

ULSTER COUNTY COMPTROLLER'S OFFICE

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Audit of Counsel at First Appearance and Upstate Quality Improvement and Caseload Reduction Grants

The mission of the Ulster County Comptroller's Office is to serve as an independent agency of the people, to protect the public interest by monitoring County government and to assess and report on the degree to which its operation is economical, efficient and its financial condition sound.

Objectives

The objectives of this audit were to:

- Determine the status of Counsel at First Appearance (“CAFA”) and Upstate Quality Improvement and Caseload Reduction Grant awards and the extent to which funds were utilized in relation to goals and performance measures outlined in contract agreements; and
- Review eligible expenses incurred and associated payment and reporting schedules required for reimbursement, including Expenditure Reports and Progress Reports, for accuracy, completeness, and timeliness.

Executive Summary

This audit of the Public Defender’s Office’s (“Public Defender” or “Office”) administration of New York State Counsel at First Appearance and Upstate Quality Improvement and Caseload Reduction grants sought to determine the general status of project implementation, as well as whether proper internal controls and grant oversight have existed with regard to adequate funding utilization and maintenance of required documentation. The report is summarized as follows:

- Oversight and monitoring could have been improved for the CAFA grant award, which may have led to increased project performance if greater assistance and collaboration had been fostered between the Office and another County entity that was more adept at administering aspects of the awards;
- The Office did not file expenditure forms required by the State prior to this audit, which prevented the extension of the CAFA grant award; and
- Through communications with the NYS Office of Indigent Legal Services (“OILS”), the Comptroller received and prepared the appropriate expenditure forms for the Public Defender that will be submitted to the State once certified.

Summary of Findings and Recommendations

1. Grant Oversight & Monitoring

Finding: We have determined that additional grant oversight would have assisted the Public Defender’s Office in implementing a program that would have satisfied the desired intentions and parameters of the awards. Though the Department of Finance provided periodic assistance to the Office, monitoring appeared to be inconsistent, which ultimately resulted in the underutilization of state aid. The Office was allotted approximately \$900,000, which was meant to be utilized over the period of June 1, 2013 through December 31, 2016. However, the only revenue actually received by the Public Defender was one advance payment for \$53,869 from which the Office only expended \$30,000 for services rendered by the Center for Research, Regional Education, and Outreach (“CRREO”) at SUNY New Paltz. Though we recognize the CAFA grant may technically be still available for use, our conversations with OILS informed us that the State had additional funding available if the awards had been expended over the original term. Similarly, the same could be said for the

Upstate Quality Improvement and Caseload Reduction grant. Essentially, if the awards had been timely expensed, total state aid granted to the County would have been larger.

Recommendation: The Public Defender would have benefited through greater collaboration with a County entity helping to oversee the administration of the grant, ensure compliance, and capitalize on the full extent of the award(s). We noted that the Public Defender recently received additional monies related to the statewide expansion of the Hurrell-Harring grant that will enhance the presence and quality of criminal defense representation and fund a full-time “Grants Specialist.” This newly created position has not yet been filled, but should allow the Office to better manage its grant portfolio, more efficiently administer aspects of the award, and ensure proposals are fully executed in compliance with necessary terms and conditions. However, in the meantime, the Public Defender should fully utilize the Department of Finance as a resource to promote proper grant oversight and monitoring functions.

2. Lack of Documentation and Deficient Reporting

Finding: After reviewing the revenues received from the Counsel at First Appearance contract between the County and State, we noted that NYS Office of Indigent Legal Services sent the Public Defender an advance payment of \$53,869 in March 2016. The Public Defender contracted with CRREO for \$78,100 to “develop arraignment software [...] and provide quantitative and qualitative analysis and reporting” related to the grant award for the purpose of enhancing public defense services and complying with requirements that attorneys should be present at defendants’ first appearances in court.¹ After disagreements surrounding deliverables and terms of payment, the contract was ultimately terminated by the County. The County Attorney determined that SUNY CRREO was owed \$30,000 based upon tasks completed per the contract’s scope of services and terms of payment. A \$30,000 invoice was submitted on November 1, 2017, paid on November 16th, and payment received was deemed in full satisfaction of all the compensation due to CRREO according to the County Attorney. However, the Public Defender never filed the appropriate paperwork with OILS to submit this expenditure against the advanced payment nor has the Office reported any other expenses against those monies to date.

Recommendation: The Public Defender must complete the appropriate paperwork to fulfill reporting requirements, citing the \$30,000 expenditure to SUNY CRREO along with any other expenses incurred related to the \$53,869 in advance funding that was received from the CAFA Grant. The Comptroller worked with the Public Defender to complete the appropriate expenditure forms regarding the payment to CRREO and requested that the Office submit the paperwork to the State. Most importantly, NYS OILS stated the grant would be eligible for extension immediately after this submission is complete. Additionally, as our research has shown that a large portion of those dollars have not been spent, the Office should determine a strategy to use or modify remaining funds.

¹ See *gen* “Agreement Between the Research Foundation of State University of New York and County of Ulster” (Contract Number 2015-00000248) (executed on April 16, 2015).

Scope

This audit reviewed the policies and procedures governing the status of CAFA and Upstate Quality Improvement and Caseload Reduction grant awards, related oversight to guarantee performance and meet requirements, and the current status of deliverables outlined in contract agreements. We obtained all available documentation and correspondence pertaining to these grants from the Ulster County Public Defender’s Office, County Attorney, and Department of Finance in addition to materials gathered from SUNY New Paltz regarding the CRREO service contract. We examined executed contracts for (sub)contracted work, analyzing incurred expenses and associated payments for eligibility, accuracy, completeness, and timeliness.

The Comptroller’s Office also maintained points of contact with the NYS Office of Indigent Legal Services to determine the availability of funds remaining from the two grants, as well as the amount of expenditures submitted for reimbursement.

Background

The seminal 1963 U.S. Supreme Court case *Gideon v. Wainwright* set the stage for safeguarding criminal defendants’ rights to counsel no matter their financial ability to pay. However, by placing the responsibility on the states – and in turn the counties and taxpayers – to finance and implement meaningful indigent defense services, significant shortcomings as far as the quantity and quality of legal representation would unfold across the State of New York over the next half century.

In 2007, the New York Civil Liberties Union sued the State and five counties NYS (Ontario, Onondaga, Schuyler, Suffolk, and Washington), alleging that indigent criminal defense representation was poorly funded and operating below constitutional mandates.² In 2014, the parties settled with the understanding that the State would generally enhance services including caseload caps for public defenders and greater state funding; provide counsel at first arraignment; and allow OILS to set criteria for determining the income eligibility of defendants.³

Around the time of the Hurrell-Harring Settlement – though not directly related to its terms – Ulster County separately received two three-year grants (i.e. CAFA and Upstate Quality Improvement and Caseload Reduction), totaling \$897,635 that ran from June 2013 through December 21, 2016. The 2017-18 NYS Budget included millions in funding to expand indigent services to the 52 Counties not included within the settlement; as a result, Ulster County is slated to receive a third grant as part of the statewide expansion of Hurrell-Harring grant monies, totaling almost \$10 million for a five-year period from April 2018 through March 2023.

To fulfill its mandate, the Ulster County “Public Defender’s Office provides legal representation to indigent clients in criminal courts[,] Family Court[,] [and] the Appellate level for criminal and family

² See *Hurrell-Harring, et al. v. State of New York, et al.* (Supreme Court, Albany County) (November 8, 2007).

³ See *gen* “Stipulation and Order of Settlement” concerning *Hurrell-Harring v. State of New York* (Supreme Court, Albany County) (dated October 21, 2014). Available at <https://www.ils.ny.gov/files/Hurrell-Harring%20Final%20Settlement%20102114.pdf>

court cases” within the county.⁴ The Office provides a financial disclosure form to determine if the defendant qualifies for representation, which the judge in each court will review in order to recommend or deny the assignment of counsel. The Public Defender’s 2019 budgeted expenditures are \$2,944,694, including \$1,734,854 in personnel costs for 32 total benefited positions; budgeted revenues for the year total \$1,170,992.⁵

As part of the Comptroller’s 2018 Annual Audit Report and Risk Assessment, the Public Defender’s Office – specifically pertaining to administration of the two awarded grants – was identified as germane subject matter for a forthcoming compliance audit.

1. NYS Contract C000451 – Counsel at First Appearance:

The Counsel at First Appearance Grant was for \$604,776, covering the period from June 1, 2013 through May 31, 2016. The goal of this award was to make “demonstrable and measurable improvements in the delivery of indigent defense services to eligible persons at a defendant’s first appearance before a judge.”⁶

This three-year grant allotted funding for the following: personnel (\$360,000), consultants (\$224,276), wireless computer tablets (\$22,600), and miscellaneous expenses related to Ulster County Information Services and other implementation costs (\$17,900).

In February 2015, Ulster County Legislative Resolution Number 67 formally authorized the execution of the agreement between OILS and the County, allowing the grant to be notarized as accepted on March 24, 2015. Also in February, Resolution Number 77 of 2015 authorized the contract (2015-00000248) between Ulster County and SUNY CRREO in the amount of \$78,100, which represented the first year’s worth of consultant fees under the grant budget. An advance payment for \$53,869, representing 25% of first year budgeted expenditures, was received by the County on March 8, 2016.

After disputing certain deliverables and terms of payment, Ulster County terminated the contract with SUNY CRREO in mid-2017. After lengthy correspondence through the County Attorney, it was determined that a \$30,000 payment would be made and “deemed in full satisfaction of all compensation due to [CRREO].” This amount was ultimately issued to CRREO on November 16, 2017. According to OILS, the Public Defender has not claimed any expenses against the \$53,869 advance payment through December 31, 2018.

⁴ See *gen* Ulster County Public Defender’s Office. Available at <https://ulstercountyny.gov/public-defender/ulster-county-public-defender>

⁵ See Ulster County Adopted Operating Budget 2019 (Public Defender). Available at <https://ulstercountyny.gov/sites/default/files/2019%20adopted%20budget.pdf>

⁶ See Attachment C: Work Plan of the State of New York Master Contract for Grants (NYS Contract Number C000451) (dated March 24, 2015).

2. NYS Contract C000651 – Upstate Quality Improvement and Caseload Reduction:

The Upstate Quality Improvement and Caseload Reduction Grant was for \$292,859 for the period of January 1, 2014 through December 31, 2016. This award was accepted by the County on May 25, 2016. Its stated purpose was “to improve the quality of mandated indigent legal representation and/or reduce excessive caseload in indigent legal service provider program(s).”⁷

This three-year grant allotted funding for the following: an Assistant Public Defender and a Receptionist/Data Clerk (total combined salaries of \$181,062), as well as associated fringe benefits (\$111,797).

There have been no reimbursement requests or other reporting submitted related to this grant as required under the agreement with the State; however, the grant was extended through December 31, 2017. Per recent conversations with OILS, this grant is still eligible for use, pending the hire of employees and submission of reimbursement requests.

Conclusion

Additional grant oversight and monitoring would have minimized the shortfalls noticed as far as the underutilization of funds, ensuring the timely completion of goals, performance measures, and requirements outlined in the two award contracts. We hope the addition of a Grants Specialist will alleviate the pitfalls previously experienced in overseeing the grants. A dedicated staff member should optimize the likelihood of success in implementing the goals of each funding source and facilitating proper recordkeeping of documentation related to grant activity and reporting requirements.

The Public Defender’s Office should seek advice and clarification directly from OILS on any future issues with grant compliance, specifically pertaining to submissions of expenditures and reporting requirements.

We would like to thank the New York State Office of Indigent Legal Services Department for answering all questions and providing instrumental updates throughout our review. We also extend our appreciation to the Benjamin Center (formerly CRREO) at SUNY New Paltz and the Ulster County Attorney’s Office for answering requests for information. Further, we thank the Ulster County Public Defender for his assistance, candor, and availability during the audit process. A draft of this report was provided to the Public Defender for an opportunity to comment prior to finalization; the Office concurred with the findings and elected not to provide a formal response.

⁷ See Attachment C: Work Plan of the State of New York Master Contract for Grants (NYS Contract Number C000651) (dated May 25, 2016).