

**Local Law Intro. No. \_\_\_\_**

A LOCAL LAW amending the Laws of Albany County by adding a new Chapter XXX relating to the creation of the Albany County Office of Assigned Counsel.

**BE IT ENACTED** by the County Legislature of the County of Albany as follows:

Section 1. A new Chapter is hereby added to the Laws of Albany County to read as follows:

Chapter XXX

**ALBANY COUNTY OFFICE OF ASSIGNED COUNSEL**

- Sec. XXX—101. Short Title
- Sec. XXX—102. Purpose
- Sec. XXX—103. Definitions
- Sec. XXX—104. Board of Directors, Membership
- Sec. XXX—105. Board of Directors, Powers and Duties
- Sec. XXX—106. Assigned Counsel Administrator, Appointment, Term.
- Sec. XXX—107. Operation of Program
- Sec. XXX—108. Rules and Regulations
- Sec. XXX---109. Severability

**Sec. XXX—101. Short Title.**

This Chapter shall be known as and cited as “The Albany County Office of Assigned Counsel.”

**Sec. XXX--102. Establishment, Purpose.**

Pursuant to New York State County Law Article 18-B, §722(3)(a)(b) there shall be an Office of Assigned Counsel, which shall operate as an independent office separate from the Albany County Office of the Public Defender and the Albany County Office of the Alternate Public Defender. The purpose of said office is to maintain an Assigned Counsel Program in the County by establishing protocols and policies for assigning attorneys to persons unable to afford counsel in both family court and the criminal court(s) to ensure the provision of professional, skilled, ethical and client-centered legal representation of such similarly situated clients. The Assigned Counsel Program shall operate in compliance with the Standards for establishing and Administering Assigned Counsel Programs promulgated by the New York State Office of Indigent Legal Services pursuant to New York State Executive Law §832 (the “Standards”).

Further, the development and creation of this plan is done in conjunction with the recent provision of funding dedicated to providing defense to persons unable to afford counsel as established by the State of New York via the Hurrell-Herring Settlement. This Plan shall remain in force and effect unless and until those resources are extinguished.

### **Sec. XXX—103. Definitions**

- a. Administrator—the person who administers the Assigned Counsel Program in the County and ensures that all appropriate Standards are met;
- b. Assigned Counsel—A private attorney or attorneys, other than an attorney or attorneys employed by the Public or Alternate Public Defender’s Offices, paid by the government at an hourly rate established under New York State County Law Article 18-B to represent eligible clients;
- c. Assigned Counsel Program— An entity within the County of Albany that sets forth protocols and policies for the assignment of attorneys to public defense clients and ensures that those attorneys provide quality representation.;
- d. Clients— Persons entitled to representation in criminal defense and family law matters under County Law, Article 18-B, as determined in accordance with applicable standards set by the New York State Office of Indigent Legal Services (hereinafter referred to as “NYS ILS”) ;
- e. County—The County of Albany;
- f. Independent—Freedom from improper influence and control by any outside entity to ensure that the Assigned Counsel Program and assigned counsel make decisions based solely on the interests of their clients;
- g. Judge(s)—Judges, magistrates, and any other persons with adjudicative powers over clients eligible for mandated representation;
- h. Mandated Representation—Government-funded legal representation that is constitutionally or statutorily required including, but not limited to, representation in criminal matters pursuant to New York State County Law Article 18-B, family court proceedings, and appellate representation;
- i. Mentor(s), Mentoring Attorney(s), Resource Attorney(s)—An experienced attorney who provides training, consultation, and guidance to other attorneys on the Panel;

- j. Office of the Assigned Counsel Program—The office responsible for administering the Assigned Counsel program in Albany County;
- k. Panel—The Assigned Counsel Program’s list of attorneys eligible to receive assignments in the County, which should be limited to those in good standing and with the requisite skills and training. The Assigned Counsel Program shall develop regulations and requirements for representation that comport with applicable guidelines provided by the New York State Office of Indigent Legal Services.
- l. Panel Attorney—An attorney who has been evaluated by the Albany County Assigned Counsel Program, and is rendering services to eligible persons in family and criminal court(s);
- m. Quality Representation—Representation of clients in a professional, skilled, ethical and client-centered manner, consistent with best practices as defined by the Standards;
- n. Standards—Standards for Establishing and Administering Assigned Counsel Programs in New York State promulgated by the New York State Office of Indigent Legal Services pursuant to New York State Executive Law §832;
- o. Supervising Attorney—An attorney, selected by the Assigned Counsel program administrator, who assists the Administrator in the execution of the tasks necessary to operate the Assigned Counsel Program and ensure that its responsibilities are executed in compliance with the Standards and all other applicable law;
- p. Vouchers—Document(s) supplied by a Panel Attorney which details an assigned counsel matter, the fees for representation and disbursements that were incurred by a Panel Attorney during their representation of a person unable to afford counsel . Completed and accurate Vouchers are necessary in order to secure payment.

#### **Sec. XXX-104. Assigned Counsel Board of Directors**

- a. There shall be an Assigned Counsel Board of Directors, which shall consist of seven (7) members. Five (5) members shall be appointed by the County Executive, one (1) shall be appointed by the Chairperson of the Albany County Legislature, and one (1) shall be appointed by the Majority Leader of the Albany County Legislature. The Board shall consist of the following:
  - (i) Three (3) members chosen by the County Executive, shall be chosen from among those individuals recommended to the County Executive by the following: one (1) member recommended from the Albany County Bar Association; one (1) member recommended by the Albany County Women’s Bar Association; and one (1) member recommended by the Capital District Black and Hispanic Bar Association;

- (ii) One (1) member chosen by the County Executive shall be an attorney who actively practices criminal or family law;
- (iii) One (1) member chosen by the County Executive shall be a member of the general public who is not a member of the legal profession;
- (iv) One (1) member chosen by the Majority Leader shall be a former assigned counsel attorney who has practiced family law; and
- (v) One (1) member chosen by the Chairperson of the Legislature who shall be a former assigned counsel attorney who has practiced criminal law;
- (vi) One (1) member shall be the Chairperson of the Law Committee of the Albany County Legislature, who shall serve as an *ex officio*, non-voting member of the Board.

Upon making their formal recommendation, the County Executive, the Chairperson of the Legislature, and the Majority Leader shall notify each of the respective offices regarding their appointments. Each appointment shall be filed with the Clerk of the Albany County Legislature within forty-five (45) days of their recommendation.

- b. When a vacancy occurs in the membership of the Assigned Counsel Board of Directors, the vacancy shall, within forty-five (45) days, be filled for the unexpired portion of the term in the same manner as the original appointment.
- c. The majority of the Board's members shall be attorneys who are not judges. No member of the board of Directors shall hold a position as a prosecutor, a member of law enforcement or any other government official whose duties may be adversarial to clients receiving mandated representation.
- d. There shall be a Chair of the Board of Directors. Such individual shall be chosen from among the members of the Board of Directors upon a majority vote. The Chair shall serve for a two (2) year term, but in no instance shall said term extend beyond the member's term of appointment as a member of the Board of Directors. No member shall be eligible to serve as Chair for consecutive terms. No judge shall serve as the Chair of the Board of Directors.
- e. The members of the Board of Directors shall be appointed for a term of two (2) years, except as indicated below, beginning on January 1 and ending on December 31 of the following calendar year, terms for the inaugural Board of Directors shall be as follows:
  - a. The members appointed by the County Executive, as recommended by, the Albany County Bar Association, the Albany County Women's Bar Association, and the Capital District Black and Hispanic Bar Association shall serve from January 1, 2025 through December 31, 2025;
  - b. The member appointed by the County Executive who actively practices criminal or family law shall serve from January 1, 2025 through December 31, 2026;

- c. The member appointed by the County Executive who is a member of the general public and not a member of the legal profession shall serve from January 1, 2025 through December 31, 2025;
  - d. The member appointed by the Majority Leader of the Legislature shall serve from January 1, 2025 through December 31, 2025; and,
  - e. The member appointed by the Chairperson of the Legislature shall serve from January 1, 2025 through December 31, 2026.
- f. No person shall serve as a member of the Board of Directors for more than three (3) consecutive two (2) year terms. Members of the Board of Directors shall continue to serve until their successors have been appointed.
  - g. Any individual chosen to fill a vacancy created otherwise than by expiration of a term shall be appointed in the same manner in which their successor was appointed and for the unexpired term of the member whom he or she is to succeed.
  - h. In all instances, the Board of Directors shall require an affirmative vote of at least three (3) members of the Board to take any official action, or to exercise any of the powers and duties authorized by this law.
  - i. No member of the Board of Directors shall be compensated for the services to be provided, but may be reimbursed for any reasonable expenses that may be incurred in the conduct of their official duties as Board members.

### **Sec. XXX—105. Board of Directors, powers and duties**

The Board of Directors shall have the following powers and duties:

- a. Provide guidance and advice on the operation of the Assigned Counsel Program in the County;
- b. Appoint the Assigned Counsel Program Administrator in consultation with the New York State Office of Indigent Legal Services and subject to approval by the Albany County Executive and confirmation of the Albany County Legislature;
- c. Study and review the existing program under Article 18-B of the New York State County Law for provision of representation in the courts for persons unable to afford counsel, and recommend any appropriate modifications to the program;
- d. Establish and implement uniform rules and regulations in compliance with the Standards for creation and administration of the Assigned Counsel Program to enable the effective provision of legal services for persons unable to afford counsel in Albany County;

- e. Review the annual Budget request from the Assigned Counsel Program Administrator for submission to the Albany County Commissioner of Management and Budget in compliance with County budgetary law and procedures;
- f. Consult with the New York State Office of Indigent Legal Services, the Judiciary, and community groups regarding the provisions of legal services for persons unable to afford counsel in the County;
- g. Prepare and review an Annual Report for submission to the County Executive and County Legislature by December 31<sup>st</sup> of each year regarding the services provided by the Assigned Counsel Program including but not limited to: numbers and types of cases, attorney caseloads, and Office expenditures;
- h. Meet on at least a biannual basis in order to ensure that all the responsibilities and duties of the Assigned Counsel Program are executed in a prompt and efficient manner.

**Sec. XXX—106. Assigned Counsel Program Administrator; appointment, qualifications, term**

- a. The Board of Directors shall nominate an Assigned Counsel Program Administrator subject to the approval of the Albany County Executive and confirmation by the Albany County Legislature. Any person so nominated shall be an attorney in good standing, licensed in State of New York, possess administrative experience, be well-versed in Criminal and/or Family law matters, and demonstrate integrity and commitment to quality representation of persons unable to afford counsel;
- b. The Administrator shall serve full-time and shall not engage in the private practice of law during their appointment.
- c. The Administrator shall serve a term of five (5) years subject to another nomination at the discretion of the Board of Directors and the approval of the County Executive and confirmation by the Albany County Legislature.
- d. The Administrator serves, pursuant to §2507 of the Albany County Charter, and may be removed for cause, after notice and opportunity to be heard in compliance with procedures established by the Board of Directors.

**Sec. XXX—107. Assigned Counsel Program Administrator; Powers and Duties.**

- a. The Administrator shall be the administrative head of the office, and shall have the duty to ensure to the extent possible that all persons unable to afford counsel are provided with quality legal representation as soon as feasible after arrest, detention or after they request

counsel in a criminal case, and at the earliest possible stage of a state intervention case in family court;

- b. Develop and monitor program policies, standards, and operational procedures of the Assigned Counsel Program regarding qualifications for appointment to each panel, recruitment of attorneys to serve on each panel, limitations on attorney caseloads, guidelines for administrative responsibilities of panel attorneys and supervision and review of attorney caseloads and quality of legal representation;
- c. Maintain panels of attorneys eligible to receive assignments for representation of persons unable to afford counsel based upon sufficient knowledge and experience. These panels are required to be subdivided into categories commensurate with the experience of each respective panel attorney and consistent with the Standards. The Administrator shall be responsible for establishing the requirements and conditions necessary for attorneys to be assigned more complex matters.
- d. Establish qualifications and standards for certification of attorneys to become members of the panels. All determinations on applications for certification to the panels shall be made by the Assigned Counsel Program Administrator. Any attorney aggrieved by the determination of the Administrator may seek review of the determination by the Board of Directors.
- e. Establish procedures and standards for a recertification program. Upon review of recertification applications and any other relevant information provided, the Assigned Counsel Administrator shall make determinations regarding all applications. All determinations regarding applications for recertification to the panels shall be made by the Administrator. Any Attorney aggrieved by the determination of the Administrator may seek review of the determination by the Board of Directors.
- f. Ensure adequate participation on the panels and that training for assigned counsel is provided.
- g. Oversee the rotation and coordination of Panel Attorneys, implement a fair and prompt process for assignment of Panel Attorneys to all matters, ensure that the ability, training and experience of panel attorneys are matched to the complexity of the cases to which they are assigned, and timely assignments of counsel to persons unable to afford counsel as soon as feasible after arrest, detention or after a request for counsel in a criminal case is made, and at the earliest possible stage of a state intervention case in family court;
- h. Review all vouchers for services provided through the Assigned Counsel Program including attorney vouchers to ensure proper payment for services performed;

- i. Prepare any and all Budget proposal for the Office of the Assigned Counsel Program for review by the Board of Directors and County Department pursuant to County law and policy.
- j. Maintain records of accounts and expenditures of the Office of Assigned Counsel Program in compliance with all applicable law and County policy;
- k. Serve as an information resource to the Board of Directors and the attorneys on each assigned counsel panel;
- l. Establish procedures for submission, investigation, and resolution of complaints from clients, client family members, co-counsel, opposing counsel, and the judiciary regarding legal representation;
- m. Conduct a periodic evaluation and review of the Assigned Counsel Program budget and communicate fiscal and programmatic needs of the program to the New York State Office of Indigent Legal Services to obtain state funding;
- n. Prepare contracts with appropriate legal organizations such as the Albany County Bar Association and other Assigned Counsel Programs to perform certain services required by the Assigned Counsel Program enumerated in this Chapter in compliance with all legal and budgetary mandates;
- o. Attend meeting(s) of the Board of Directors and provide the annual reports as requested by the Board of Directors on the Assigned Counsel Program which shall include number of cases assigned, attorneys assigned, services provided to the Panels and office expenditures;
- p. Ensure compliance with County Law, policies, and procedures;
- q. Approve requests by panel attorneys of use of funding issued by the New York State Office of Indigent Legal Services for any non-attorney professional services such as investigators, expert witnesses, social workers, interpreters, mental health, supervised visitation or any other professional services as required to provide quality representation.
- r. Remove or suspend for a definite period of time, an attorney from the panel for cause, upon notice and opportunity to be heard, subject to review by the Board of Directors pursuant to procedures established by the Assigned Counsel Program.
- s. Make applications for other sources of state and federal funding to meet the budgetary and programmatic needs of the Assigned Counsel Program;



- t. Ensure that data is collected and reported to the New York State Office of Indigent Legal Services (“NYS ILS”) as required by County Law §722-f, and in accordance with all valid NYS ILS contracts.
- u. Any other duties necessary to carry out the purposes of this Chapter.

#### **Sec. XXX—108. Assignment of Defense Counsel**

- a. Order of Assignment—The Albany County Public Defender’s Office has the primary responsibility for providing services for the defense/representation of persons unable to afford counsel in a particular matter. In the event that the Albany County Public Defender’s Office is determined to have a conflict, this responsibility will pass to the Albany County Alternate Public Defender’s Office. The Albany County Alternate Public Defender’s Office has the secondary responsibility for the defense/representation of persons unable to afford counsel in a particular matter. If the Alternate Public Defender’s Office is determined to have a conflict, then the Assigned Counsel Program will have the responsibility to assign counsel to persons unable to afford counsel pursuant to the provisions of this Plan. The Court may, utilizing its inherent powers, appoint an attorney from the Assigned Counsel Program’s list of Panel Attorneys to a case involving persons unable to afford counsel if circumstances require an immediate appointment, and the Court is unable to contact the Assigned Counsel Program to make such an appointment. If the Court makes such an appointment, they shall notify the Assigned Counsel Program within two (2) days of the assignment. Such notification shall be in a manner which ensures that the Assigned Counsel Program is informed of the Court’s appointment as soon as practicable.
- b. Counsel at First Appearance (CAFA) Program--The Albany County Public Defender’s Office and Alternate Public Defender’s Office administer a program to provide representation to persons unable to afford counsel at that persons first appearance and arraignment. In the event that the Public Defender’s Office and Alternate Public Defender’s Office cannot provide representation to an eligible person who is unable to afford counsel , the Court may assign a Panel Attorney to represent the person eligible for assigned counsel from a list provided by this Assigned Counsel Program.
- c. Acceptance—Attorneys may be asked to accept assignment in emergencies or on very short notice. While acceptance of such assignments is not required, it is strongly encouraged.
- d. Non-Criminal Matters—The Administrator shall assign counsel to any person legally entitled to representation in family court or other matters constitutionally or statutorily eligible for representation. The Administrator may assign counsel at the earliest stage possible. In family law matters this includes the assignment of counsel to parents and other legally responsible adults, as those terms are defined by relevant law, during a child welfare

investigation. The Assigned Counsel Administrator shall develop rules and regulations for the assignment of counsel to persons unable to afford counsel in all other legally eligible matters.

- e. Manner of Assignment—The Administrator shall make assignment on a rotating basis from a list of all eligible participating attorneys. In assigning counsel, due regard shall be given to the following factors: (1) Potential conflict(s) of interest; (2) Geographic proximity; (3) Prior representation (continuity of counsel); (4) Attorney caseload; and (5) Applicable expertise and experience with the type of case involved.
- f. Second Chair, Resource Attorneys—Pursuant to the rules and regulations developed by the Assigned Counsel Program, the Administrator may require (or Panel Attorneys may request) that the Panel Attorney consult a Resource Attorney or 2<sup>nd</sup> Chair Attorney as appropriate.
- g. Amendments—The Assigned Counsel Program may, with a majority vote of the Board of Directors and the written approval of the New York State Office of Indigent Legal Services, make such amendments to this assignment process as are necessary and proper .

#### **Sec. XXX—109. Responsibilities of Assigned Counsel Program**

- a. The Assigned Counsel Program shall ensure that Panel Attorneys have access to non-attorney professional services such as investigative, expert witnesses, social workers, interpreters, mental health professionals, supervised visitation or any other professional service, as required, to provide quality representation;
- b. The work of assigned counsel shall be periodically evaluated based upon objective criteria developed and published by the Assigned Counsel Program;
- c. Each attorney new to the representation of a of person unable to afford counsel may receive a mentor to assist the attorney to provide quality representation;
- d. All assigned counsel shall have access to appropriate substantive, procedural, and practical training programs through the Albany County Bar Association and other organizations that provide legal training as well as Resource Attorneys who are available for private consultation on case related matters;
- e. Ensure the creation of a “2<sup>nd</sup> Chair Program” for the criminal panel whereby attorneys are paired on more complex cases in order to obtain more litigation and more trial experience;
- f. Undertake effort to ensure provision of adequate facilities for client meetings, equipment, and legal research programs for Panel Attorneys;

- g. Develop appropriate resources for Panel Attorneys who may be handling complex litigation including matters requiring forensic expertise;
- h. Ensure that any attorney seeking appointment to the Panel through initial certification or recertification carries professional liability insurance.

#### **Sec. XXX—110. Rules and Regulations**

The Administrator, with the support of the Board of Directors, shall establish rules and regulations for the administration of the Assigned Counsel Program, and update them as necessary. A copy of such rules and regulations so established shall be filed with the Clerk of the Albany County Legislature and the Office of the Albany County Attorney..

#### **Sec. XXX—111. 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 applications to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgement shall be rendered.

This Local Law shall take effect \_\_\_\_\_ after enactment.