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To: Hon. Wanda F. Willingham, Chair
Audit and Finance Committee

From: Thomas C. DeBose III
Assigned Counsel Administrator
Albany County Assigned Counsel Program

Date: October 10, 2024

Re: Proposed 2025 Budget

Chairwoman Willingham:

In preparation for our impending Budget Session Discussion on the Assigned Counsel Program (“ACP”) submits the following responses to the 2024 Agency Budget Call Letter (*ACP answers in italics*):

1) Identify Department Representative appearing before the Audit & Finance Committee for your Agency Budget presentation.

The Representative for ACP will be its Administrator and head of department, Thomas C. DeBose III.

2) Identify by line item all vacant positions in your department.

Due to recent departures (and State-based poaching of ACP’s personnel) there are three (3) positions open at present:

| | | |
|------------|------------------------|-------------------------------|
| <i>I.</i> | <i>Legal Secretary</i> | <i>A1172 15025 001 146006</i> |
| <i>II.</i> | <i>Data Analyst</i> | <i>A1172 16024 001 146007</i> |

III. *Secretary II (which will convert to Confidential Secretary)—A1172 16401 001 146010*

3) Identify by line item any new position(s), how the position(s) will be funded and the reimbursement rate(s), if applicable.

ACP has two (2) new position(s) created this year—The Confidential Secretary 1172 16401 001 146010, and Senior Attorney—A1172 12043 002 146001. This position, like all ACP positions, is 100% State Funded.

4) Identify by line item any proposed salary increase(s) beyond union contract commitments. Include justifications for those raise(s).

There have been no salary increases in Assigned Counsel beyond the cost-of-living assessments done to all County employees.

5) Identify by line item any position proposed to be eliminated or salary decreased.

The Secretary II Position A1172 16404 001 146002 will be removed and converted into a Confidential Secretary position for next year.

6) Identify by line item all positions that are funded by grant money, the percentage of funding provided by the grant, and indicate whether there is a commitment that the grant has been renewed for 2024.

All seven (7) positions in ACP are fully funded (100%) by grant money ILS. Six of the Positions (A1172 12002 001 146001—Supervising Attorney, A91172 15025 001 146606—Legal Secretary, A1172 16024 001 146007—Data Analyst, A91172 16210 001 146008—Office Assistant, and Confidential Secretary 1172 16401 001 146010) are funded exclusively by the NYS ILS Statewide Funding Source (“Statewide”), and one position (A1172 15031 001 146003—Administrator) is funded primarily by Statewide, and partially by ILS funding called Distributions. The Senior Attorney—A1172 12043 002 146001 is funded by the funding system from DCJS. The Distribution funding has already been approved of for 2024, and the Statewide funding will undergo a new three (3) contract for 2024—2026).

7) Identify by line item all job titles proposed to be changed or moved to another line item (e.g., reclassifications).

None.

8) Provide an itemized breakdown of specific expenditures regarding fees for services lines and miscellaneous contractual expense lines and indicate 2024 expenditures compared to 2023 proposed expenditures.

As of October 10, 2024, ACP has the following services lines and expenditures for them:

- 1) A1172 44068 10000—*Investigative Services (\$33,266.48 [2023] v. \$54,782.00 [2024]). This line is used to provide investigative services to the Panel Attorneys for assistance in their assigned cases.*
- 2) A1172 44300 10000—*Association Dues (\$1,425.00 [2023] v. \$1450.00 [2024]). This line is used to cover association fees such as NYSDA for Panel Attorneys.*
- 3) A91172 44121 1000—*Specialized Services (\$6937.50 [2024] v. \$0.00 [2022]). This line covers the fees for Expert Services for assigned cases.*

All three lines are budgeted in concurrence with ILS Guidelines on the use of these services and the expanded provision of investigators, experts, and other non-legal personnel for the Panel Attorneys in 2024 and beyond.

- 9) Identify any new initiatives and/or eliminated programs and reimbursements associated with those programs.

Coming in 2025, ACP will (hopefully) have gotten its Assigned Counsel Plan passed, and will be better able to shape the process of improving indigent defense than it has ever been able to before. Through patient negotiation, diligence, and no small amount of cooperation from State and County officials, ACP will gain the ability to assign attorneys from the outset, rather than equipping attorneys that have already been assigned to the courts. Such a change represents a quantum leap in the County's ability to manage and improve the services our program can render to our attorneys and the clients they serve.

- 10) Identify all County vehicles used by your department. Include the title of any employee(s) assigned each vehicle and the reason for the assignment of a County vehicle to that employee.

ACP does not utilize any County vehicles.

- 11) Provide a specific breakdown for the use of the proposed funding for all Conferences/Training/Tuition line items in your department budget.

Part of the obligations that ACP has under the terms of the Statewide Grant is to improve the quality of services rendered by the 18-B attorneys under our umbrella. To do so, we are working with organizations such as the Albany County Bar Association, ILS, and the New York State Defender's Association to develop MCLE programs relating to the practice of criminal law, with a focus on issues identified by ACP and the Panel. Further, there are specialized events hosted by non-profits such as Gideon's Promise which ACP has been invited to attend. These events place the leading organizations in New York State together and offer specialized training, which ACP can then develop into programs for the 18-B panels. We also have funding for CLEs to further prepare our Panel Attorneys for parental representation through the Upstate Family Defense Grant. All of these expenditures are 100% grant funded.

The grant funding also supports the production and implementation of ACP's MCLE initiative with the assigned counsel programs in Saratoga, Schenectady, and Warren Counties—the "Last Tuesdays" series. This series of one-hour MCLEs provides new programming for our Panel Attorneys, with emphasis on the issues proposed by ILS for expansion—the use on non-legal professional services and more specialized section of criminal practice. ACP anticipates that its changes to the Assigned Counsel process will allow it to greatly expand the conferences available and the use of this funding next year. Moreover, with the coming adjustments to the Assigned Counsel Plan, ACP intends to be able to mandate training for the first time in our history,

12) Provide a specific breakdown of overtime line items in your department budget, including the actual overtime expenditures for the previous two years.

ACP does not have any overtime line items in our budget, and we have had 0 overtime expenditures in the past two years.

13) Identify by line item any positions that were established/changed during the 2023 fiscal year.

ACP created no positions during the 2024 fiscal year.

14) Please describe the biggest risk your department faces and the actions you have taken (or will take in 2025) to better understand that risk and mitigate it.

ACP's biggest challenges in the 2025 cycle will be growth and continuity. Growth, because we anticipate having significantly more ability to direct assignments—the key to making transformative change in the assigned counsel space. With the power of assignment comes the ability to not only persuade, but direct the other entities in the assigned counsel space to make needed changes to how cases are managed, assigned, and litigated. Continuity remains a continuing challenge in ACP. As the Program grows and gets better, our staff is continuously poached by the State.

As to how we will address these issues, our strategy remains the same: we attack the problems head on. We anticipate being able to transform our data collection processes to streamline our data collection and processing, we are keeping our eyes open to ensure that we find and retain folks who can grow and develop in our system fast, and we remain confident that we can face down the challenge of living up to past successes. We take comfort in the knowledge that many of the tasks we have already surmounted were considered impossible before we did them.

15) Please list performance indicators and metrics used by your department and current statistics for those metrics.

ACP's clearest performance indicators relate to our state reporting. Statewide Metrics relate to NYS ILS Caseload Standards. Effectively, the State's evaluation of good service to clients in ACP relates to how closely the average type of case (Violent Felony, Felony, Appeal, etc.) covered by ACP attorneys reaches that average. For our data released this year, our ACP

program is measuring well in several areas (our Violent Felony, Misdemeanor, Post-Disposition and Parole Representation all meet the requirements as provided by the State.

| | | |
|--------------------------|--------------------|--------------------|
| Violent Felony Matters | Our Number: 40.41 | ILS Average: 37.5 |
| Other Felony Matters | Our Average: 15.15 | ILS Average: 18.8 |
| Misdemeanor/Violations | Our Number 12.63 | ILS Average: 6.3 |
| Post Disposition Matters | Our Number 21.02 | ILS Average: 9.4 |
| Parole Representation | Our Number 21.02 | ILS Average: 9.4 |
| Appeals, Guilty Verdict | Our Number 23.7 | ILS Average: 53.6 |
| Appeals, Guilty Plea | Our Number 88.5 | ILS Average: 156.3 |

Where ACP struggles to approach the standards' expectations relates to the appellate matters, a place where the assignment and control of matters is furthest from the County's hands. Our hope is that the new Assigned Counsel Plan, together with the power of assignment, will provide us the ability to address this concern head-on by providing us a means to address how cases are sent to the various appellate level attorneys, and what can be done to render more comprehensive services to our clients in that field.

16) Note specifically all potential new unfunded mandates, regulations, risks to grant revenues, risks to reimbursement revenues, from any source.

For ACP, the persistent, looming threat is the State's decision to place their commitment to providing partial reimbursement of the \$158/hr. assigned counsel rate in the annual Aid to Localities section of the budget, rather than making such a commitment a permanent adjustment to state law (as the rate and the County's obligations to pay it already are). For the first 3 quarters of this year, such reimbursements amounts to \$287,121.37. ACP continues to submit these requests for reimbursement on time and on target, but this remains an area to cautiously observe.

If you required any additional information regarding the Assigned Counsel Program, please feel free to contact me.

With Respect,

Thomas C. DeBose III

Thomas C. DeBose III

Administrator

Albany County Assigned Counsel Program