



18B CLAIMS REVIEW & ADMINISTRATION REPORT

**Office of the
Ulster County Comptroller
March S. Gallagher**



2021



ULSTER COUNTY OFFICE OF THE COMPTROLLER

18-B Claims Review & Administration Report

comptroller.ulstercountyny.gov

Released November 2021

OBJECTIVES

- Review the process for receiving, reviewing, returning, and payment of invoices related to 18-B Assigned Counsel services
- Analyze internal controls over the processing and reviewing of 18-B invoices
- Review the timeliness of invoice processing from initial receipt to payment

Executive Summary

Why this audit is important

The Ulster County Comptroller's Office received complaints regarding the implementation of the 18-B program from both clients and attorneys.

What we found

Our analysis found that all the attorneys for which we received client complaints have done 18-B work for Ulster County, but that the cases for which complaints were received were administered by the New York State Supreme Court, Appellate Division, Third Department Office of Attorneys for Children, not Ulster County's 18-B administration. We also found that 18-B claims for payment submitted by attorneys are paid within 77 days on average and often contain attorney-generated mathematical billing errors. Ulster County has no means to verify that invoices correspond to actual services rendered and judges who have oversight authority may face challenges in verifying the claims submitted. The rates paid to 18-B attorneys have not been increased since 2004. Lastly, the County had no mechanisms in place to receive attorney or client concerns regarding the 18-B program.

What we recommend

We recommend Ulster County implement a form based electronic 18-B invoicing system that will eliminate billing errors and streamline payment processes. We also recommend that judges periodically sample 18-B invoices for in-depth verification. Ulster County should establish a process through which 18-B complaints can be filed and investigated. We further recommend that Ulster County use the newly created 18-B Administrator position to improve billing practices and monitor quality concerns for 18-B attorneys. Finally, Ulster County should advocate for New York State to inflation-adjust the payrate for 18-B counsel, to properly compensate attorneys for the population that is unable to afford private counsel.

Findings & Recommendations

Finding 1: Ulster County has delays in processing

18-B invoices.

Condition: This office has received complaints regarding timely payments of invoices from local attorneys that participate in the 18-B program.

Although payments saw a large delay in 2020 (most likely due to pandemic restrictions to the workforce), the 2019 average days until payment still showed a lag. In comparison the county-wide average for all vendor payments turnaround time was 39 days in 2019 and 40 days in 2020.

Number of Days for Processing			
18-B Invoice Process	Invoice Location	# of Days	
		2019	2020
Reviewed by Judge Received by County	Court	4	6
	Court	9	19
	Total Days in Court	13	25
Finance Review and Entry Departmental Approval A/P Approval Comptroller Approval Finance Approval Check Run	County	18	25
	County	11	19
	County	3	3
	County	2	2
	County	0	0
	County	4	3
	Total Days in County	38	52
Days until payment issued		51	77
All Ulster County Invoice Average days til payment		39	40

Effect: Ensuring timely payments to attorneys helps foster the relationship and retain good services. When vendors struggle to be paid for services, they may opt not to be a part of the program.

Invoice percentage without date stamps	2019	2020
Lacking date received in Court	15%	18%
Lacking date signed by Judge	2%	0%
Lacking date received in Finance	2%	3%

Cause: Some 18-B invoices lacked important date stamps when they were received by the court, approved by the judge, and received in the finance department which would ensure the invoices were being handled efficiently.

According to the Commissioner of Finance the delay is also due to limited staffing with only one employee charged with the task of reviewing 18-B invoices. Although the Commissioner noted that the employee was also chosen to participate in COVID assignments and may explain the delay for 2020 invoices, this Office has noted there has been a consistent delay in processing 18-B invoices dating back to before 2016.

Criteria: GASB No. 6 notes that liabilities that governments normally pay in a timely manner should be recognized when incurred. While there is no GASB, GFOA or OSC guidance defining timely payment, both federal (31 U.S.C. §3903(a)) and state prompt payment laws indicate a payment within 30 days is appropriate with interest accruing thereafter. In New York State the obligation is reduced to 15 days where the vendor is a small business submitting a claim for payment electronically. State Finance Law §179-f. GFOA recommends that governments have policies and procedures and internal controls in place for each payment method and use electronic means to make payments as often as possible to facilitate timely payment. New York State Bar Association Standards for Providing Mandated Representation provide that assigned counsel receive prompt compensation at a reasonable hourly rate. Standards for Providing Mandated Representation K-3, available at <https://nysba.org/app/uploads/2020/02/Standards.pdf>.

Recommendation 1: 18-B invoice submission should move to an electronic format that would track dates of submission, assist in fewer mathematical errors, and create more of a consistent format and delivery method.

Recommendation 2: The Ulster County Standard Operation Procedures should require dates and signatures to be present to process a claim and should require timely payment of claims within 30 days when possible. If staffing shortages prevent timely claim processing, cross training of multiple employees and/or adding staff may be necessary.

Finding 2: The County has no way to monitor the amount or quality of services provided in the 18-B program.

Condition: When vouchers are presented to Ulster County for payment it is assumed that the judge's approval includes monitoring of the hours and quality of the work, yet judges' full dockets may prevent claims auditing of 18-B vouchers presented for payment.

Effect: Recipients of 18-B services may not be receiving quality legal services.

Cause: There is no centralized recruitment, training, guidance or monitoring for attorneys providing 18-B services.

Criteria: County Law Article 18-B requires counties to make a county plan to provide mandated representation where necessary. County Law §722; Family Court Act §261 ("Counsel is often indispensable to a practical realization of due process of law and may be helpful to the court in making reasoned determinations of fact and proper orders of disposition."). Furthermore the New York State Bar association has promulgated standards for mandated representation that speak to independence, quality, and training. Standards for Providing Mandated Representation (2005), available at <https://nysba.org/app/uploads/2020/02/Standards.pdf>.

Recommendation 1: The County should work with judges to sample invoices for a claims audit process to determine if hours billed were worked.

Recommendation 2: The 18-B Administrator should establish an 18-B recruitment, training, billing, and complaints program.

Finding 3: Invoices presented for payment contain mathematical errors that over or understate the claim.

Condition: For the most part, what is billed by the attorney is what is paid, however, there were incidences where the billed total did not add up to the amount itemized. The county will decrease a claim if overbilled but will not notify the attorney if the claim submitted was underbilled.

18-B 2019-2020 Invoices		
	2019	2020
Overbilled	8	1
Underbilled	106	44

Effect: Having multiple mathematical errors extends the review time and underpays attorneys.

Cause: Currently, attorneys are documenting and making hand calculations on paper forms without a way to double check their work. The County's undocumented policy is that overbilling is not paid while underbilling is not reported back to the vendor for resubmission.

Criteria: New York State Bar Association standard require that attorneys are paid for all the hours necessary to provide quality legal representation and where an assigned counsel's request for compensation is reduced in any respect, counsel must be afforded a meaningful opportunity to contest said reduction. Standards for Providing Mandated Representation (K-10).

Recommendation 1: Ulster County should move to a digital invoice submission system for 18-B attorneys that will automatically calculate totals.

Recommendation 2: Underbilling should be reported back to 18-B attorneys for the option of re-billing with clear communication that re-billing may delay payment.

Other Observations and Recommendations:

We heard from members of the legal community that the rate of pay for 18-B cases is a barrier to participation in the program. Currently, 18-B attorneys make \$60 an hour to represent clients with misdemeanors and \$75 an hour representing felony, family court, or appeal matters. The 18-B program rates are set by state regulation and should be inflation adjusted.

Scope

Our audit researched all assigned counsel complaints received by community members including the name of the complainant, contact information, the name of the attorney, the docket, case or file number, and a summary of the complaint.

The scope of this audit analyzed all 18-B invoices for years 2019 and 2020. That included 1,435 invoices for 2019 and 638 invoices for 2020 for a total of 2,073 invoices. The analysis included the following fields for each invoice. Invoices for transcription services were excluded.

Invoice Data Analyzed	
Vendor	Date Received in Court
Invoice #	Date Signed by Judge
Court	Date Received in Finance
Honorable	Date Entered in NWS financial System
File #	Date Approved by Dept Head
Original Invoice Amount	Date of A/P approval
Final Invoice Amount Paid	Date of Comptroller Approval
Correct Invoice Amount	Date of Finance Approval
Represented Individual	Check Date

Background

The Sixth Amendment of the Constitution requires that a person facing criminal prosecution has a right to the “assistance of counsel for his defense.” The U.S. Supreme Court held in *Gideon v. Wainwright*, 372 U.S. 335 (1973), that the Sixth Amendment right to assistance of counsel requires states to provide counsel to criminal defendants who cannot afford to retain counsel. New York State law has extended the right to counsel for individuals financially unable to retain legal representation to matters involving fundamental constitutional interests such as family court and surrogate court matters. See NYS Family Court Act, §261 (recognizing the enormity of family law matters to parents and children); §262 (providing for assigned counsel in wide array of family court matters).

New York State County Law Article 18-B authorizes each county to choose one or a combination of several options for providing representation to eligible clients: a public defender office, a private legal aid bureau or society, any corporation or voluntary association or organization permitted to practice under Judiciary Law §495(7), or the assignment of private practitioners pursuant to an assigned counsel plan under County Law §722.

In Ulster County, the Office of the Public Defender is assigned to represent indigent individuals entitled to counsel in the first instance under New York State County Law Article 18-B which authorizes counties to choose how to best provide representation. Ulster County's Public Defenders Office has a relationship with Dutchess County's Public Defender's Office where the two offices exchange legal services to address criminal cases with mandated representation where the Public Defender has a potential conflict of interest. Where the Ulster County Public Defender's Office has a conflict of interest, or in a criminal matter where the Ulster County Public Defender and the Dutchess County conflict defender has a conflict, a judge may appoint a private attorney under the 18-B program. Improving indigent legal services, particularly where there is a conflict, has long been discussed in Ulster County. Attached in Appendix A is a draft Assigned Counsel Plan prepared by the previous Public Defender's Office.

A minimum rate for 18-B attorneys is set County Law §722-b and has not been changed since 2004. The rate is \$60 for a misdemeanor and \$75 for felonies, family court and appellate work. County Law §722-b also sets a cap for each case of \$2,400 for misdemeanors and \$4,400 for the more complex cases. Exceeding that cap requires a court to find extraordinary circumstances. Using a standard inflation rate and the CPI Inflation Calculator from the Bureau of Labor Statistics, the \$60 per hour rate would be \$88.87 in 2021 dollars and \$75 would be \$111.09 per hour in today's dollars. Likewise, the caps for each type of case would be \$3,554.77 and \$6,517.08 in today's dollars respectively.

In 2021, the Ulster County Comptroller's Office received complaints from Ulster County residents regarding the quality of their mandated representation. Six complainants filed 12 separate complaints involving the services of 10 attorneys, each of whom were practicing 18-B attorneys. In addition, the Comptroller's Office also received complaints from 18-B attorneys over the length of time between claim submission and payment. As all the attorneys for which we received quality of service client complaints also serve or have served as 18-B attorneys we framed our audit around the 18-B process for which Ulster County has primary financial responsibility.

As we conducted our analysis, the Comptroller's Office determined that of complaints received from clients these cases corresponded not to an attorney paid by Ulster County under 18-B but instead to attorneys through the Attorneys for Children Program administered by the Third Department of the New York State Supreme Court, Appellate Division. These cases were referred to the appropriate parties for further investigation.

In early 2021, Ulster County hired a part time 18-B Administrator. Our office attempted to communicate with the 18-B Administrator, James Lynch, in April of 2021, but was told to direct all communications regarding the program to Commissioner of Finance, Burt Gulnick. A contract for software to manage the 18-B program was entered into with IntelLinx on July 5, 2021, with a one-time set up fee of \$4,500 and annual licensing fee of \$15,000. The County has yet to make a payment on the contract although an entry is pending in the financial system. The system will enable a cloud-based billing and voucher submission system. Our goal in releasing this audit now is so that the 18-B Administrator has our findings in hand while implementing changes.

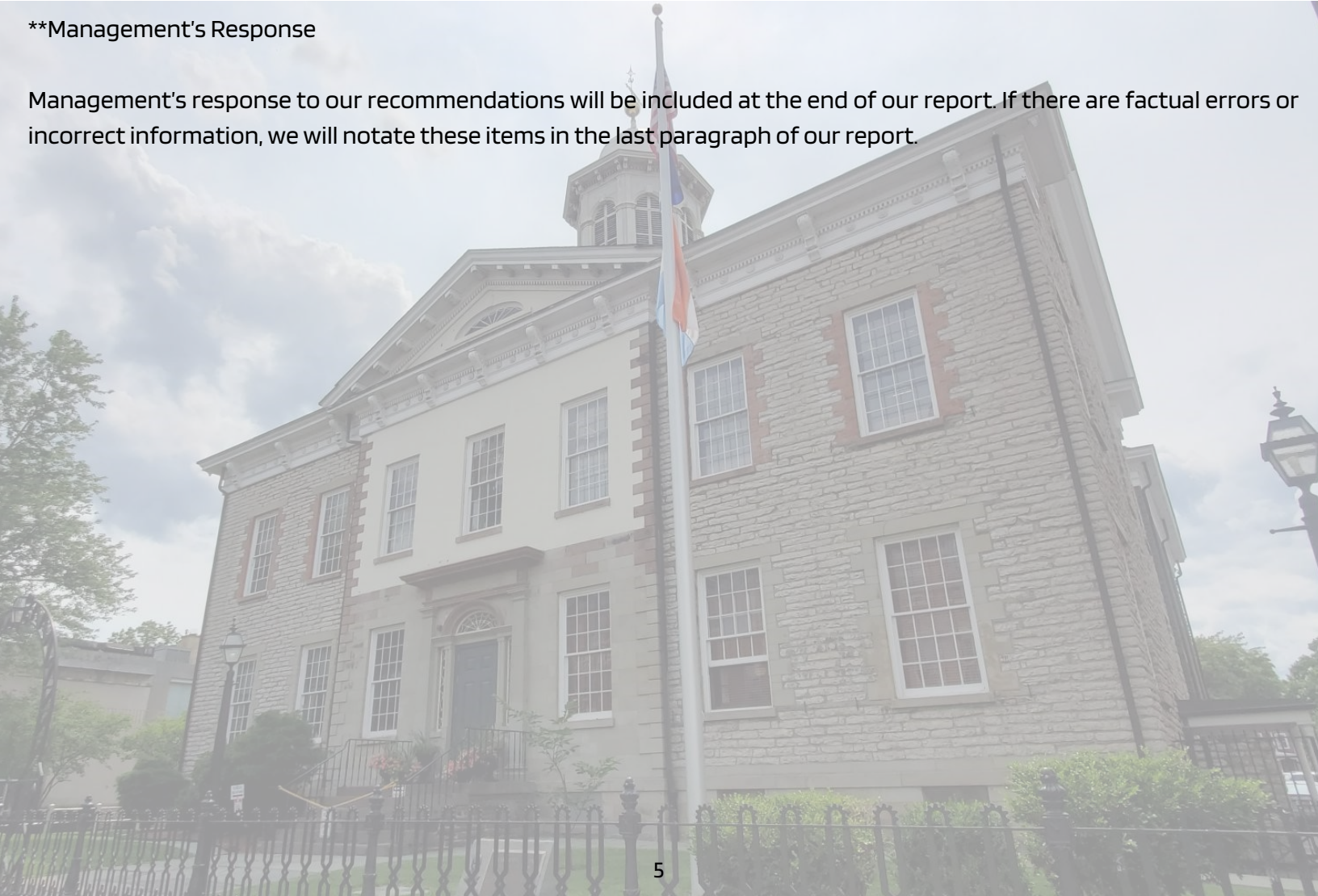
We also attempted to survey all judges in Ulster County including Supreme Court, Family Court, Surrogates Court, City, town, and village courts. The survey has been pending with the Appellate Division Third Department since October 20, 2021. We recommend that the 18-B Administrator seek to implement his own data collection program to gather information from judges on their experience with 18-B. Our survey is attached in Appendix B.

Conclusion

Quality of service complaints received by the Comptroller's Office were not for cases billed under 18-B but rather through the Office of Attorneys for Children administered by the Third Department of the New York State Supreme Court, Appellate Division. Our review identified extended time periods between the first receipt of an invoice and ultimate payment of the invoice. Furthermore, a significant number of the invoices had mathematical errors resulting in underbilling. Ulster County's 18-B program could be strengthened with improved attention to date stamping, verifying hours, and an electronic means to address billing errors. Ulster County should address state policy makers to inflation adjust the 18-B rate. Finally, the new 18-B Administrator should establish a complaint system for 18-B attorneys.

**Management's Response

Management's response to our recommendations will be included at the end of our report. If there are factual errors or incorrect information, we will notate these items in the last paragraph of our report.

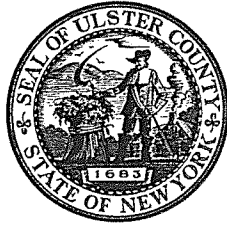


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November 19, 2021

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RE: 18B PROGRAM ANALYSIS / RECOMMENDATIONS

Dear Comptroller Gallagher,

Thank you very much for your office's comprehensive review and report regarding the 18B Program. It is valuable to see these important issues from different perspectives.

18B Attorneys and Attorneys for Children

We note that one of the catalysts for the investigation stemmed from complaints regarding assigned attorneys. As your investigation revealed, the complaints generally related to Attorney for the Child (AFCs) and not 18B criminal or 18B family court attorneys. Consequently, it is also important to highlight that AFCs are not screened by, monitored by, nor paid by Ulster County. Although the family court judges appoint AFCs, their invoices for time are submitted directly to New York State.

18B Rate of Pay

We acknowledge your recommendations regarding state reimbursements and would note that this issue is being address at the state level. Indigent Legal Services, however, provides additional funding to 18B attorneys for second-seat programs and mentoring programs at rates that are not subject to the current \$60/\$75 an hour rate. Accordingly, there are state funds available to help supplement the hourly rate of 18B attorneys. These additional programs are administered by James Lynch, the Ulster County Assigned Counsel Program Administrator.

Report Recommendations

With regard to the report's recommendations, under the UC Assigned Counsel Program, 18B oversight will be a wholly county function, and properly administered as such. As part of ACP office buildout, the ACP shall:

1. Have a form based electronic 18B invoicing system. This will reduce billing errors and streamline the payment processes. Consequently, the turn around time for invoice payment shall be shortened.
2. The ACP administrator shall review every invoice for accuracy and verification prior to its submission to the judge for approval.
3. The ACP shall have a link on the office web site for complaints to be filed. The ACP shall investigate and follow up on all complaints.
4. Improve billing practices and monitor quality concerns for 18-B attorneys.

Our Assigned Counsel Program Administrator does plan to address the recommendations made in your report. Additionally, James Lynch is meeting with the justice court judges in January or February at their invitation. He will discuss the ACP in general and the survey your office distributed.

If you have any further questions or concerns, please do not hesitate to contact me.

Sincerely,



Burton Gulnick, Jr.
Commissioner of Finance
Ulster County Department of Finance

The Ulster County Assigned Counsel Plan

I. Mission and Purpose of the Ulster County Assigned Counsel Plan

The Sixth Amendment of the Constitution provides fairness in our system of justice by requiring that an individual facing criminal prosecution has a right to the “assistance of counsel for his defense”. The presumption of innocence is a fundamental right as all individuals charged with a criminal offense are innocent until proven guilty in a court of law. When an individual is charged by the government with a criminal offense, the prosecutor must prove the person guilty of the offense. In *Gideon v. Wainwright*, 372 U.S. 335 (1973), the U.S. Supreme Court held that the Sixth Amendment right to assistance of counsel requires states to provide counsel to criminal defendants who cannot otherwise afford to retain counsel. The right to counsel for individuals financially unable to retain legal representation has been extended by the federal and state courts as a matter of constitutional law and statute to other matters involving fundamental interests of individuals including custody and visitation of children. See, NYS Family Court Act, §261 (recognizing the enormity of family law matters to parents and children); FCA §262 (providing for assigned counsel in wide array of family court matters).

New York State County Law Article 18-B authorizes each county to choose one or a combination of several options for providing representation to eligible clients: a public defender office, a private legal aid bureau or society or, in Family Court matters, any corporation or voluntary association or organization permitted to practice under Judiciary Law §495(7); or the assignment of private practitioners pursuant to an assigned counsel plan under County Law §722.

In Ulster County, the Office of the Public Defender is assigned to represent indigent individuals entitled to counsel in the first instance. **Those cases that the public defender cannot handle due to a conflict or other reasons are assigned to other attorneys. As of this writing, conflict cases in some courts are assigned to a conflict defender through a shared services program with Dutchess County.** In those courts, private attorneys are assigned under County Law Article 18-B, §722 to represent those defendants whom the conflict defender cannot represent. In all other forums, including Supreme Court, Family Court and all other Justice courts, private attorneys are also assigned under County Law §722. See also, Judiciary Law §35(8) (providing for assigned counsel in matters transferred from Family Court to Supreme Court for which assigned counsel available in Family Court).

II. The Assigned Counsel Plan

The purpose of the Ulster County Assigned Counsel Plan (the “Plan”) is to ensure high quality representation for every individual represented by assigned counsel in Ulster County.

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Under the Plan, panels of qualified attorneys will be established for each court and type of case for which assigned counsel is available. Attorneys serving on each panel must meet minimum qualifications established by the Assigned Counsel Plan. The lists of qualified panel attorneys will be sent to the judges of each court that assigns private attorneys under NYS County Law §18B and such assignments shall be made from the lists of panel attorneys. The Plan will provide training and support for qualified panel attorneys and all attorneys seeking to join each panel. A mentor program for panel attorneys and all attorneys seeking to join each panel will be established.

III. The Plan Administrator

1. The Plan Administrator is responsible for implementation of the Plan and its day to day operation. The Plan Administrator's responsibilities include the following:

a. Establish eligibility requirements for the assigned counsel panels; Set policy and procedure for the Plan; **Modify plan as necessary or desirable in accord with applicable procedures.**

b. Recruit, screen and interview applicants, gather information about applicants and determine eligibility; Compile lists of panel attorneys and distribute lists to each court utilizing assigned counsel; Develop and distribute application and other forms for the Plan.

c. Arrange and schedule training and CLE programs for attorneys, including participating attorneys and those not yet qualified; Notify panel and other attorneys of relevant training programs; Establish mentoring program for attorneys and assist attorneys in meeting panel eligibility requirements; Track training of participating attorneys to insure compliance with training requirements. Provide support for participating attorneys and applicants.

d. Review performance of panel members. Consider, review and resolve any complaints regarding participating attorneys.

e. Develop invoicing procedures for participating attorneys; Review panel attorneys' invoices prior to processing by Ulster County.

f. Recruit and establish Advisory Board; Work with Advisory Board in areas of recruitment, applicant screening, training and mentoring and complaint resolution.

h. Oversee and manage the Plan's budget.

g. Coordinate with the Ulster County Bar Association, the Office of Court Administration, Ulster County, the judiciary and all other agencies and interested parties.

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IV. Advisory Board

The Advisory Board to the Plan is composed of five experienced attorneys who represent or have represented indigent assigned clients and are knowledgeable about practice in Ulster County courts. Members of the Advisory Board will assist the Plan Administrator in screening applications for panel participation, interviewing applicants, gathering information regarding applicants and determining applicants' eligibility to serve on the assigned counsel panels. Advisory Board members will assist the Administrator in reviewing the performance of panel members, setting policy and eligibility requirements for the Plan, and development of the training program. Advisory Board members may also serve as mentors for applicants/panel attorneys. The Advisory Board shall also participate in the review and consideration of complaints against panel attorneys.

V. Rules for the Ulster County Assigned Counsel Plan

1. Service on an assigned counsel panel is a privilege, not a right. Continuing membership in good standing requires compliance with all rules set forth herein.
2. Professionalism: It is expected that every attorney on an Ulster County Assigned Counsel panel will conduct him/herself at all times with the utmost professionalism. This means that every assigned case should be handled in the same manner as if it were a privately retained case. If it is in the best interest of the client to accept a favorable disposition, that should be done. If it is in the best interest of the client to proceed to trial, that should be done. Although the rates for assigned counsel are lower than that of private fees, no one is forced to participate. Low rates are therefore no excuse for second rate representation. Anyone who views or treats assigned counsel clients as second class in the course of representation is not welcome on any panel and is asked to refrain from applying or continuing to serve on the panel.
3. Members of the misdemeanor panel may handle only misdemeanor cases. Members of the lower felony panel may handle any case other than a major felony matter, but may not limit their practice to felony matters. Family Court panel members may handle cases that are transferred to Supreme Court in which assigned counsel remains available.
4. All panel members are paid at the statutory rate of \$60 per hour for in and out of court time for misdemeanors, and \$75 per hour for in and out of court time on all other cases.
5. Judiciary Law §35 and the Rules of the Appellate Division, Third Department specifically prohibit panelists from accepting private retainers from any indigent clients. Members of the Ulster County Assigned Counsel panels are prohibited from doing so.

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6. Panelists should visit incarcerated clients within 72 hours of assignment. Travel time to and from court and to and from jail is billable. Panelists should meet with nonincarcerated clients as soon as practicable after assignment but in any event within ten days of assignment. **Panelists should meet with clients in advance of court appearances to the extent practicable.**
7. Panelists should communicate regularly with assigned clients by letter, telephone or email. Attorneys should communicate with clients promptly after each court appearance, especially if the client, whether incarcerated or not, was not present.
8. **Vouchers must be submitted to the Plan Administrator for preliminary review within 90 days of the final disposition of the case.** A copy of the assignment order must be included with the voucher. After the voucher is returned to the panel attorney by the Administrator, the attorney should forward it to the judge presiding at the time. The voucher should then be forwarded to the Ulster County Finance Department.
9. The services of experts, investigators, interpreters and others may be obtained by an ex-parte application to the court.
10. Panel members must set up and maintain separate files for each assigned case. assigned to him/her. Files must be maintained by the attorney for a period of seven years.
11. Once assigned to a case, a panel member remains the attorney of record unless specifically relieved by the court or the case is completed. Panel members must make every appearance themselves unless an affidavit of actual engagement is submitted or the court otherwise grants permission for another attorney to cover the appearance.

VI. General Qualifications for Panel Membership

1. A panel member must be an attorney admitted to practice in New York State, currently registered and in good standing with the Office of Court Administration. In addition, the attorney must meet the “General Qualifications” for the Plan and the corresponding “Standards of Professional Conduct” of the Plan. The attorney must also meet the “Criteria for Participation” for the particular panel or panels sought.
2. Panel members must be full-time practicing lawyers. Applicants who are regularly employed in some other occupation are not eligible.
3. Attorneys who have a legal or ethical conflict of interest may not participate in the Plan.
4. Each panel member must either live or maintain an office in Ulster County.

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5. Each panel member must maintain or have access to a business office in Ulster County where s/he can receive and interview clients and witnesses. The office must be accessible to clients and witnesses.
6. Each applicant must maintain professional liability insurance in the amount of \$500,000/\$1,000,000 or greater.
7. Where a certain number of years of legal experience are required for panel membership, applicants must have the indicated years of actual legal practice, not simply years of admission to the bar.
8. Notwithstanding any other provision of these general qualifications or of the specific qualifications for each assigned counsel panel, an applicant may be accepted for participation in any panel if s/he possess such skills as are necessary to properly fulfill the requirements of such panel, if the Plan Administrator and the Advisory Board, or a subcommittee thereof, determine that the applicant's prior criminal law, family law or other legal experience, training, skill and/or knowledge warrants such admission.
9. Upon acceptance to a panel, an attorney's conduct and performance is regulated by Article 18-B of the County Law, the Rules of the Appellate Division, Third Department, the Rules of Professional Conduct, the Standards for Providing Mandated Representation of the Ulster County Assigned Counsel Plan and the Rules of the Ulster County Assigned Counsel Plan. The performance of attorneys serving on assigned counsel panels must also be in accord with the New York State Bar Association Revised Standards for Providing Mandated Representation.
10. Applicants to the Plan and panel members must demonstrate a commitment to the provision of quality legal representation to poor people.

VII. Criteria for Participation in Ulster County Assigned Counsel Plan Panels

A. Criteria for Participation in Family Court Panel

1. This panel of attorneys shall accept assignments to matters brought in Family Court in all areas in which assignment of counsel is mandated by law. These areas include custody and visitation; abuse and neglect; termination of parental rights; family offense; violation of support orders; and paternity.
2. To be eligible for participation in any area of family law practice on this panel, an attorney must meet the following criteria:
 - a) Be an attorney in good standing admitted to the practice of law in New York State; and
 - b) Demonstrate knowledge of the substantive and procedural law related to those

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areas of family law in which s/he wishes to receive assignments; and

c) Demonstrate strong trial skills, including but not limited to, witness examination and an understanding of the rules of evidence applicable in Family Court matters; and

d) Have substantial experience in the handling of matters in each area of family law in which s/he wishes to receive assignments, including representation through full hearing and disposition in at least 3 matters; or

e) As approved by the Plan, have been mentored by, or served as co-counsel with, or shadowed an experienced attorney through the handling of at least five such matters and observed the complete hearing of at least two such cases at which testimony was taken and witnesses examined, and attend one or more CLE programs for a total of 4 credit hours focused specifically on the types of family law matters the applicant wishes to handle. The specific training programs to be attended are subject to approval of the Plan Administrator.

3. All attorneys on this panel shall complete a minimum of 9 CLE credits in the area of Family Law over each two year attorney registration period. At least four of these credits must be completed in any given calendar year.

4. Attorneys who have been practicing family law for less than 3 years must complete the training for NYS law guardians provided by the Office of Attorneys for Children, Appellate Division, Third Department. Participation in the law guardian panel is strongly recommended, although not required.

5. Additional qualifications may be set by the Plan, including but not limited to, participation in mentoring or second chair programs, shadowing, and additional training/CLE programs.

6. Under certain circumstances, one or more of the stated requirements may be waived by the Plan when an attorney is particularly well qualified by reason of demonstrated ability, knowledge and/or experience.

7. Applicants will be required to submit the names of judges, adversaries and co-counsel or colleagues who are familiar with the applicant's knowledge and ability through actual in-court observation and discussion. No cross references are permitted, i.e. no two applicants may be references for one another.

8. Attorneys who serve on the Family Court panel may be asked to accept assignments in emergencies or on very short notice, such as, but not limited to, child removal proceedings. While acceptance of such assignments is not required, it is strongly encouraged.

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B. Criteria for Participation in Misdemeanor Panel

1. This panel of attorneys shall accept assignments to criminal misdemeanor and violation prosecutions brought in City, Town and Village Justice Courts in Ulster County.
2. To be eligible for participation in the misdemeanor panel, the attorney must meet the following criteria:
 - a) Be an attorney in good standing admitted to the practice of law in New York State; and
 - b) Have substantial skill and experience in the handling of criminal matters; or
 - c) Have successfully completed, or agree to complete within three months of application to the panel, a comprehensive criminal practice training program approved by the Plan Administrator, and through mentoring, co-counseling or shadowing as approved by the Plan, have observed the conduct of at least 5 criminal matters from arraignment to final resolution by an experienced criminal defense attorney; or,
 - d) As approved by the Plan, have been mentored by, served as co-counsel with, or shadowed, an experienced criminal attorney through the handling of at least 7 criminal matters and observed the conduct of an entire case, through trial and final resolution, in at least one such case.
3. Attorneys practicing law for two years or less may serve on the misdemeanor panels for purposes of representing clients in violation prosecutions until they have satisfied one of the criteria set forth in paragraph 2, at which time they may be assigned to represent clients in misdemeanor cases.
4. All attorneys on this panel shall complete a minimum of 9 CLE credits in the area of criminal law and practice over each two year attorney registration period. At least four of these credits must be completed in any given calendar year.
5. It is strongly recommended that attorneys on the misdemeanor panel become or remain members of the New York State Defenders Association, the New York State Association of Criminal Defense Lawyers and/or the New York State Bar Association Criminal Justice Section. It is also strongly recommended that attorneys on the misdemeanor panel become or remain members of the Ulster County Bar Association.
6. Additional qualifications may be set by the Plan, including but not limited to, participation in mentoring/second chair programs, and specific and/or additional training programs or further demonstration of skill and substantial experience in the handling of criminal matters.

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7. Under certain circumstances, one or more of the stated requirements may be waived by the Plan when an attorney is particularly well qualified by reason of demonstrated ability, knowledge and/or experience.
8. Applicants will be required to submit the names of judges, adversaries and co-counsel, and colleagues who are familiar with the applicant's knowledge and ability through actual in-court observation and discussion. No cross references are permitted, i.e, two applicants may not be references for one another.
9. **Attorneys who serve on the misdemeanor panel may be asked to accept assignments in emergencies or on very short notice, such as, but not limited to, after hours arraignments. While acceptance of such assignments is not required, it is strongly encouraged**

C. Criteria for Participation on Felony Panels

1. The Plan maintains criminal defense panels for lower felonies, which consist of C, D and E level felonies prosecuted in Ulster County Courts; and for major felonies which consist of A and B level felonies prosecuted in Ulster County Courts.
2. To be eligible for participation in the lower felony panel, the attorney must meet the following criteria:
 - a) Be an attorney in good standing admitted to the practice law in New York State; have engaged in the actual practice of law for at least two years; and
 - b) Have substantial experience in the handling of criminal matters; or
 - c) Have second chaired at least three felony matters from commencement to final resolution; and
 - d) Demonstrate experience and skill in representing criminal defendants, including, but not limited to, the areas of counseling and communicating with clients, negotiating with prosecutors, conducting appropriate motion practice, written and oral advocacy, examination of witnesses, jury trial practice, and must stay abreast of current developments in the area of criminal practice;
3. To be eligible for participation in the major felony panel, the attorney must meet the following criteria:
 - a) Be an attorney in good standing admitted to the practice law in New York State; have engaged in the actual practice of law for at least 4 years; and
 - b) Have substantial experience in the handling of felony matters; or

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c) Have second chaired at least two A or B felony matters from commencement to final resolution; and

d) Demonstrate superior experience and skill in representing criminal defendants, including, but not limited to, the areas of counseling and communicating with clients, negotiating with prosecutors, conducting appropriate motion practice, written and oral advocacy, examination of witnesses, jury trial practice, and must stay abreast of current developments in the area of criminal practice.

4. All attorneys on the felony panels shall complete a minimum of 9 CLE credits in the area of criminal practice and law over each two year attorney registration period. At least four of these credits must be completed in any given calendar year.

5. It is strongly recommended that attorneys on the felony panels become or remain members of the New York State Defenders Association, the New York State Association of Criminal Defense Lawyers and/or the New York State Bar Association Criminal Justice Section. It is also strongly recommended that felony panel attorneys become or remain members of the Ulster County Bar Association.

6. Additional qualifications may be set by the Plan, including but not limited to, participation in mentoring/second chair programs, specific and/or additional training/CLE programs or further demonstration of skill and superior experience in the handling of felony criminal matters.

7. Under certain circumstances, one or more of the stated requirements may be waived by the Plan when an attorney is particularly well qualified by reason of demonstrated ability, knowledge and/or experience.

8. Applicants will be required to submit the names of judges, adversaries and co-counsel or colleagues who are familiar with the applicant's knowledge and ability through actual in-court observation, co-counseling and/or consultation. No cross references are permitted, i.e., two applicants may not serve as references for one another.

9. **Attorneys who serve on the felony panels may be asked to accept assignments in emergencies or on very short notice, such as, but not limited to, after hours arraignments. While acceptance of such assignments is not required, it is strongly encouraged.**

VIII. Application Process

1. To the extent possible, all attorneys in Ulster County shall be informed of the opportunity to apply for participation in the Plan on an annual basis. Minimally, such notification shall consist of written notice posted in the Ulster County Bar newsletter or email blast to the bar membership, notices posted in the local courthouses and in local newspapers.

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2. Attorneys must apply to serve on each panel. Application shall be made on forms developed by the Plan Administrator. More than one form may be used, depending on the experience of the attorney and the Plan's need for information regarding the applicant. Generally, application forms shall be accompanied at a minimum by a writing sample, a resume, and a personal statement explaining the applicant's particular interest in providing representation to persons of limited means through the Plan.
3. Applications will be reviewed by the Plan Administrator and members of the Advisory Board. Applicants may be interviewed at the discretion of the Plan Administrator. Further information may be requested from the applicant as deemed necessary for proper review of the application. The Advisory Board will assist the Plan Administrator in screening, interviewing and evaluating applicants.
4. The Plan Administrator and the Advisory Board will determine whether the applicant should be accepted to the Plan panels to which s/he has applied. If further information is necessary in order to make a fully informed decision, the additional information shall be obtained and the application given further investigation and consideration. Such further investigation may include, but is not limited to, contact with additional persons familiar with the work and skills of the applicant, and an additional interview of the applicant. Following any such further investigation and consideration, a final decision will be made.
5. In reviewing applications, the Administrator and the Advisory Board may review any relevant information, including but not limited to input from attorneys, opposing counsel, co-counsel, judges, and clients, as well as personal observation of the attorney's work by the Plan Administrator and members of the Advisory Board, and the attorney's history of performance as assigned counsel.
6. The Plan Administrator may deny panel participation with the Plan to any attorney who fails to submit a complete application, including any required submissions, or who fails to participate in an interview, if requested.

IX. Panel Admission/Participation

1. Admission into a particular panel or panels shall be for an indefinite term, until a subsequent re-certification process as determined by the Plan Administrator, or until such time as the attorney may be removed from the panel by the Plan Administrator. If an attorney applies for admission to a particular panel, and is not granted admission, the Plan Administrator shall advise that attorney of what actions, if any, s/he should take prior to any reapplication for admission to those panels. The Plan Administrator and members of the Advisory Board shall undertake a *de novo* review of any such reapplication. Completion of the suggested actions by the attorney will not necessarily ensure subsequent certification to the panel for which the application is made.

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X. Panel Participation Contingencies

1. When it has been determined that an applicant may participate in one or more panels contingent upon successful completion of certain training, the Plan Administrator must communicate that determination to the attorney in writing. The Plan Administrator shall advise of the necessary training and will set a specific time frame by which such training should be completed such that the attorney may be accepted into the various panels.

XI. Re-Application

1. Attorneys with three or less years of legal experience must re-apply to each panel on a yearly basis. Attorneys with more than three years legal experience will be re-evaluated for panel participation if a) complaints or concerns regarding the attorney's performance are brought to the attention of the Plan Administrator or b) at the discretion of the Assigned Counsel Plan Administrator in consultation with the Advisory Board. All attorneys must submit documentation of completion of the required CLE credits over each two year period.

XII. Training and Mentoring Programs

1. The Plan will regularly notify panel members of trainings relevant to their representation of assigned indigent clients, including trainings on substantive criminal and family law as well as practice and procedure. The Plan will also conduct or facilitate local trainings for panel attorneys and others.

2. A mentoring program, pairing applicants and/or panel attorneys with experienced panel members as needed, will be established by the Plan. Mentors may be members of the Advisory Board or other experienced members of the Ulster County legal community who serve on assigned counsel panels or have experience representing assigned clients. All applicants and panel attorneys with less than eighteen months legal experience shall be assigned a mentor. Applicants and/or panel attorneys will be assigned a mentor by the Plan Administrator for purposes of training, shadowing and teaching, and to assist the attorney in meeting the eligibility requirements for panel participation. With the agreement of the mentor, the applicant/attorney may act as co-counsel in a proceeding to which the mentor has been assigned, provided however, that the mentor shall be the attorney of record in the proceeding and shall be responsible for all aspects of the representation. The applicant/attorney and the mentor will report to the Plan Administrator on the progress of the training and mentoring, as requested, for purposes of evaluating the applicant/attorney's progress and qualifications to serve on assigned counsel panels. When the applicant/attorney has met the eligibility requirements s/he shall so inform the Plan Administrator, so that the applicant/attorney's eligibility for panel participation may be determined.

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Any attorney participating in the Assigned Counsel Plan, regardless of experience, may be assigned a mentor upon request.

XIII. Complaint Review

1. The Plan Administrator will review any complaints received regarding the performance of an assigned counsel panel attorney. The Plan Administrator will determine the appropriate action to be taken and take such action, or may consider the matter with the Advisory Board. The Administrator may communicate with the person making the complaint, the panel attorney, and other individuals with relevant knowledge.
2. If the Administrator determines that the conduct complained of was not inconsistent with the policies, rules and standards of the Plan, the Rules of Professional Conduct and the NYSBA Revised Standards for Mandated Representation, the matter may be dismissed, or any other appropriate action taken.
3. If the Plan Administrator, in consultation with the Advisory Board, determines that the conduct complained of may have been inconsistent with the policies, rules and standards of the Plan, the Rules of Professional Conduct, and/or the NYSBA Revised Standards for Mandated Representation, the Plan Administrator may take any appropriate action, including, but not limited to, counseling, training, suspension or removal from the Plan. The attorney who is the subject of the complaint shall have the opportunity to respond to the complaint and submit any relevant information to the Plan Administrator prior to a final decision. **The decisions of the Plan Administrator and Advisory Board regarding complaints are final and nonreviewable if no appeal is taken as provided in Section XIII ¶ 4 of the plan, set forth below.**
4. **If the Plan Administrator, in consultation with the Advisory Board, determines that the conduct complained of may have been inconsistent with the policies, rules and standards of the Plan, the Rules of Professional Conduct, and/or the NYSBA Revised Standards for Mandated Representation, the attorney who is the subject of the complaint shall be entitled to appeal such determination to the Grievance Committee of the Ulster County Bar Association. Such appeals must be submitted in writing to the chair of the Grievance Committee within 30 days of the determination of the Plan Administrator and Advisory Board. The aggrieved attorney shall set forth the basis for his/her appeal and submit any relevant information to the Grievance Committee. A copy of the appeal and all information submitted with it shall be sent to the Plan Administrator. The Plan Administrator and Advisory Board may respond to the appeal and shall forward all documents and information considered in reaching its decision to the chair of the Grievance Committee. A copy of the response of the Plan Administrator and Advisory Board shall be sent to the attorney. The decisions of the Grievance Committee of the Ulster County Bar Association are final and nonreviewable.**

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Kingston, New York
December 1, 2014

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THE ULSTER COUNTY ASSIGNED COUNSEL PLAN

Standards for Providing Mandated Representation Applicable to Individual Attorneys

I. PERFORMANCE

I-1. An attorney can provide zealous, effective and high quality representation only if the attorney has the time, resources, knowledge, and expertise that a conscientious and professional attorney familiar with the particulars of the cause would consider necessary.

I-2. If at any time during the representation the attorney concludes that s/he is not able to provide zealous, effective and high quality representation, the attorney must immediately seek to withdraw from the case unless the attorney can associate with another attorney in the Assigned Counsel Plan panel and thereby enabled to provide zealous, effective, and high quality representation.

The following Performance Standards are not intended to be exhaustive. Assigned counsel panel attorneys must also adhere to the NYSBA Revised Standards for Providing Mandated Representation. A copy of the NYSBA Standards is provided to every attorney on each assigned counsel panel.

General Performance Standards

I-3. An attorney must (a) communicate with his or her client on a regular basis during the course of representation, preferably in a private face-to-face discussion; **(b) communicate with the client prior to court appearances, to the extent possible,** (c) communicate with family or friends of the client, to the extent that the client waives the attorney-client privilege as to such communication; (d) inform the client on a regular basis of the progress of the case; (e) ensure that, if desired, the client sees copies of all documents prepared or received by the attorney; (f) provide the client with the information necessary and the opportunity to make an intelligent and well-informed

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decision in those instances when a decision is to be made by the client (i.e., whether to plead guilty, make an admission, to be tried by judge or jury, and whether to testify).

I-4. An attorney shall abide by the Rules of the Code of Professional Conduct (Part 1200 of Title 22 of the New York Codes, Rules and Regulations), including but not limited to, the Rules concerning conflicts of interest.

I-5. It is the intent of the Ulster County Assigned Counsel Plan that the same attorney represent the client continuously from the inception of the representation until the initiation of the appellate proceeding, if any, unless it is determined that (a) there is a conflict of interest; (b) there is a breakdown in the attorney-client relationship that interferes with counsel's ability to provide zealous, effective and high quality representation; or (c) some unforeseen circumstance, such as illness, prevents counsel from continuing to provide zealous, effective, and high quality representation.

I-6. When a client has multiple pending proceedings, the attorney on any one of them shall immediately and thereafter regularly communicate with the attorney(s) on the other matter(s) to the extent that the client waives the attorney-client privilege as to such communication. If feasible, and with the approval of the client, the Administrator shall take steps to have a single attorney represent the client on all pending matters.

Specific Types of Matters

I-7. Criminal Matters

No attorney shall accept a criminal case unless the attorney can provide, and is confident that s/he can provide, zealous, effective and high quality representation. Such representation at the trial court stage means, at a minimum:

- a. Obtaining all available information concerning the client's background and circumstances for purposes of (i) obtaining the client's pretrial release on the most favorable terms possible; (ii) negotiating the most favorable pretrial disposition possible, if such a disposition is in the client's interests; (iii) presenting character

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- evidence at trial if appropriate; (iv) advocating for the lowest legally permissible sentence, if that becomes necessary; and (v) avoiding, if at all possible, collateral consequences including but not limited to deportation or eviction.
- b. Investigating the facts concerning the offense charged, including: (i) interviewing the client; (ii) seeking discovery and disclosure of the People's evidence, exculpatory information and impeaching material; (iii) obtaining relevant information from other sources; (iv) interviewing witnesses to the relevant events; and (v) obtaining corroborating evidence for any relevant defenses;
 - c. Researching the law, including, as appropriate, state statutory and constitutional law and federal constitutional law relevant to (i) the offense charged (and any lesser included offenses); (ii) any possible defenses; (iii) relevant sentencing provisions; and (iv) other matters such as issues concerning the accusatory instrument, the admissibility of evidence, the prosecutor's obligations, speedy trial rights, and any other relevant federal or state, constitutional, common law or statutory issue;
 - d. Preserving the client's options at all stages of the proceeding, such as (i) to seek a jury trial; (ii) to proffer a defense; (iii) to seek dismissal of the accusatory instrument; (iv) to seek dismissal of the charges for denial of statutory or constitutional speedy trial rights; (v) to seek preclusion or suppression of evidence; (vi) to seek discovery, exculpatory and impeaching information; and (vii) to seek an appropriate disposition consistent with the client's best interests and instructions;
 - e. Providing the client with full information concerning such matters as (i) potential defenses and their viability; (ii) the weaknesses in the People's case; (iii) plea offers; (iv) potential sentence exposure under all possible eventualities, including the relationship to any other sentences, potential release dates and available

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- correctional programs; and (v) immigration, motor vehicle licensing and other collateral consequences under all possible eventualities;
- f. Filing appropriate pretrial motions for, among other things, (i) dismissal of the charging instrument for facial or evidentiary insufficiency; (ii) joinder or severance; (iii) dismissal of the charges for denial of statutory or constitutional speedy trial rights; (iv) suppression or preclusion of evidence; and (v) additional resources not available due to the client's financial circumstances;
 - g. In the event of, and in advance of, trial; (i) developing a legal and factual strategy, using whatever investigative and forensic resources are appropriate; (ii) preparing for cross examination of the People's witnesses and direct examination of defense witnesses; (iii) developing a foundation for the introduction of defense evidence; (iv) formulating opening and closing statements; and (v) drafting requests for jury instructions;
 - h. In the event of, and in advance of, sentencing: (i) gathering favorable information, and where appropriate, presenting that information in written form; (ii) reviewing the probation department report to ensure that it is accurate and taking whatever steps are necessary to correct errors; and (iii) utilizing forensic resources if appropriate;
 - i. Following a final disposition other than a dismissal or acquittal: (i) advising the client of the right to appeal and the requirement to file a notice of appeal; (ii) filing a notice of appeal on the client's behalf if the client requests; (iii) advising the client of the right to seek appointment of counsel and a free copy of the transcript in connection with the appeal; (iv) assisting the client in applying for appointment of counsel and a free copy of the transcript if the client requests ; and (v) cooperating fully with appellate counsel; and
 - j. Following a disposition from which the prosecutor has a right to appeal: (i) advising the client of the possibility that the prosecutor will pursue an appeal; (ii)

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advising the client of the client's right to appointment of counsel should the prosecutor appeal; and (iii) assisting the client in applying for appointment of counsel if the client requests.

I-8. Family Law Matters

- a. Attorneys representing adults in abuse and neglect cases shall investigate, research, and prepare in the same manner and using the same tools as attorneys in criminal cases. Thus to the extent consistent with these types of matters, the Performance Standards contained within § I-7, supra, apply here;
- b. The attorney shall take into consideration any attendant emotional and psychological needs of the client. Where appropriate, the attorney shall seek the services of a forensic social worker or other qualified professional;
- c. The attorney shall be aware of the possibility of criminal prosecution based upon the same conduct at issue and plan strategy, advise the client accordingly and coordinate representation and advocacy with criminal defense counsel, if any;
- d. When an attorney has been appointed for children of the client; the attorney shall advise the client regarding the role of that attorney and, when appropriate, shall prepare the client for contact or interviews with that attorney; and
- e. Attorneys shall counsel clients regarding all of the potential consequences of any particular resolution of the matter before the clients are asked to make decisions regarding possible dispositions.

Ulster County 18-b Judicial Survey

1. Name

2. Email

3. Court

4. How often do you appoint an 18-b attorney in your court?

Mark only one oval.

Never

Occasionally

Often

5. In what types of cases do you find you are appointing 18-b attorneys?

- 6. Do you find there are ample 18-b attorneys from which to make the appointment?
And if not, what would you recommend to improve the pool?

- 7. Are you satisfied with the quality of work provided by 18-b attorneys?

Mark only one oval.

- Yes *Skip to question 9*
- No

Quality of Work Question

- 8. What are some of the areas of improvement you see for 18-b counsel?

Skip to question 9

Last Three Questions

9. What is your method for reviewing 18-b invoices from attorneys?

10. Do you ever reject 18-b invoices and if so, why?

11. Do you have any suggestions to improve 18-b services in Ulster County?

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