

THE COUNCIL OF THE CITY OF NEW YORK

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Hearing on the Fiscal Year 2013 Executive Budget

Legal Aid Society

June 1, 2012

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Table of Contents

Indigent Defense Fiscal 2013 Budget Overview 1

Indigent Defense Funding Summary 2

The Providers 3

Legal Aid Society – Civil Legal Services 5

Appendix 1: City Council Fiscal Year 2012 Initiatives 7

Indigent Defense Fiscal 2013 Budget Overview

New York City, according to State law, is solely responsible for funding legal representation for indigent criminal defendants in New York City. Whereas some jurisdictions across the country have government-employed public defenders, New York City contracts with several institutional providers and operates the Assigned Counsel Program to provide legal services to indigent criminal defendants. The goal of the City's indigent defense services is to insure that all individuals charged with crimes have effective assistance of counsel, both at the trial and on appeal.

The Legal Aid Society (LAS), under agreement with the City of New York, serves as the primary indigent criminal defense provider in the State court system, at both the trial and appellate levels, for individuals who cannot afford private legal counsel. Indigent criminal defendants are also represented by other entities. In the Criminal and Supreme Courts, indigent defense work is performed by five alternative contractors (one in each borough), by a Court-appointed panel of assigned counsel (18-B) attorneys, and by the Neighborhood Defender Service (NDS), which is a full-service agency serving Northern Manhattan. Of note, the alternative provider on Staten Island, Battiste, Aronowsky & Suchow is funded through Fiscal 2012 only, and the Legal Aid Society is contracted to provide services beginning in Fiscal 2013.

In the Appellate Courts, cases are handled by LAS and two alternative contractors (Appellate Advocates and Center for Appellate Litigation), the Office of the Appellate Defender, and 18-B attorneys. The City also provides, on a limited basis, institutional representation for adults in Family Court.

This report presents an analysis of the Indigent Defense portion of the City's Miscellaneous Budget (Agency 098) as proposed in the Fiscal 2013 Executive Budget. In the section below, the Fiscal 2013 budget is presented in a funding summary table which provides an overview of indigent defense spending for Fiscal 2012 and Fiscal 2013 by provider. The chart is followed by a discussion of year over year changes, an overview of the criminal indigent defense providers and the civil legal services provided by Legal Aid and funded through City Council Initiatives. The Committees on Finance and Fire and Criminal Justice Services will hold a hearing on the Fiscal 2013 Executive Budget for the Legal Aid Society on June 1, 2012

Indigent Defense Funding Summary

<i>Dollars in Thousands</i>	2012 Adopted	2012 Exec. Plan	2013 Exec. Plan	*Difference 2012-2013
18-B Assigned Counsel Program	\$75,273	\$75,073	\$74,836	(\$437)
Legal Aid Society – Criminal Defense	\$84,700	\$84,700	\$86,685	\$1,985
Legal Aid Society - Appellate	8,100	8,100	11,423	3,323
Legal Aid Society - sub-total	\$94,900	\$92,800	\$98,108	\$5,308
NY County Defenders	\$7,236	\$7,329	\$7,236	\$0
Bronx Defenders	14,250	12,714	11,732	(2,518)
Brooklyn Defender Services	16,015	16,015	14,440	(1,575)
Queens Law Associates, P.C.	8,450	8,448	8,448	(2)
Battiste, Aronowsky & Suchow, Inc. (Staten Island)	131	131		(131)
Alternative Providers - Trial Level sub-total	\$46,082	\$44,637	\$41,856	(\$4,226)
Appellate Advocates	\$4,283	\$4,283	\$7,035	\$2,752
Center for Appellate Litigation	3,783	3,783	7,156	3,373
Alternative Providers - Appellate Level sub-total	\$8,067	\$8,067	\$14,191	\$6,125
Neighborhood Defender Services (Upper Manhattan)	\$4,750	\$4,810	\$4,750	\$0
Office of the Appellate Defender	\$1,751	\$2,347	\$2,611	\$860,166
Center for Family Representation (Manhattan)	\$2,380	\$2,380	\$2,442	\$62
Center for Family Representation (Queens)	2,711	2,728	2,483	(229)
Bronx Defenders	3,988	3,988	4,163	175
Legal Services for New York City (Brooklyn)	3,605	3,805	3,805	200
Family Court Providers sub-total	\$12,684	\$12,901	\$12,892	\$208
Funding to Cover Estimated New Costs Stemming from RFP & Art. 10 Family Justice Center	\$6,218	\$329	\$3,350	(\$2,867)
Total Indigent Defense Services Budget	\$249,724	\$240,963	\$252,595	\$2,871

*The difference of Fiscal 2012 Adopted compared to Fiscal 2013 Executive Plan.

The Executive Budget for indigent defense services includes \$252.6 million for Fiscal 2013. This amount is \$2.8 million more than the Fiscal 2012 Adopted amount of \$249.7 million and is approximately \$11.6 million more than the current 2012 modified budget.

In June 2011, the projected Fiscal 2013 budget for indigent defense was \$239.2 million, approximately \$10.5 million less than the Fiscal 2012 Adopted budget of \$249.7 million. Since Fiscal 2012 Adoption, \$13.4 million in contract adjustments have increased the Fiscal 2013 budget to \$252.6 million. These changes include: adjustments of \$9.7 million for appellate contracts; \$2.7 million for Legal Aid contracts (\$2 million for the criminal defense contract and a \$700,000

technical adjustment to the appellate contract) and \$1 million in other contract costs. (Please see the provider section below for individual contract details.)

The Executive Budget for Fiscal 2013 shows \$11.6 million in growth when compared to the Fiscal 2012 Modified budget. This difference is attributable to the other adjustments listed above and Fiscal 2012 contract adjustments.

The Providers

The Legal Aid Society (LAS)

The Fiscal 2013 Executive Budget for Legal Aid includes \$98.1 million, \$5.3 million more than the Fiscal 2012 Adopted Budget. Of that amount, \$84.7 million is for criminal indigent defense and \$11.4 million is for appellate litigation services.

The Fiscal 2013 Executive Budget adds one-time funding of \$1.9 million in Fiscal 2013 to cover costs associated with 218 additional appellate cases that were handled in Fiscal 2012. In addition, baseline funding of \$1.4 million is being added in Fiscal 2013 to support costs associated with the increase in the appellate caseload. The base contract caseload was 900 and Legal Aid took on an additional 218 cases. The budget now supports funding for 1,118 appellate cases annually. In addition to appellate litigation, the Fiscal 2013 Executive Budget adds an additional \$2 million for criminal indigent defense services pursuant to LAS' contract.

Alternative Indigent Defense Contractors

In addition to the Legal Aid Society, the City contracts with seven indigent defense firms. The five that provide criminal defense services include New York County Defenders, Bronx Defenders, Brooklyn Defender Services, Queens Law Associates, P.C., and Battiste, Aronowsky & Suchow. The two that provide appellate advocacy are the Center for Appellate Litigation (1st Appellate Department) and Appellate Advocates (2nd Appellate Department.) The alternate providers are contracted to represent a fixed number of cases, unlike Legal Aid.

The Executive Budget includes \$44.6 million in Fiscal 2012 and \$42 million in Fiscal 2013 for the trial-level alternative providers. The amounts above represent the finalized contract amount for each provider in Fiscal 2012 and Fiscal 2013. (See Indigent Defense Funding summary for individual amounts.)

The Executive budget includes \$8 million in Fiscal 2012 and \$14.2 million in Fiscal 2013 and the outyears for appellate litigation services. Of that amount approximately \$7 million will support work provided by the Appellate Advocates and \$7.2 million will support work provided by the Center for Appellate Litigation. Of note, the appellate providers are entering in the last year of their contract. It is anticipated that within six months, the CJC will release an RFP for appellate litigation services. The current contract will end by June 30, 2014.

The Executive Budget adds \$6.4 million in additional funding for Fiscal 2013 to support appellate litigation services provided by Appellate Advocates (AA) and the Center for Appellate litigation (CAL.)

The Executive Budget adds one-time funding of \$3.8 million (\$1.7 million for AA and \$2.1 million for CAL) in Fiscal 2013 to support costs associated with additional appellate cases (171 for AA and 215 for CAL) that were handled in Fiscal 2012. In addition, the Executive Budget adds baseline funding of \$2.3 million (\$1.1 million for AA and \$1.2 million for CAL) is being added in Fiscal 2013 to support costs associated with the increase in appellate caseloads. Appellate Advocates is now funded to handle 601 appellate cases annually and Center for Appellate Litigation is now funded to handle 595 appellate cases annually.

Assigned Council Program (18-B Attorneys)

The Court appoints private 18-B attorneys to represent defendants when representation by an indigent defense provider would create a conflict of interest (i.e., when multiple defendants need representation) or when the defendant is charged with a crime punishable by death or life imprisonment. The Executive Budget includes \$75 million in Fiscal 2012 and 2013 to support the assigned council program.

The CJC sought to create institutional conflict providers through the RFP released last February, but an ongoing lawsuit has prevented the CJC from doing so. If the City prevails in court and the CJC succeeds in executing one or more such institutional contracts, the number of cases handled by 18-B attorneys, and by extension, the associated dollars paid to them, may be significantly reduced. The Fiscal 2013 Budget, however, recognizes no 18-B savings.

Neighborhood Defender Service

NDS is a full service, community-based indigent defense organization. For several years the City Council funded NDS to provide indigent defense services in the catchment area of Northern Manhattan. In years past, NDS had been deemed ineligible to receive non-discretionary funding from the City since past RFPs have sought the provision of services exclusively at the borough level as opposed to a catchment area level. This contracting reality necessitated the annual provision of funding by the City Council to keep NDS in business.

The recently-released RFP allowed NDS, for the first time, to submit a responsive bid on a catchment area basis. NDS was awarded a multi-year contract with the Administration to provide indigent defense services. An executed contract stemming from this process is in place and the Fiscal 2013 Executive Budget contains funding for NDS in the amount of \$4.8 million in Fiscal 2012 and \$4.75 million in Fiscal 2013.

Office of the Appellate Defender (OAD)

OAD is a twenty-two year old not-for-profit firm devoted to providing representation to indigent defendants in the First Department, primarily in criminal appeals in State Court and collateral proceedings in State and Federal Court. For several years the City Council funded OAD to provide these services. As a result of the RFP issued for appellate criminal defense services, OAD entered into a multi-year contract with the Administration.

The February 2012 Plan increased the Office of the Appellate Defenders contract from \$1.7 million to \$2.3 million in Fiscal 2012 and Fiscal 2013. The increase of \$557,266 was attributed to an increase in their caseload from the Office of Court Administration that was not originally covered under their contract. The Fiscal 2013 Executive Budget adds one-time funding of \$263,000 in

Fiscal 2013 for 26 additional cases that were handled in Fiscal 2012. As discussed above, the appellate providers are entering the last year of their contract which will expire June 30, 2014.

Family Court Providers

As it has for the past several years, the indigent defense budget contains funding for three organizations to provide legal representation for adults in certain Family Court proceedings. This combined funding includes approximately \$12.9 million in Fiscal 2013 and the outyears for the provision of such services in four boroughs: Manhattan (Center for Family Representation, or CFR), the Bronx (Bronx Defenders), Brooklyn (Legal Services NYC), and Queens (CFR).

Legal Aid Society – Civil Legal Services

Since Fiscal Year 1993 the City Council has been funding the Legal Aid Society's Civil Practice for services that are provided through its neighborhood-based offices within the five boroughs and city-wide units that serve individuals with special needs.

Although the Legal Aid Society is now fully funded by the Administration for its criminal practice, the Fiscal 2013 Executive Budget contains \$2.2 million in cuts to the Legal Aid Society in Fiscal 2013 for the provision of civil legal services. These cuts represent funding provided by the City Council in the Fiscal 2012 Adopted Budget but not baselined by the Mayor in the City's Financial Plan for Fiscal 2013 and the outyears.

Civil legal services are a great resource for low-income New Yorkers. In testimony from the Legal Society during the Committee on Fire and Criminal Justice Services hearing on the Fiscal 2013 Preliminary Budget, Steve Banks the Attorney-in-Chief indicated that the civil program handled more than 44,000 individual civil matters which benefited around 100,000 children and adults living in poverty citywide. The services that are provided by Legal Aid run the gamut from housing/homelessness and immigration issues to domestic violence/family law to employment and low-wage worker matters. Please see below for the initiatives that were funded by the Council in Fiscal 2012.

- **Anti Eviction and SRO Legal Services** – Funded at \$2 million in the Fiscal 2012 Adopted Budget, this initiative provides services to Low-and moderate-income people faced with illegal eviction and to Single Resident Occupancy (SRO) tenants. Legal Aid received approximately \$714,000 for the provision legal services and advocacy.
- **Immigrant Opportunity Initiative** – Funded at \$4 million in the Fiscal 2012 Adopted Budget, this initiative provides services to New York City's immigration population. Legal Aid received approximately \$241,000 for the provision of legal services that focus specifically on wage and hour disputes and other workplace issues.
- **Citywide Civil Legal Services** – Funded at \$1.5 million in Fiscal 2012, this initiative provides services to indigent persons requiring legal assistance. Legal Aid received \$750,000 for the provision of legal services and advice. Services include but are not limited to: direct client representation, including representation in class action cases; the provision of legal advice; community legal education presentations; pro-bono/volunteer

lawyer programs; and hotline and other telephone-based legal services. Legal areas in which services may be provided include, but are not limited to: consumer/finance; education; employment; family; juvenile; health; housing; income maintenance; individual rights; and miscellaneous benefits.

- **Unemployment Insurance/Supplemental Security Income Program** – Funded at \$1 million in the Fiscal 2012 Adopted Budget, this initiative provides services to persons eligible for unemployment insurance and supplemental security income. Legal Aid received \$500,000 for the provision of legal representation at hearing before Administrative Law Judges to help disabled individuals and the unemployed receive the Unemployment Insurance Benefits (UIB) and/or the Supplemental Security Income (SSI) benefits they have been wrongly denied.

Appendix 1: City Council Fiscal Year 2012 Initiatives

FY 2012 Council Changes at Adoption	
<i>Dollars in Thousands</i>	
Anti Eviction and SRO Legal Services	\$713,888
Legal Aid Society/ Civil Division - Bronx	124,643
Legal Aid Society/ Civil Division - Brooklyn	163,963
Legal Aid Society/ Civil Division - Community Law Office	262,782
Legal Aid Society/ Civil Division - Queens	93,750
Legal Aid Society/ Civil Division - Staten Island	68,750
Citywide Civil Legal Services	750,000
Immigrant Opportunities Initiative	241,290
Legal Aid Society	\$199,504
Legal Aid Society/ Civil Division - Brooklyn	41,786
Unemployment Insurance/Supplemental Security Income	500,000
Subtotal	\$2,205,178
Local Initiatives	\$20,000
Total	\$2,251,178