

# Proposed Local Law Number 8 Of 2024

## County Of Ulster

### **A Local Law Amending The Code Of The County Of Ulster To Establish The Department Of Assigned Counsel**

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

#### **SECTION 1. LEGISLATIVE INTENT.**

Pursuant to § C-11 of the Ulster County Charter, the Ulster County Legislature has the power and duty to “create, alter, combine or abolish County administrative units.” Article 18-B of County Law, enacted in 1965, delegates to localities the responsibility for public defense services. The Ulster County Public Defender’s Office has the primary responsibility for the provision of quality legal services to eligible persons who cannot afford counsel and who possess a right to assigned counsel. The Assigned Counsel Program provides quality legal services to eligible persons who cannot afford counsel in court cases in which the Ulster County Public Defender has a conflict. The New York State Indigent Legal Services Standards for Establishing and Administering Assigned Counsel Program, require that the Assigned Counsel Program be an independent office.

The purpose of this local law is to create a Department of Assigned Counsel to handle cases when the Public Defender’s Office has a conflict. The Department of Assigned Counsel shall ensure the provision of professional, skilled, ethical and client-centered legal representation for all clients.

#### **SECTION 2. The Code of the County of Ulster shall be amended to include a new Chapter under Part I: Administrative Legislation, Chapter 92, which shall read as follows:**

Chapter 92 Department of Assigned Counsel

§ 92-1 Assigned Counsel Administrator, appointment, qualifications.

- A. There shall be a Department of Assigned Counsel under the direction of the Assigned Counsel Administrator, who shall be appointed by the County Executive, in consultation with the Assigned Counsel Advisory Board if so established, subject to confirmation by the County Legislature, and shall serve at the pleasure of the County Executive.

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- B. The Assigned Counsel Administrator shall be an attorney in good standing, continually licensed in the State of New York and be admitted to practice law for at least ten years, with three years of administrative experience, skill in the representation of criminal defendants and/or adults in Family Law matters, and who demonstrates integrity and commitment to quality representation of public defense clients.
  
- C. The Administrator shall serve full time and shall not engage in the private practice of law or other employment during their appointment.

§ 92-2 Purpose. The purpose of the Ulster County Assigned Program is to ensure high quality representation for every individual represented by assigned counsel in Ulster County.

- A. The Program will establish panels of qualified attorneys for each type of case for which assigned counsel is available. Attorneys serving on each panel must meet minimum qualifications established by the Assigned Counsel Program. Once a defendant has been deemed eligible for the services of the Assigned Counsel Program, the Assigned Counsel Administrator shall rotate and coordinate the assignment of attorneys. The Program will provide training, oversight and support for panel attorneys. An Advising Attorney program for panel attorneys will be established.
  
- B. The Office of Assigned Counsel shall operate as an independent Department of the County, the purpose of which is to maintain an Assigned Counsel Program in the County by establishing protocols and policies for assigning attorneys to indigent public defense clients when there is a conflict with representation provided by the Ulster County Public Defender, Ulster County Conflict Defender, or any other entity contracted with by the County to provide indigent legal representation, in addition to other cases in which assigned counsel is authorized.

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C. The Assigned Counsel Program shall operate in compliance with the Standards for Establishing and Administering Assigned Counsel Programs promulgated by and amended from time to time by the New York State Office of Indigent Legal Services pursuant to New York State Executive Law Section 832 (“Standards”).

§ 92-3 Definitions.

- A. Administrator. The person who administers the Assigned Counsel Program in the county and ensures that the Standards are met;
- B. Advisory Board. A three-member board of experienced attorneys who will assist the Assigned Counsel Administrator with the Assigned Counsel Program;
- C. Assigned Counsel. A private attorney or attorneys, other than an attorney or attorneys employed by the Ulster County Public Defender’s Office, (or any other entity contracted by the County to provide legal representation to indigent persons);
- D. Assigned Counsel Program. An entity that sets forth protocols and policies for assigning attorneys to public defense clients and ensures that those attorneys provide quality representation;
- E. Client or Client(s). A person or persons entitled to representation in criminal defense and family law matters under New York County Law Article 18-B and who actually receives such services by member(s) of the Panel;
- F. County. The County of Ulster;
- G. Grant. Shall mean funding received by the County from the State of New York or an Office thereof designed to pay for the costs of the Office of Assigned Counsel other than those actual amounts of County

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taxpayer resources for which no revenue to the County other than through County property taxes, sales tax, or other non-State of New York sources exists in relation to the operation of the Assigned Counsel Program;

- H. Independent. Freedom from improper influence and/or control by an outside entity, to ensure that the Assigned Counsel Program and assigned counsel make decisions based solely on the interest of the client or clients;
- I. Judge. Judges magistrates, Justices, and any other persons with adjudicative powers that may impact a client or clients eligible for mandated representation;
- J. Mandated Representation. Government funded legal representation that is constitutionally or statutorily required including but not limited to representation in criminal matters pursuant to New York State County Law Article 18-B, family court proceedings, and appellate representation, regardless of the client's party status;
- K. Advising Panel Attorney. An experienced attorney who provides training, consultation, and guidance to less experienced attorneys on the Panel;
- L. Office of Assigned Counsel. The office responsible to administer the Assigned Counsel program in Ulster County;
- M. Panel. The Assigned Counsel Panel's list of attorneys eligible to receive assignments in the County, which should be limited to those in good standing and with the requisite skills and training;
- N. Quality Representation. Representation of clients in a professional, skilled, ethical, and client-centered manner;

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- O. Second Chair. One or more attorneys appointed by the Administrator to assist any attorney who has primary responsibility for the defense of any Client or Clients;
- P. Standards. Standards for Establishing and Administering Assigned Counsel Program's in New York State promulgated by and amended from time to time by the New York State Office of Indigent Legal Services pursuant to New York State Executive Law Section 832.

§ 92-4 Powers and Duties of Assigned Counsel Administrator. The Administrator shall have the following responsibilities:

- A. Be the administrative head of the Office and shall have the duty to take steps to ensure that all Clients receive quality representation by Panel Attorney Members;
- B. Oversee the supervision, coordination and administration of the Program. The Administrator is responsible for implementation of the Program and its day-to-day operation;
- C. Develop and implement policy and procedures for the Program as necessary or desirable in accord with applicable statutory requirements, any standards promulgated by the Office of Indigent Legal Services, including the Assigned Counsel Plan Standards, the New York State Office of Court Administration (OCA) rules, New York State Bar Association Revised Standards for Providing Mandated Representation and any other applicable statutory, regulatory, or professional standards;
- D. Prior to processing by Ulster County, review vouchers submitted by panel attorneys not only for calculation errors, but also to assess the quality of practice;

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- E. Develop and monitor programs and policies, standards and operational procedures of the Assigned Counsel Program regarding qualifications for appointment to the Panel, recruitment of attorneys to serve on the Panel, limitations on representation by Panel attorneys of Clients, guidelines for the administrative responsibilities of Panel attorneys and supervision and review of attorney caseloads and quality of legal representation;
- F. Make rotational assignments to panel attorneys in accordance with County Law section 722;
- G. Maintain a panel of attorneys eligible to receive assignments for indigent representation based upon sufficient knowledge and experience and periodically evaluate members of the Panel;
- H. Establish qualifications and standards for certification of attorneys to become members of and remain on the Panel provided that any attorney aggrieved by any decision of the Administrator in relation to membership on the Panel may appeal in writing the decision of the Administrator within ninety days;
- I. Maintain a program of continuing legal education for members of the Panel;
- J. Assign an Advising Attorney to new members of the Panel or to those members of the Panel the Administrator recommends the assignment of an Advising Attorney to or to a Panel member who requests an Advising Attorney be assigned to such Panel member;
- K. Establish a Second Chair Program for the Panel whereby an experienced attorney is paired with one or more other attorneys knowledgeable in the area of law such other attorney(s) is/are actively practicing in;

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- L. Develop appropriate resources for Panel attorneys who may handle complex litigation including matters that require forensic expertise;
- M. From time to time engage with Members of the Judiciary within the County to share concerns about methodologies of attorney assignments, facilities for client meetings, recommend to the County and the Judiciary such modifications as may be warranted to better ensure quality representation;
- N. Within available appropriations, appoint attorneys and staff of the Assigned Counsel Program to assist the Administrator who shall be employees of the County. Such employees shall be appointed pursuant to applicable Civil Service and any other applicable laws and regulations. The salaries and grades of employment of such attorneys and staff shall be established pursuant to law as other County employee salaries and grades are;
- O. Prepare an annual Budget proposal for the Office of Assigned Counsel for review for submission to the County Budget Office;
- P. Authorize such expenses of the Office of Assigned Counsel subject to the budget approved as part of the annual County budget process;
- Q. Maintain records of accounts and expenditures of the Assigned Counsel Program in compliance with all applicable law and County policy;
- R. Develop a Program handbook that shall contain standards and regulations for representation, assignment procedures, and invoice submission policies that are to be adhered to by panel attorneys;

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- S. Conduct a periodic evaluation and review of the Assigned Counsel Program budget and communicate the programmatic and fiscal needs of the program to the New York State Office of Indigent Legal Services to obtain necessary State funding;
- T. Prepare and submit any required reports about the County's assigned counsel activities including any financial reports necessary to claim reimbursement or other grant funding from government agencies or private funding sources;
- U. Apply for such funding as the Administrator deems appropriate;
- V. Prepare and enter into contracts necessary or appropriate to enable the performance of this Local Law;
- W. Prepare periodic reports requested by the County Executive and the Legislature;
- X. Recruit and establish an Advisory Board and work with the advisory board in areas of panel attorneys recruitment, screening, training and mentoring and complaint resolution;
- Y. Ensure compliance with County laws, policies and procedures including but not limited to procuring goods and/or services under the procurement policy of the County;
- Z. Secure office space for the Office of Assigned Counsel which office space shall, if rented, contain a provision in the lease that the office space shall terminate upon termination of Grant funding;
- AA. Approve requests by Panel attorneys for use of funding made available through the New York State Office of Indigent Legal Services for any non-attorney professional services such as investigative, expert witnesses, social work, forensic, interpreter,

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mental health, supervised visitation and attorney second chair and advising attorney services all with the goal of providing Quality Representation to Client(s);

- BB. Any other duties necessary or convenient for the purpose of carrying out this Local Law;
- CC. Ensure that any attorney on the Panel carries malpractice insurance in a form acceptable to the Assigned Counsel Program;
- DD. Any positions created in the County to work in the Office of Assigned Counsel shall terminate upon the cessation of the Grant funding utilized to pay the salaries and benefits of such employees.

§ 92-5 Advisory Board, Duties and Role of the Advisory Board.

- A. There shall be an advisory board to the assigned counsel program composed of three experienced attorneys who represent or have represented assigned clients and are knowledgeable about practices in Ulster County courts. One member of the advisory board shall be nominated by the Ulster County Bar Association, one member shall be a member of the assigned counsel panel selected by assigned counsel attorneys, and one member shall be a member of the assigned counsel panel assigned by the Assigned Counsel Administrator, or by the County Executive if the Assigned Counsel Administrator position is vacant.
- B. No member of the Advisory Board shall be employed in the County Attorney's office, the District Attorney's office, the Public Defender, Probation Department, nor of the judiciary or other government officials. All members of the Advisory Board shall have significant experience in criminal defense and/or family court practices.

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- C. The advisory board will assist the Assigned Counsel Administrator with the following duties:
1. Developments of a Program Handbook.
  2. Screening applications for panel participation, interviewing applicants, gathering information regarding applicants and determining applicants' eligibility to serve on the assigned counsel panels.
  3. Panel member performance reviews.
  4. Setting policy and eligibility requirements for the Program.
  5. Participating in the review and consideration of complaints against panel attorneys.
  6. Development of the training program as well as serve as Advising Attorneys for applicants/panel attorneys.

**SECTION 3. SEVERABILITY.**

In the event that any portion of this local law is found to be invalid, such finding will not have any effect on either the remaining portions or applications of this local law or any provisions of the Code of the County of Ulster, which shall remain in full force and effect.

**SECTION 4. EFFECTIVE DATE.**

This Local Law shall take effect immediately upon filing with the Office of the Secretary of State of the State of New York.