

David C. Schopp
Chief Executive Officer

Nadine E. Patterson
Deputy Executive Director – Civil Practice

Joanne Macri
Deputy Executive Director – Criminal Practice



Lisa M. Patterson
President

Craig R. Bucki
First Vice President

Timothy Murphy
Second Vice President

John T. Kolaga
Secretary

Meghan Corcoran
Treasurer

County Attorney Jeremy Toth
Department of Law
Edward A. Rath County Office Building
95 Franklin St., 16th Floor
Buffalo, NY 14202

Re: The Legal Aid Bureau of Buffalo, Inc. Can Improve Indigent Defense Representation in Erie County in a Cost-Effective Manner

Dear County Attorney Toth:

The Legal Aid Bureau has been the Public Defender in Buffalo City Court for more than sixty years. Our Criminal Defense Unit (CDU) has a staff of seventy-one employees, consisting of experienced criminal defense attorneys, support staff, social workers, client advocates and investigators who are well-qualified to provide client-centered representation at all stages of a criminal proceeding regardless of case type and charged offense. In addition, our Appeals and Post-Conviction Unit (APCU), consisting of a team of extensively trained appellate attorneys and legal support staff, is considered a statewide leader among providers of indigent legal services for training and setting best practices among appellate practitioners. The attorneys in APCU represent clients with direct criminal appeals to the Appellate Division, Fourth Judicial Department, the New York Court of Appeals and, where necessary, the United States Supreme Court.

Legal Aid also has an extensive Civil Legal Services Unit devoted to providing representation in a variety of civil matters for low-income clients (i.e., housing, bankruptcy, labor and unemployment, education access, veteran services, estate, foreclosure, education, consumer protection, immigration, and re-entry matters). Our office is the only organization in Erie County that has the capacity to provide both criminal defense and representation in civil matters that are frequently collateral to our client's criminal charges.

Legal Aid appreciates the County's interest in sustaining and improving the quality of constitutionally mandated indigent defense while maintaining cost efficiency. The following is a list of some of the areas in which we believe that our organization would be the most cost-effective option to Erie County in providing constitutionally and statutorily mandated representation to those who cannot afford private counsel.

A. Legal Aid's Expansion of Mandated Representation in the City of Buffalo

Legal Aid provides mandated representation to all financially eligible persons arraigned in Buffalo City Court and charged with select offenses (misdemeanors, violations, and E and D felonies). However, the

current contract with Erie County prevents Legal Aid from accepting case assignments of clients charged with A, B, and C felonies save for representation at arraignment.

Currently, the more serious felony offenses originating in Buffalo City Court that often require greater resources and more time to litigate are assigned to panel attorneys of the Assigned Counsel Program (ACP) and billed at an hourly rate of \$158.00/hour.

This peculiar division of the cases in Buffalo City Court stemmed from an earlier effort to ensure vertical representation in all felony cases in the City of Buffalo. However, the division of cases in Buffalo City Court has been problematic, causing issues for clients who must be re-assigned to an ACP attorney after receiving earlier representation from a Legal Aid attorney on the same criminal matter once a formal accusation to a higher-level felony is involved.

Legal Aid proposes that every criminal case requiring the arising in the City of Buffalo be assigned to our office, less any conflict cases. This includes all higher-level felony offenses currently assigned to the ACP. Based on available data, Legal Aid can significantly increase its felony caseload to include higher level felonies without the need for significant additional funding and while maintaining ILS Caseload Standards. This will undoubtedly save Erie County taxpayer money.

B. Legal Aid's Expansion of Mandated Representation in Appellate and Post Conviction Representation

Instrumental to indigent defense representation in Erie County is the Bureau's Appeals and Post-Conviction Unit (APCU) which is one of the largest and most respected appellate offices in New York State. The APCU, consisting of a team of dedicated and extensively trained fourteen appellate attorneys and legal support staff, is a statewide leader among providers of indigent legal services for training and setting best practices among appellate practitioners. Legal Aid is the only mandated representation provider in New York State's 8th Judicial District to have a well-trained, closely supervised team of appellate attorneys. Strict protocols are in place to ensure that clients receive quality legal representation and that appellate briefs are timely filed. Each client pursued receives representation that is in accordance with ILS Appellate Standards and Best Practices.

APCU is the primary provider of appellate services in Erie County. It handles all criminal appeals and post-conviction motions arising out of superior court. Legal Aid is well-positioned to assume all criminal defense appeals and post-conviction assignments arising out of Buffalo City Court, less any conflict cases, without requiring any additional funding. In addition, Legal Aid proposes that the APCU be considered to accept all assignments, less any conflict cases, involving Town Justice Court appeals to Erie County Court, as well as various parole matters.

C. Expansion of Representation in Higher Volume Justice Courts

Representation in town and village justice courts is costly. Although Legal Aid focuses its representation on the City of Buffalo, there are many practical options the working group can consider regarding Legal Aid's expansion of indigent defense representation beyond cases originating in Buffalo City Court.

Currently, the ACP handles all assignments in these courts, including conflict cases that are assigned to multiple private attorneys on the panel. When individual cases are assigned to individual attorneys many of the high-volume courts have a considerable number of assigned attorneys appearing in each court session, each making \$158.00/hour. Alternatively, depending on the volume of cases handled in a particular court, Legal Aid can assign staff attorneys to the courts in compliance with ILS caseload standards.

Legal Aid proposes that the best way to evaluate the quality of representation and cost savings that could result from Legal Aid's representation is to allow Legal Aid to engage in a one-year pilot project where the Bureau would be assigned as a primary provider of mandated representation in one high-volume justice court, such as Cheektowaga Town Justice Court, to accurately assess the costs involved to the County and the Bureau. Legal Aid's representation during such a pilot project would also include superior court representation on any felony arising out of the pilot project court.

D. Expansion of Representation in Family Court Cases

Providing mandated representation on behalf of indigent parents in family court proceedings remains a significant fiscal burden on Erie County. Legal Aid is interested in establishing a Family Defense Unit that would provide mandated representation to parents in Family Court proceedings. To avoid any potential concerns of conflict cases involving Legal Aid's Attorney for the Child Unit (AFC), the Bureau is prepared to establish AFC as a separate nonprofit supported by independent administrative functions provided by our organization. This separate not-for-profit would also represent those charged as adolescent offenders in Erie County's Youth Part.

Legal Aid has the proven capacity to provide the highest quality representation at a cost that is less than the cost of an equivalent county office. Although Legal Aid's current employee salaries are close to equivalent to county salaries, Legal Aid's fringe benefit rates on those salaries are significantly less for county employees.

The Legal Aid Bureau looks forward to meeting soon to discuss how the Bureau can continue to provide the best and most cost-effective indigent defense representation in criminal, appellate and post-conviction, and family court matters across Erie County.

Sincerely,



David C. Schopp
Executive Director/Chief Executive Officer

cc: Mark Poloncarz, Erie County Executive
Mark Cornell, Erie County Deputy Budget Director
Honorable Susan Eagan, Erie County Court Judge, 8th Judicial District Supervising Criminal
Court Judge (Working Group Co-Chair)
John Flynn, Esq., Partner, Lippes Mathias LLP (Working Group Co-Chair)