

Warren County Board of Supervisors

RESOLUTION NO. 481 OF 2013

Resolution introduced by Supervisors Bentley, Kenny, Strainer, Monroe, Dickinson, Vanselow and Mason

AUTHORIZATION TO APPROVE THE PLAN OF THE WARREN COUNTY BAR ASSOCIATION, INC. FOR ASSIGNED COUNSEL SERVICES PURSUANT TO COUNTY LAW SECTION 722(3) (WARREN COUNTY ACP)

WHEREAS, pursuant to the requirements of NYS County Law Section 722(3), the Warren County Bar Association in consultation with the Warren County Attorney's Office and the New York State Office of Court Administration, has developed a plan for the provision of legal services for the eligible indigent of Warren County, and

WHEREAS, the attached plan specifically addresses those steps Warren County may take in the event a conflict of interest exists with the Public Defender's Office, thereby preventing their representation of a particular indigent person, now, therefore, be it

RESOLVED, that the Warren County Board of Supervisors hereby approves the attached plan of the Warren County Bar Association, Inc. for Assigned Counsel representation for those financially unable to pay for legal representation pursuant to County Law Section 722 (3), and be it further

RESOLVED, that upon receipt of final approval of the Warren County Bar Association and approval of the Administrative Judge from the Office of Court Administration, the attached plan shall become effective.

PLAN OF THE WARREN COUNTY BAR ASSOCIATION, INC. FOR ASSIGNED
COUNSEL SERVICES PURSUANT TO COUNTY LAW SECTION 722 (3).
(WARREN COUNTY ACP)

1. PRIMARY COVERAGE FOR LEGAL SERVICES BE PROVIDED BY THE WARREN COUNTY PUBLIC DEFENDER SYSTEM .
 - a. The Warren County Public Defender system established in 2003, which includes the Public Defender has primary responsibility for providing legal services to indigent persons or other persons unable to afford legal services (“indigent persons”) for those matters in which such attorney services are required to be provided by the United States or New York State Constitution or by federal or state laws.
 - b. As part of the Warren County Public Defender System, and in the event that a conflict is determined to exist in the representation of an indigent persons, the County of Warren is specifically authorized by this plan, but not required, to contract with a particular law firm or attorney of its choosing for a particular court or courts, to provide qualified conflict representation.
 - c. In proceedings under the Family Court Act, representation may be provided by a private legal aid society or as otherwise set forth in paragraph 2 of New York State County Law §722.
 - d. Any and all representation afforded by an attorney or attorneys for eligible indigent persons selected or contracted with by Warren County is to fully comply with all the Standards and Criteria for the Provision of Mandated Representation in Cases involving a Conflict of Interest. These standards which were recently established by the New York State Office of Indigent Legal Services are applicable to the New York State Conflict Defender Plans, effective July 1, 2012.

2. **ROLE OF WARREN COUNTY BAR IN PROVIDING LEGAL SERVICES FOR INDIGENT PERSONS**

- a. In the event of cases not served by the Public Defenders system and for which no other provision has been made by Warren County, including under paragraph 1(b) above, the Warren County Office of Assigned Counsel shall maintain a panel of qualified attorneys ready willing and able to accept assignment (the "Panel") to represent indigent persons.
- b. In the event that the Panel is unable to provide suitable representation, then a member of the Warren County Bar Association shall be assigned by the Assigned Counsel Coordinator to provide such representation.
- c. Such attorney shall qualify, serve and be compensated pursuant to the terms and conditions of this plan and all applicable statutes.

3. **ASSIGNED COUNSEL COORDINATOR AND SUPERVISING JUDGE**

- a. The County of Warren created the office of Assigned Counsel in 1964, same is staffed by an Assigned Counsel Coordinator. Such person is not an employee of the Warren County Bar Association, Inc., and may not be a judge, county attorney or official of the public defender's office.
- b. In the event that the Assigned Counsel Coordinator requires direction or instruction concerning the operation or implementation of the Assigned Counsel Plan, the Assigned Counsel Coordinator shall obtain such guidance from one or more of the Trial Court Justices of the Courts covered by the plan. The instruction, supervision and direction of the Trial Court Justices shall include, but is not limited to:

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1. Providing, as needed, opinions relative to the question of conflicts of interest.
2. Mediation, as needed between the Public Defender and the Conflict Defender as to whether or not an actual conflict exists.
3. Determining, as needed, whether a type of case is eligible for indigent services.
4. Reviewing, as needed, assigned counsel billings to determine the appropriateness of charges.
5. Reviewing, as needed, the credentials of assigned counsel to determine the appropriateness of an assignment.

4. QUALIFICATION OF ATTORNEY FOR ASSIGNMENT

a. General Qualifications of Attorney

- i. A Panel member and any other assigned attorney must be duly sworn as a practicing attorney in the State of New York.
- ii. Each attorney's CLE requirements must be up to date.
- iii. Each attorney must live or maintain an office for the practice of law in Warren County, NY or within 30 miles of the borders of Warren County, except in the case of extraordinary circumstances requiring additional or special counsel.
- iv. Every attorney must provide such information as is reasonably requested by the Assigned Counsel Coordinator from time to time in order to determine any such person's qualification and suitability for assignment.
- v. The Assigned Counsel Coordinator, in consultation with the Trial Court Justices, may disapprove the participation of any particular attorney.

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5. APPLICATION FOR AND APPOINTMENT TO ASSIGNED COUNSEL PANEL
 - a. The Assigned Counsel Coordinator is hereby designated and authorized to maintain a list of attorneys qualified and available to be appointed to represent indigent persons for all classes of matters in which such representation is required in Warren County.
 - b. Membership on the Panel is Voluntary. Members must apply using an application form created by the Assigned Counsel Coordinator in consultation with the Trial Court Justices. Applicants must demonstrate prior experience in criminal or family court matters.

6. APPOINTMENT OF ATTORNEY FOR REPRESENTATION OF INDIGENT DEFENDANTS.
 - a. The Assigned Counsel Coordinator shall appoint a qualified attorney for representation of an Indigent person within 48 hours of the qualification of an indigent person for such services, or 72 hours if said 48 hours includes a weekend.
 - b. In the first instance the assignment shall be made from the Assigned Counsel Panel. In the event that the Assigned Counsel Panel lacks a suitable attorney able to take the case then an assignment shall be made to another attorney.
 - c. The Assigned Attorney shall be initially notified by phone or by e-mail correspondence. If the client is incarcerated then the assigned attorney shall be notified immediately upon appointment, and shall be notified that the client is incarcerated
 - d. In all cases, assignment of counsel shall be accomplished so that an indigent defendant will be represented at all critical phases of the prosecution, including arraignment, and shall comply with all statutory and constitutional mandates.

7. STANDARDS OF INDIGENCE

- a. No clear statewide standard exists for the purpose of determining whether a person is indigent.
- b. If such standards are created by appropriate law or regulation then they shall be deemed a part of this Plan.
- c. Until the adoption of such statewide standards, the foregoing standards of indigence shall apply:
 - i. All cases except felonies:
 - (1) Income test
 - (a). 125% of the federal poverty guidelines, with reasonable deductions, including FICA expense and Child Support payments, however if the client has children not residing in the household, then such children shall NOT be counted as members of the household for determining federal poverty guidelines. If the prospective client is under the age of 21 and living with a parent or guardian then such parent or guardian's income shall be taken into consideration.
 - (2) Asset test:
 - 1. In the event that the client has liquid assets readily available as cash in excess of \$1,500 said client shall not be eligible for assigned counsel representation.
 - ii. Felonies:
 - (1) Income test:
 - (a) 125% of the federal poverty guidelines, with reasonable deductions,

including FICA expense and Child Support payments, however if the client has children not residing in the household, then such children shall NOT be counted as members of the household for determining federal poverty guidelines. If the prospective client is under the age of 21 and living with a parent or guardian then such parent or guardian's income shall be taken into consideration.

(2) Asset test:

(a) In the event that the client has liquid assets readily available as cash in excess of \$5,000, said client shall not be eligible for assigned counsel representation.

iii. In all cases the assigned client shall have a continuing obligation to disclose any change in financial circumstances

iv. All clients shall be re-evaluated for indigence at least annually, and more frequently at the option of the Assigned Counsel Coordinator.

d. Judges retain their statutory and constitutional authority to appoint counsel, regardless of the eligibility standards in the plan if the judge determines, based on the facts of the case, that the defendant cannot afford to retain counsel.

8. STANDARDS OF CONDUCT FOR ASSIGNED COUNSEL

a. Every Assigned Attorney will at all times act with the utmost professionalism.

b. An Assigned Attorney must immediately determine if the client is incarcerated.

i. If the client is incarcerated or otherwise deprived of liberty the assigned attorney should meet with the client in person within two business days from the time of notification of appointment. At that meeting the assigned attorney should discuss the

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issue of bail with the client.

- ii. If the client is not incarcerated the attorney should contact the client within 2 business days, but such contact may be by phone or by letter.
 - c. No assigned attorney shall accept any payment of gift or thing of value from the client.
 - d. The assigned attorney should make application to the appropriate court for investigatory services or expert services, when reasonably required.
 - e. The assigned attorney shall attempt to communicate with the client within a reasonable period of time after each court appearance if the client was not in attendance at the appearance.
 - f. Clients shall be timely notified of their right to appeal.
 - g. Notices of appeal shall be filed, as appropriate as soon as possible after the conclusion of a matter and before billing the matter.
 - h. Assigned attorneys shall maintain a separate file for each assigned matter and shall maintain such files for at least seven years.
 - i. Once assigned to the case the assigned attorney remains the attorney of record until an application for withdrawal is approved by presiding judge or justice (or the assigned counsel and the client agree, in writing) and a new assigned counsel, is assigned by the Assigned Counsel Coordinator.
9. Intentional submission of materially incorrect information or applications, vouchers or other submissions to the Office of Assigned Counsel shall cause an attorney to be dismissed from the Assigned Counsel Panel. Said determination shall be made by the Assigned Counsel Coordinator, after giving the panel member a reasonable opportunity to be heard with respect to said misinformation.

10. LIMITATION ASSIGNMENTS

The Assigned Counsel shall limit the annual number of assignments which may be made to a particular Assigned Attorney to a maximum of 250 non-felony matters, 60 felonies, or 25 appeals, or a reasonable combination of such services.

11. PAYMENT OF ASSIGNED COUNSEL

- a. Assigned Counsel shall not receive payment or benefit of any kind for representing an assigned client except through the County's voucher and payment system. In particular no fee or benefit may be accepted from the assigned client.
- b. The form of voucher shall be selected by the Assigned Counsel Coordinator in consultation with the Warren County Auditor, the County Judge.
- c. Assigned attorneys shall maintain accurate contemporaneous time records for each assigned matter and shall maintain such files for at least seven years. Such time records shall be made available to the Assigned Counsel Coordinator, the Warren County Auditor and the appropriate presiding judge or justice, upon reasonable demand.
- d. Assigned Counsel shall bill, and may be paid, only for reasonable and necessary services and expenses.
- e. Time spent traveling or waiting in court for the benefit of more than one assigned client shall be apportioned between or among such clients or assigned all to one client so long as it is not billed more than once. In no case may an attorney bill for more time than was actually spent.
- f. Time spent billing the file or discussing the bill with the Assigned Counsel Office or any judicial officer or auditor may not be billed and shall not be paid.

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- g. Vouchers for payment shall be submitted to Assigned Counsel Coordinator's Office with forty-five (45) days of completion of an assigned case except in extraordinary circumstances. All work completed in any calendar year shall be submitted not later than January 15th of the following calendar year; regardless of whether or not the case has concluded.
- h. Vouchers shall show accurate and complete records for work done on the case and for all expenses.
- i. The Assigned Counsel's signature on the voucher' seeking payment shall be deemed a verification of all information contained therein.
- j. Vouchers shall be reviewed by the Assigned Counsel Coordinator. If approved, they shall be signed by the Assigned Counsel Coordinator as Department Head of the County Assigned Counsel Office and then forwarded to the presiding judge or justice for further review and signature pursuant to County Law §722. When approved by the presiding judge or justice they shall be submitted to the Warren County Auditor for payment.

12. ANNUAL REPORT

Upon written request of the Warren County Bar Association, Inc. which request shall not be made more frequent than once in a twelve (12) month period, the Assigned Counsel Coordinator shall prepare and submit a report of the matters covering the prior twelve (12) month period to the Warren County Bar Association, Inc. and the Warren County Board of Supervisors. The report shall be submitted no later than sixty (60) days from receipt of the request.

13. APPROVAL OF PLAN BY WARREN COUNTY BAR

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This Plan shall be certified by the Secretary of the Warren County Bar Association, Inc, showing that it has been duly adopted by that organization.

14. SUBJECT TO APPROVAL BY WARREN COUNTY BOARD OF SUPERVISORS

This Plan is subject to the approval of the County Board of Supervisors.

15. SUBJECT TO APPROVAL OF UNIFIED COURT SYSTEM

This Plan is subject to the approval of the Unified Court System as required by County Law section 722 .