to a Group 23.

The legislative action requested in this referral is not an "Action," as that term is defined in 6 NYCRR § 617.2(b), and is not subject to review under the State Environmental Quality Review Act.

Funding for this position is included in the 2023 operating budget of the Department of Public Safety, general fund 9300, funds center 2402010000, Legal Representation No additional net County support is required in the current Monroe County budget.

I recommend that this matter be referred to the appropriate committees for favorable action by Your Honorable Body.

Sincerely,  


Adam J. Bello  
Monroe County Executive

AJB:db