

ON MOTION OF MR. DANIELS

RESOLUTION NO. 400-06

Adopt Local Law No. 1 for the Year 2006

A LOCAL LAW PROVIDING FOR THE CREATION OF THE OFFICE OF CONFLICT ATTORNEY FOR INDIGENT DEFENSE; FIXING THE TERM OF OFFICE, COMPENSATION AND DUTIES OF THE CONFLICT ATTORNEY; PROVIDING FOR THE REPRESENTATION OF INDIGENT DEFENDANTS UNABLE TO BE REPRESENTED BY THE PUBLIC DEFENDER DUE TO CONFLICT; AND PROVIDING FOR PLAN PROCEDURES FOR ASSIGNED COUNSEL DEFENSE IN CASES OF CONFLICT WITH THE PUBLIC DEFENDER'S AND CONFLICT ATTORNEY'S OFFICES

Whereas, Article 18-B, Section 722 of County Law mandates that the County Legislature place in operation throughout the County a plan for providing counsel to persons charged with a crime or who are entitled to counsel pursuant to section two-hundred sixty-two or section eleven hundred twenty of the family court act, article six-C of the correction law or section four hundred seven of the surrogate's court procedure act, who are financially unable to obtain counsel; and

Whereas, the Cortland County Legislature, in order to comply with Article 18-B, Section 722, adopted Local Law No. 2 for the year 1966 creating the Office of Public Defender pursuant to Article 18-A, Section 716 of County Law; AND

Whereas, the Public Defender is responsible with representing, without charge, at the request of the defendant, or by order of the court with the consent of the defendant, each indigent defendant who is charged with a crime or who is entitled to counsel pursuant to section two-hundred sixty-two or section eleven hundred twenty of the family court act, article six-C of the correction law or section four hundred seven of the surrogate's court procedure act, who is financially unable to obtain counsel; and

Whereas, conflicts arise within the Public Defender's Office, such as in cases of multiple defendants, which causes the Public Defender's Office from defending a client resulting in the use of assigned counsel; and

Whereas, the Public Defender has also been made the administrator of the Cortland County assigned counsel plan and has the responsibility of compiling and maintaining a list of assigned counsel attorneys willing to accept conflict assignments and selecting an attorney to handle those assignments; and

Whereas, the creation of a Conflict Attorney's Office to defend, in the first instance, any indigent defendant unable to be defended by the Public Defender's Office due to any conflict, is logistically, administratively and economically more efficient for the County and the Courts to efficiently provide qualified counsel to indigent defendants in a expeditious manner; and

Whereas, it is the intent of the Cortland County Legislature to exercise the authority granted pursuant to Section 10, Municipal Home Rule Law and the authority granted pursuant to Local Law No. 2 for the Year 1972; and

Whereas, pursuant to this authority adopts the policy and procedures contained herein for the administration of the Cortland County Assigned Counsel Plan to ensure quality representation to all eligible indigent defendants or other litigants in cases where the Public Defender's Office and Conflict Attorney's Office has a conflict of interest; to maintain a coordinated and centralized assignment system for conflict cases arising in the courts; to maintain a equitable distribution of conflict assignments among assigned counsel attorneys; to attract more attorneys willing to handle conflict assignments; to establish rules to ensure uniform and proper billing and payment practices; and to ensure cost accountability of services;

NOW THEREFORE BE IT ENACTED, by the County Legislature of the County of Cortland, State of New York, as follows:

Article I. Restatement of Authority of the Office of Public Defender:

Section 1. Pursuant to Local Law No. 2 of 1966, the Public Defender is responsible, in the first instance, with representing, without charge, at the request of the defendant, or by order of the court with the consent of the defendant, each indigent defendant who is charged with a crime or who is entitled to counsel pursuant to section two-hundred sixty-two or section eleven hundred twenty of the family court act, article six-C of the correction law or section four hundred seven of the surrogate's court procedure act, who is financially unable to obtain counsel.

Article II. Office of Conflict Attorney, Created.

Section 1. The office of Conflict Attorney in the County of Cortland, State of New York, be and hereby is, created effective July 27, 2006.

Article III. Authority; Powers and Duties of Conflict Attorney.

Section 1. The Conflict Attorney is responsible, upon referral from the Public Defender's Office, with representing, without charge, at the request of the defendant, or by order of the court with the consent of the defendant, each indigent defendant who is charged with a crime or who is entitled to counsel pursuant to section two-hundred sixty-two or section eleven hundred twenty of the family court act, article six-C of the correction law or section four hundred seven of the surrogate's court procedure act, who is financially unable to obtain counsel.

Section 2. The Conflict Attorney shall have such powers and duties as provided by Article 18-A of the County Law and such other powers and duties as may be granted or imposed by statute or resolution of the Cortland County Legislature provided,

however, that said Board shall not grant or impose powers or duties inconsistent with statutory provisions.

Article IV. Term of Office; Appointment, and Compensation for Office

Section 1. In accordance with Local Law No. 7 of the Year 2002, Section 5, the County Administrator, as chief administrative officer, shall recommend a nominee for appointment of the Conflict Attorney to the County Legislature of Cortland County.

Section 2. The County Legislature shall appoint a Conflict Attorney by resolution for a term not to exceed four years.

Section 3. The Conflict Attorney shall be compensated in accordance with the Management/Management Confidential Compensation Employment Policy as adopted by Resolution No. 424-05.

Article V. Policy for Assigned Counsel; Created

Section 1. Definitions

1. Bar: The term "Bar" shall mean the Cortland County Bar Association.
2. County: The term "County" shall mean the County of Cortland.
3. Eligible: The term "eligible" shall mean only those defendants or other litigants who meet the Cortland County Public Defender's income eligibility standards and who are litigants in those classes of cases for which the Public Defender's Office, by law, is required to provide representation.
4. Conflict Assignment: The term "conflict" assignment shall mean a court proceeding wherein the defendant or other litigant is eligible for Public Defender services, but where a conflict of interest would occur if the Public Defender or Conflict Attorney represented the defendant.

Section 2. Policy Objectives

The objectives of this Policy for Assigned Counsel are to provide quality representation to eligible indigent defendants or other litigants in those cases where the Public Defender or Conflict Attorney has a conflict of interest; to provide a coordinated and centralized assignment system for conflict cases arising in the courts specified herein; to provide a more equitable distribution of conflict assignments among lawyers; to attract more lawyers willing to handle conflict assignments; to maintain uniform and proper billing practices; to ensure cost accountability of services; and to provide increased efficiency for the courts by making qualified attorneys more readily available to handle conflict cases.

Section 3. Scope of Policy

A. Appointment of Assigned Counsel Administrator

1. There shall be a full-time Assigned Counsel Administrator to administer conflict assignments in accordance with the terms of this and other applicable law. The Assigned Counsel Administrator may also assign conflict cases on appeal. The Assigned Counsel Administrator shall report to and serve under the supervision of the Public Defender. The Assigned Counsel Administrator shall be compensated in accordance with the Management/Management Confidential Compensation Employment Policy as adopted by Resolution No. 424-05.
2. The Assigned Counsel Administrator shall be appointed by the Public Defender in accordance with civil services requirements and confirmation by the Cortland County Administrator.

B. Assigned Counsel Administrator; Responsibilities

The Assigned Counsel Administrator shall:

1. Compile and maintain a list of panel attorneys who indicate a willingness to accept conflict assignments. Review attorney applications and determine whether an attorney meets the criteria for panel participation.
2. Select attorneys for conflict assignment, in accordance with Article V. herein, on a rotating basis, for assignment, except where such conflict assignment is assigned to the Public Defender's Office or Conflict Attorney's Office as provided in Article V., Section 4, herein.
3. Maintain a record of all attorneys assigned directly by judges to represent conflict defendants and other litigants.
4. In conjunction with the Bar, recruit panel attorneys willing to accept conflict assignments.
5. Design and implement an orientation program for panel attorneys.
6. Develop and implement a complaint procedure that ensures that all complaints regarding attorney performance on pending cases are immediately forwarded to the assigning judge for resolution in connection with the pending case, and, where appropriate. The Assigned Counsel Administrator shall also maintain a record of all complaints regarding attorney performance.
7. Design and develop an attorney program application, and ensure that all attorneys execute such program application as a condition of accepting an assignment.
8. Maintain a record of all attorney acceptance[s] and rejection[s] of assignments.
9. In accordance with Article V., Section 5, review attorney invoices prior to submission to assigning judge for payment order and make appropriate recommendations to the assigning judge regarding payment.

10. Maintain such statistics and make such reports as may be required by the County Administrator or County Legislature.
11. Institute a yearly review process of the plan for the purposes of determining if the plan objectives are being met and for the purpose of determining if any changes are needed and recommending such changes. The Assigned Counsel Administrator shall seek the comments and recommendations of representatives of the Bar, the County, the Judiciary, panel attorneys, and any other individuals or entities the Assigned Counsel Administrator deems appropriate.
12. When necessary or appropriate, obtain information regarding a conflict assignment defendant's or other litigant's eligibility for public defender services for the purpose of making eligibility recommendations.

Section 4. Assignment Procedure

- A. Upon a request for indigent representation, the Assigned Counsel Administrator shall refer such request to the Public Defender to determine eligibility for representation by the Public Defender's Office. If the Public Defender declares that the office is conflicted, the Assigned Counsel Administrator shall refer such conflict to the Conflict Attorney's Office to determine eligibility for representation. If the Conflict Attorney declares that the office is conflicted, the Assigned Counsel Administrator shall, as soon as possible, provide the name of an attorney registered to provide assigned counsel to the judge in accordance with the procedures set forth herein. The assigning judge shall have the final authority to determine whether the attorney is qualified to handle the assigned matter and shall have the final authority to actually make the assignment except where such representation is being provided by the Public Defender or Conflict Attorney.
- B. The Assigned Counsel Administrator shall maintain the following lists of attorneys: (a) Those qualified to handle, A, B, C, felonies; (b) those qualified to handle D, E felonies; and (c) those qualified to handle misdemeanors; (d) those qualified to handle Family Court matters; and (e) those qualified to handle Surrogate Court matters. In cases of conflict declared by the Public Defender and Conflict Attorney, the Assigned Counsel Administrator shall assign, subject to the referring judge's approval, conflict cases to assigned counsel attorneys in sequence, considering the following factors as well as systematic rotation of panelist's names: matching of case classification with attorney skill level, potential conflicts of interest, geographic preference where administrative feasible, and the number of assignments already made to any attorney. The names of assigned counsel attorneys passed by for good cause should remain at the top of the list for the next available assignment. The

Assigned Counsel Administrator should manage files so as to avoid excessive assigned caseloads.

- C. For exceptional cases, and for cases where a defendant is incarcerated at the time of arraignment, except where such case is assigned to the Public Defender's or Conflict Attorney's Offices, the judge shall have the option to make a direct assignment of counsel from amongst those who are listed as assigned counsel attorneys on a list supplied to the judge by the Assigned Counsel Administrator provided that the judge shall notify the Assigned Counsel Administrator as soon as practical of the assignment. ~~Upon receipt of a notice from a judge of an in-court assignment, the~~ Assigned Counsel Administrator shall record the assignment on the panel attorney's record and the Assigned Counsel Administrator, for rotation purposes, shall treat the assignment as though the Assigned Counsel Administrator made the assignment.
- D. The Assigned Counsel Administrator shall maintain a record of assignments to each staff attorney within the Public Defender's Office, the Conflict Attorney's Office and referrals for assigned counsel attorneys. The Assigned Counsel Administrator shall note on each assigned counsel attorney's record the date the proposed assignment was made to the assigned counsel attorney, whether it was a direct assignment made by a judge and, if the assignment was recommended by the Assigned Counsel Administrator, whether the attorney accepted or rejected the assignment. When the attorney accepts the assignment and is approved by the judge, the Assigned Counsel Administrator shall note the date of acceptance, the defendant's or other litigant's name, and the charge against the defendant, or the type of case, for which representation is needed, and the referring judge on the attorney's record. The Assigned Counsel Administrator shall note the rejection where a judge for a particular case rejected the attorney.

Section 5. Compensation and Payment Procedures for Assigned Counsel Attorney Services.

- A. The amount of compensation paid to assigned counsel attorneys shall conform and be in accordance with Section 722-b of New York State County Law. Reimbursement for support services shall conform and be in accordance with Section 722-C of New York State County Law.
- B. The County Legislature shall promulgate additional payment regulations, by Resolution, in accordance with the requirements of applicable law or the requirements of the County Auditor, the County's independent auditors or the State Comptroller or any similar body or entity having such jurisdiction over the County. The Assigned Counsel Administrator shall have the right to implement any other payment regulations in accordance with the terms of this plan upon the prior review and approval of the

shall advise the Assigned Counsel Administrator of the disposition of each such complaint received and in those instances in which the Assigned Counsel Administrator determines that cause may exist warranting further consideration, the Assigned Counsel Administrator shall promptly refer any complaint to the Bar Association.

- B. The Assigned Counsel Administrator, Judge or Bar shall have the right, upon just cause, to remove or suspend attorneys from serving assigned counsel assignments. Just cause for removal or ~~suspension from assignment consideration shall be as follows:~~
1. Failure to adequately represent a client.
 2. Failure to comply with applicable professional standards.
 3. Failure to comply with the terms and conditions of this Law or other applicable laws, rules and regulations governing conflict assignments or representation of criminal defendants or other litigants.
 4. Repeated billing improprieties.
 5. Continued failure to accept assignments.
 6. Any other conduct by the attorney that would result in the frustration of this Law's objectives as set forth in Article V., Section 2, herein.
- C. The Assigned Counsel Administrator, Judge or Bar shall have the discretion to suspend an attorney from the panel membership for a period not to exceed six months. At the end of the suspension period, the suspending party shall have the right to impose reasonable conditions on the attorney's reinstatement for assigned counsel assignment consideration.
- D. Upon removal or suspension of an attorney from assigned counsel assignment consideration, the Assigned Counsel Administrator shall immediately notify all judges that the attorney is no longer eligible for conflict assignments.
- E. The Assigned Counsel Administrator shall have the right to refuse to consider an attorney for assigned counsel for any of the following reasons:
1. Refusal of the attorney to agree to the terms and conditions of this Law or to agree to applicable laws, rules or regulations.
 2. A previous finding by an Assigned Counsel Administrator that there was just cause for removal of the attorney from consideration.
 3. Failure of the attorney to meet the criteria established for handling conflict assignments.

4. Any other conduct by the attorney that would result in the frustration of the plan's objectives as set forth in Article V., Section 2.

F. Any attorney, rejected as an assigned counsel attorney or removed or suspended from consideration as assigned counsel, shall be entitled to a hearing under Article 78 of New York State Civil Practice Law and Rules (CPLR).

Article VI. Effective Date

This Local Law shall be, and become effective upon adoption and filing with the New York State Department of State.

STATE OF NEW YORK) SS:
COUNTY OF CORTLAND)

This is to certify that I, the undersigned, Clerk of the Cortland County Legislature of the County of Cortland have compared the foregoing copy of resolution with the original resolution now on file in this office, and which was passed by the Cortland County Legislature of said County on the 30th day of November and that the same is a correct and true transcript of such original resolution and of the whole thereof.

IN WITNESS WHEREOF I have hereunto set my hand
and the official seal of the CORTLAND COUNTY
LEGISLATURE, this 30th day of November, 2006



Clerk of the Cortland County Legislature