COMMITTEE TO ENSURE QUALITY OF MANDATED REPRESENTATION
Minutes of Conference Call Meeting Held December 9, 2011

Attendees:

William Baker, Robert Dean, Norman Effman (Chair), Klaus Eppler, Jan Fink, Susan Horn, Gary Horton, Andrew Kossover, Susan Lindenauer, Robert Lonski, Malvina Nathanson, Michael Scherz, Sherry Wallach

Status Report of Committee Report Concerning Shared Resources

The chairs or members of each subcommittee reported that each subcommittee was satisfied with the draft report submitted prior to the last committee meeting with the exception of the subcommittee on assigned counsel panels, which had modified its draft. Malvina Nathanson has been assigned the task of preparing the first draft of a committee report that will consolidate the subcommittee reports. The deadline date for the first draft is December 15. The first draft will be reviewed by Jack Carter, Susan Lindenauer and Klaus Eppler. After they have finished their edits, the resulting draft will be circulated to the full committee.

Susan Lindenauer raised concerns about the specificity in the final section of the training subcommittee report. She thought that a recommendation concerning the format of proposals to be submitted to the Office of Indigent Legal Services should await information from ILS concerning its requirements. Gary Horton reported that at a recent meeting of the Chief Defenders, Bill Leahy, Executive Director of OILS, advised that his office's RFPs would be issued in about early March or April. Meanwhile, our liaisons to OILS, Susan Horn and Andy Kossover, will seek information from Bill Leahy concerning what will be required in a proposal.

NYSBA Annual Meeting

Norm anticipates that the Committee will make an informational presentation to the NYSBA Executive Committee and House of Delegates at the annual meeting in January. The presentation will be accompanied by a draft report.

A date for a Committee meeting at the annual meeting has not yet been set.

Outline for Committee Report

Norm explained his outline for the report (previously distributed). The Committee discussed the "Background" section. Malvina stated that she could probably draft a narrative to cover the first two subdivisions – "Why the need to address the task – our Mission" and "history of CEQMR" – but did not know enough about the third – "Background of Indigent Defense Fund and Indigent Legal Services Office." Andy has a

memorandum he prepared for his county legislature and will send it to Malvina. Malvina will send a draft of the Background section to Andy, Susan Horn and Gary for their comments before incorporating that section into the complete report. Norm will ask the entire Committee to send any suggestions or ideas they have about the Background section to Gloria Herron Arthur by Tuesday for distribution to the entire Committee.

Norm also advised that he would draft the third section, "Proposed Resolution for House of Delegates," himself.

Update on Activities of OILS

Norm and Andy reported on Bill Leahy's current plans. The office is hiring three attorneys and one non-attorney. He has also set a plan for distribution of money:

- 62.1 million is the baseline amount (75% of 2009 funding to counties) to be distributed to counties.
- 8.1 million (25% of 2009 funding to counties) will be distributed to counties for grants targeted to specific new programs.
- 35 million will be distributed in a competitive bidding process for counsel at arraignment and implementation of Padilla projects.

Norm noted that this represents funding for one year but OILS intends each funded program to be extended for two additional years. He warned that the availability of funding depends on whether there are sweeps.

The meeting was adjourned at 1:45 p.m.

Respectfully submitted,

Malvina Nathanson
Acting Secretary

Minutes
October 12, 2011
Committee to Ensure Quality of Mandated Representation

Present

Chair Norman Effman; William Baker; John E. Carter; Billy Coughlin on behalf of David Schopp; Patrick Cummings on behalf of Stephen Acquario; Gary Horton; Andrew Kossover; Robert Lonski; Malvina Nathanson; and Gloria Herron Arthur.

Telephone

President Vincent E. Doyle III; David Abbatoy; Robert Dean; Klaus Eppler; Janet Fink; Susan Lindenauer; Michael Scherz; and Sherry Levin Wallach.

Excused

Susan Horn; Tucker Stanclift; and Karen Steinberg.

Minutes of August 28, 2011 Meeting

William Baker moved that the minutes of August 28 be accepted. Malvina Nathanson seconded the motion. The members voted unanimously to accept the minutes.

Discussion re: Sharing Resources Among Indigent Defense Providers

Chair Effman led a discussion about what role the Committee to Ensure Quality of Mandated Representation (CEQMR) should have in developing a model plan for mandated providers to use in facilitating the sharing of resources. Mr. Effman stated that possibly the short term goal should be for the CEQMR to develop a model form or agreement for sharing resources. The long range goal could be for the CEQMR to identify NYSBA=s role vis-a-vis the Indigent Legal Services Office (ILS).

Ms. Lindenauer suggested that CEQMR should try to involve ILS in the CEQMR=s planning discussion so that we can ensure their buy-in to whatever proposal we develop. President Doyle cautioned that the CEQMR should not allow ILS to set our agenda since NYSBA=s goals may be broader than those of ILS. In response to Ms. Lindenauer=s comments, Mr. Effman stated that he did not see the issue as the CEQMR having to first obtain ILS approval on any of our proposals, but rather he believes that we should develop our proposals with an understanding of how the proposals are likely to be viewed by ILS.

Chair Effman stated that since ILS will be issuing Requests for Proposals, perhaps the CEQMR could develop a template for providers to use in drafting their responses to the RFPs. He suggested that a proposal approved by ILS that he, Mr. Lonski and other mandated providers put together in the 8th Judicial District might be an example. The proposal ensures that attorneys placed on the 18B panel would have the competence to

provide meaningful and effective assistance to the clients they would be assigned by including a screening component that determines an applicant=s certification to handle designated offenses (such as low level misdemeanors or more serious felony offenses) based on the applicants skill level and experience and a training component that provides supervision of new panel members through second chair opportunities, feedback based on observations of how panel members handle case assignments, CLE certifications, and mentoring.

Mr. Lonski recommended that CEQMR try to identify the basic elements that ILS would be looking for in determining which proposals it would fund based on input from ILS regarding what it identifies as the essential elements to include in proposal. The committee=s NYSBA-approved Standards, setting forth the essential elements for any assigned counsel plan, should be in every proposal.

Mr. Kossover stated his understanding that Mr. Leahy would like proposals to include performance goals and standards. Mr. Kossover volunteered to obtain from Mr. Leahy a copy of a model proposal which contains both goals and standards.

Ms. Nathanson commented that it is unlikely that the committee will be able to devise a one size fits all model plan. CEQMR should try to develop different models from which different providers could choose.

The committee discussed how to formulate the models. As a first step, it may be helpful for the committee to identify what resources capable of being shared exist in which localities. The resources of institutional provider offices not be overlooked. Under the federal Criminal Justice Act, federal defender offices are required to serve as a resource for panel attorneys. Legal Aid Societies and Public Defenders could do the same.
The committee will need to look at County Law section 722 which governs indigent defense and other statutes that may control the degree and extent to which localities can share resources. It may be that some legislative changes will have to be proposed. Changes in existing Bar Association plans may also be necessary.

At some point it will be desirable to obtain support from the counties. Mr. Cummings, who attended the meeting on behalf of Stephen Acquario, Executive Director of the New York State Association of Counties, stated that counties want to minimize costs. Nevertheless they may be willing to try a regional approach to indigent defense if they are shown that demonstrated cost savings will result. If not, they likely would not be interested, particularly, in light of the current cap on property tax increases. NYSAC would be willing to let counties know of CEQMR=s efforts. Mr. Cummings explained that the particular process NYSAC would employ depends on the complexity of the legal issue presented. In some instances NYSAC may advise individual counties. He noted that NYSAC has two seats on the ILS Board and that CEQMR should consider reaching out to them.

There was a discussion concerning the relationship between the different subcommittees. In particular, it was not clear whether the 18-B subcommittee was limited

to assigned counsel programs, and whether it should deal with the subject matter of other subcommittees (appeals, training, and support services) as they relate to assigned counsel plans. The sense of the committee was that the 18-B committee would focus on assigned counsel plans, although some recommendations might include the sharing of resources with institutional providers, and that there was likely to be some overlap but that was not of concern in the early stages.

Time Line

By mid-November, the subcommittees will provide CEQMR with a progress report and plan of action. By early January, each subcommittee will prepare a working draft. We hope to provide an informational report to the House of Delegates at the late January 2012 meeting. A schedule of telephone conferences for the subcommittees was set. The full committee will meet by videoconference (locations in New York City, Albany, and Buffalo) on November 22 at 2:00 p.m.

Sweeping of Funds from Indigent Defense

ASweeping@ is the executive practice (exercised by Governors Pataki and Spitzer) of taking unused indigent defense funds and diverting them to other uses. President Doyle recalled that NYSBA had issued a resolution denouncing the practice and provided a copy of the resolution to William Leahy, the Executive Director of ILS. The ILS enabling statute states that indigent defense funds are to be used solely for ILS purposes.

ILS Standards

ILS is tasked with developing attorney performance standards. Mr. Kossover reported that Marty Crawford, of the New York State Defenders Association, is working with Mr. Leahy=s office to develop standards using models such as those promulgated by NYSBA, NYSDA and the First Department Oversight Panel. He is cautiously optimistic that a blended version of these existing standards will be ready for review and comment sometime in November.

The ILS enabling statute appears to require that Conflict Defender Officers (CDO) have standards in place that have been approved by the county bar association and signed off on by the Administrative judge for the judicial district where the county is located.

Mr. Kossover reported that in a meeting with Mr. Leahy in September, Mr. Leahy expressed concern that counties with CDOs are opposed to the enactment of standards as they consider such requirements as attorney case load limits, minimum qualification standards for attorney, and on-going training requirements to be unfunded mandates.

CEQMR Liaisons to ILS

Chair Effman announced that Ms. Susan Horn and Mr. Kossover will act as liaisons to ILS.

Action Items

Ms. Herron Arthur will distribute the immigration proposal submitted to ILS.

Mr. Kossover is to obtain a model RFP and provide the committee with an update on the development of ILS standards.

Ms. Horn and Mr. Kossover are to contact NYSAC Board members to inform them of CEQMR=s efforts and seek input re: how the committee should go about securing input and cooperation from counties.

Mr. Carter moved that the meeting be adjourned. Ms. Nathanson seconded the motion. The meeting adjourned at 1:30 pm.

Respectfully submitted,

Gloria Herron Arthur, Esq.
NYSBA Staff Liaison

COMMITTEE TO ENSURE QUALITY OF MANDATED REPRESENTATION

Minutes August 26, 2011 Meeting

Attendees:

In-person: Chair Norman Effman; William Baker; Robert Dean; Klaus Eppler; Janet Fink; Andrew Kossover; Susan Lindenauer; Malvina Nathanson; Tucker Stanclift; Billy Coughlin for David Schopp. **Teleconference:** John Carter; Susan Horn; Gary Horton; Prof. Laurie Shanks. **Excused:** Prof. Merril Sobie; Karen Steinberg; Michael Scherz; Robert Lonski; Sherry Wallach; Marc Gann; Hon. Patrick L. Kirk; Vincent Doyle III; Timothy Hoover.

Review of Revised Mission Statement

The revised Mission Statement was circulated to members. Some members were concerned that as revised, the statement did not specifically address mandated representation in Family Court proceedings. Following discussion, it was agreed that the revised Mission Statement was intended to also apply to mandated representation in Family Court consistent with the Committee's inclusion of both court systems in the recently Revised Standards on Mandated Representation.

Ms. Nathanson suggested that the revised Mission Statement could be changed to read more smoothly and volunteered to revise it.

Update on Indigent Legal Services Office (OILS)

Chairman Effman reported that OILS has made an initial disbursement of approximately 90% of grant awards to providers, despite the fact that the office still is not yet fully staffed. The remaining 10% will be released later pursuant to a grant application process. No information has been released yet concerning the grant application process.

Mr. Horton explained that the grants will be issued directly to county public defender offices to be used for specific criminal justice initiatives and that the grants will not be placed into a county's general fund as has been the practice in previous years. Mr. Effman noted that the initial grants were awarded on the same basis as last year and thus did not represent any policy initiatives.

This summer, the Chief Public and Conflict Defenders met with OILS Executive Director William Leahy. The chief defenders recommended that an advisory board of chief defenders be established to give advice to OILS. Conceptually, the chiefs believe that OILS would benefit from input front line service providers could offer as their interest may not always be consistent with the interest of the OILS statutory Board. A second meeting is scheduled for September.

Mr. Kossover and Mr. Dean volunteered to serve as liaisons from our Committee to the OILS office so that we can ensure we are working collaboratively together.

Members discussed that there may be differing views within the mandated provider bar concerning whether counsel at arraignment is more or less important than providing offices with adequate funding for interpreters, social workers, expert witnesses, or private investors. The divergence in views may reflect a downstate vs. upstate dichotomy, the realities of limited funding, or both. However, Professor Shanks urged that the Committee maintain its focus and not feed into this controversy as the most important issue is ensuring adequate funding so that consistently high quality mandated defender services can be provided throughout the state. Mr. Horton noted that each county may have its own perspective concerning what it would identify as critical need. These types of differences are driven by local dynamics.

Sharing of Resources

In fulfilling our revised Mission the Committee is expected to produce a report detailing our recommendations concerning the sharing of resources and provision of mandated representation on a regional basis. Mr. Effman identified the following substantive areas for the Committee to focus on, with each issue to be addressed by a separate subcommittee:

Assigned Counsel 18-B Plans - this subcommittee will be asked to (1) study the current assigned counsel system, including 18B plans, and public and conflict defender offices; the training and selection of 18-B attorneys; and whether 18-B attorneys should be certified re: competency to handle felonies and/or misdemeanors; (2) analyze the strengths and weaknesses of the current systems; and (3) develop recommendations concerning how these systems could be reformed to better serve the needs of defendants and counties on a regional basis.

Appeals – this subcommittee will (1) examine how counties currently handle appeals and whether training is provided for appeals staff; (2) identify the strengths and weaknesses of the county-based approach to appeals; and (3) develop recommendations for how appeals could be more efficiently handled using a regional approach.

Training – the training subcommittee will (1) examine how counties presently train their indigent provider staffs (public defenders and conflict defenders) and 18-B assigned attorneys; (2) identify the strengths and weaknesses of the current training programs; and (3) develop recommendations which, if implemented, could better ensure that the quality of indigent defense representation is more consistent and standardized across the state.

Support Services – are defined as any service not performed by attorneys and includes the services of social workers, experts, private investigators, interpreters, as well as technology (computerized case management systems, legal research, etc.). This subcommittee will be asked to (1) report on whether counties currently provide these ancillary services, and if so, whether the level of ancillary services is sufficient; (2) identify strengths and weaknesses in the support services systems; and (3) develop

recommendations for how support services could be delivered more effectively on a regional basis.

Members were asked to review the subcommittee descriptions and are encouraged to volunteer to work on one or more. Ms. Lindenauer will work with each subcommittee because of her involvement with the Task Force on Family Courts. Mr. Eppler will work with all of the subcommittees on any NYC specific issues.

Assigned Counsel 18-B - Mr. Baker, Mr. Carter, Mr. Stanclift, Ms. Nathanson, and Ms. Fink volunteered to work on this subcommittee. Mr. Dean suggested that this subcommittee may want to look at the 1st Department's resources office for assigned counsel.

Appeals – Mr. Dean, Ms. Fink and Ms. Herron Arthur.

Training – Mr. Stanclift, Mr. Baker, and Mr. Dean.

Support Services – Mr. Horton and Ms. Nathanson.

The subcommittee list will be distributed to the entire committee so all members can sign up for one or more.

Focus of the Report

Mr. Eppler recommended that, using the Revised Standards as a guide, each subcommittee should develop at least two key recommendations per substantive area of review and specific suggestions for implementing those recommendations. It was suggested that Ms. Herron Arthur provide members with a copy of the Kaye Commission Report and the Spangenberg Report – both of which were comprehensive studies of the indigent defense system.

Adjournment

The meeting was adjourned at approximately 1:00 pm.

Next Meeting Date

The next meeting will take place in October in Albany, New York at the State Bar Center. Date and time to be announced.

Respectfully submitted,

Gloria Herron Arthur, Esq.
NYSBA Liaison

Minutes
Committee to Ensure Quality of Mandated Representation
January 26, 2011

Present

Chair Norman Effman, John E. Carter, Robert Dean, Klaus Eppler, Janet Fink, Susan Horn, Seymour James, Andrew Kossover, Susan Lindenauer, Malvina Nathanson, David Schopp, NYSBA Staff Liaison Gloria Herron Arthur. Guest: Vincent Doyle.
Excused: Professor Laurie Shanks and Craig Schlanger.

Update re: June 17, 2011 Criminal Law CLE

Malvina Nathanson reported that on June 17, 2011, the Committee will present a free, day-long CLE program entitled: *Staying Ahead of the Curve: What Criminal Defense Lawyers Need to Know.* The issue of whether Dorchen Leidholdt should be a presenter remains unresolved. Ms. Nathanson volunteered to speak with Joanne Macri and Ms. Leidholdt to determine if their presentations could be combined. Committee members recommended that the seminar should begin at 9:30 rather than 9:10 to allow time for attendees from the NYC area to arrive on the first train.

Committee members also expressed interest in having the seminar webcast and/or recorded so that it would be available to other criminal defense attorneys later. NYSBA liaison Arthur will consult with the Doug Guevara, the new director of CLE, to determine the cost of these options.

Nominations Committee

The Nominations Committee members are Ms. Nathanson, Mr. Eppler, Professor Shanks, and Liaison Arthur. Ms. Arthur is developing the nominations brochures for the Denison Ray Criminal Defender Awards and the Awards for Outstanding Achievements in Promoting Standards of Excellence in Quality Mandated Representation. Up to three Denison Ray Criminal Awards may be presented: two awards to staff attorneys and one director award. Up to three Excellence Awards may be given. The call for nominations brochures will be posted on the NYSBA pro bono website, e-mailed, and hard mailed to: Criminal Justice Section members; NYS Defenders Association list; NYS Association of Criminal Defense Lawyers; and to County Court Clerks offices.

Award recipients will be recognized during the June 17th luncheon to be held in conjunction with the CLE program.

Office of Indigent Defense Legal Services (OILS)

Chairman Effman reported that Bill Leahey of Massachusetts has been nominated to be the Executive Director of OILS. Mr. Leahey is well known for being the architect of the Massachusetts public defense system.

Andrew Kossover will send a detailed memo re: OILS and its distribution formula to Ms. Arthur for dissemination to the Committee.

Report of the President-Elect

President-Elect Vincent E. Doyle, III, shared with Committee members that indigent defense will be one of his key initiatives of his presidency. In this regard, he would like NYSBA to create a model for regionalization of defense services; conduct a summit; develop a procedural manual; and formulate model participation agreements. To accomplish this goal, Mr. Doyle would like to add new members to the Committee, some with knowledge of technology, others with knowledge of municipal law; enhance CEQMR's budget; and have the committee coordinate with other sections and committees (i.e., Family Law Task Force, PCAJ; Criminal Justice).

President-Elect Doyle also expressed concern that a protocol has not yet been established for how monies will be distributed through OILS. Moreover, since the Executive Director is not yet in place it is unlikely OILS will be in a position to begin distribution on March 31st. If OILS is not operational by March 31st and, thus, unable to distribute any funds, then upstate New York counties will suffer substantial hardship.

Adjournment

Meeting was adjourned at 11:45am.