

RULES, ENACTMENTS AND INTERGOVERNMENTAL RELATIONS COMMITTEE
MINUTES
WEDNESDAY, FEBRUARY 16, 2022
3:30 P.M.

PRESENT: Paul Ruskiewicz, Chairman
Michael Amo, Barry J. Cheney, Thomas J. Faggione, Kevin W. Hines,
Michael D. Paduch, Kathy Stegenga

ALSO

PRESENT: Katie Bonelli, Chairwoman
Glenn R. Ehlers, Legislator
Betsy N. Abraham, Legislative Counsel
Langdon Chapman, County Attorney
Damian Brady, Chief Assistant County Attorney
Robert J. Conflitti, Counsel to the District Attorney
Erin Sztendor, Budget Analyst
Bill Fioravanti, CEO, Orange County Industrial Development Agency
Susan R. Katzoff, Esq., Bousquet Holstein, PLLC

Mr. Ruskiewicz opened the meeting at 3:30 p.m. and requested everyone stand for the Pledge of Allegiance to the Flag. All members were present with the exception of Legislator Sierra, who was absent.

Mr. Amo moved request to enact a
Local law to provide for the creation
of an Office of Assigned Counsel,
seconded by Mr. Faggione.

Mr. Chapman explained that in New York State there are two sets of attorneys that defend indigent criminals and in Orange County that is the Legal Aid Society and 18B Panel. 18B attorneys are private practice attorneys who are paid a state mandated rate for which the county pays a sizable portion and historically administered by private attorneys like the late Mark D. Stern, Esq. and current Administrator, James Monroe, Esq. The Legal Aid Society is a non-profit corporation that employs full-time staff and their own attorneys. Approximately three or four years ago New York State created positions in relation to the legal settlement of Hurrell–Harring and in Orange County they created a Chief Assistant County Attorney for Indigent Legal Defense, Data Officer and an individual to market the program. The genesis of that case was that the state had to do a much better job and spend a lot more money to defend and allow for the defense of criminal defendants. As part of the Hurrell–Harring settlement New York State placed a great deal of money into counties with Orange County receiving approximately \$23 million over five years to provide and hire forensic experts, social service workers, mental health counselors and so forth to provide an adequate defense which criminal defendants are constitutionally entitled to. It was initially set up in the County Attorney’s Office on a temporary basis; however, New York State has stated that it now needs to be independent of the County Attorney’s office. At the end of the day the County Attorney’s office is a political organization and serves at the pleasure of the County Executive. Criminal defense should never be politized and this needs to be a separate and independent office. The New York State Office of Indigent Legal Services (ILS) suggested Orange County follow the Westchester County model and set up their own independent process of a local Indigent Legal Services Office.

Mr. Chapman stated that the Administrator would initially be nominated by the County Executive and confirmed by the Legislature. The seven-member Board of Directors will oversee and run the program with the Administrator reporting to the board. The Office of Assigned Counsel will not be in competition with the Legal Aid Society as it is completely different entity. Lastly, if the funding goes away the Office of Assigned Counsel goes away.

Mr. Paduch commented that the Assigned Counsel Administrator would initially be confirmed by the legislature for a six-year term; however, after that term the Administrator would be reappointed without confirmation of the legislature.

Mr. Chapman replied yes, the person would initially be appointed by the County Executive and then subject to the board. The premise is "independence" and to be completely independent from political processing.

Mr. Paduch asked if the cost for the 18B private attorney would be eliminated. Mr. Chapman replied no, they are not allowed to eliminate the cost as there must always be a maintenance of effort. While the county cannot reduce funding they will not be stuck with increased funding. An agreement was made with New York State that any increase in ILS funding would be charged to 18B costs due to the state grant. Therefore, the county will not see an increase in county taxation by accepting this grant.

Ms. Stegenga referred to Section 4 (c) and the appointments of the five-member board. The paragraph states that ...at least one of whom shall be a Judge... however, should there be someone that works in the field of mental health and social services. There are only five members on the board and eight different areas of expertise. In her opinion, that area of expertise should be a requirement.

Mr. Brady clarified that they are required to have at least one judge on the panel; however, the goal is to not have too many judges but a good mix of people.

Mr. Chapman added that he would not have an issue if they would like that mandated; however, he would suggest they see how the project works and if they are not happy with the composition of the board, they could tweak the statute to make it mandatory.

Mr. Hines commented that justice courts have attorney's waiting for 18B assignments but under this scenario, would that stop. Mr. Chapman replied no, 18B attorneys will continue to be 18B attorneys and approved by the 18B Administrator with some oversight by the Board of Directors. This is not downsizing the 18B panel but providing them with significantly more resources pursuant to the Hurrell-Harring settlement.

Mr. Hines asked for the role of the panel. Mr. Chapman replied that the panel's role is to provide more resources and to oversee the administration to ensure that the Administrator is actually getting those resources on the street and making sure the program is effective.

Mr. Hines asked if they would review the billing or would that still go back to Mr. Monroe and/or the Administrator. The role of the current contracted Administrator will change but they will still need that contracted person to conduct outside bill review.

Mr. Hines asked if the board would receive compensation. Mr. Chapman replied no.

Mr. Faggione asked if this has been successful in Westchester County and/or have there been any pitfalls. Mr. Chapman replied that Westchester County has not been fully effectuated.

Mr. Faggione asked if Mr. Chapman foresees any additional expenses to the county. Mr. Chapman replied no, they can use ILS funds for traditional 18B defense.

Mr. Chapman asked that the following corrections be made to the proposed local law:

1. On page 2, section 3, letter "f" add a semicolon not a period after "f"
2. Page 3, section 4(a)(ii) take out the ZERO before the word "two" 4th line.
3. Page 6, change "qualify" to "quality"
4. Page 7, letter O, change "contract" to "contracts"
5. Page 7 section 8 at the bottom, rather than "transfer" the positions in the Office of Assigned Counsel, clarify that the positions will be established in the Assigned Counsel Administrator's Office and thereupon "abolished" in the Law Department.

Mr. Cheney added that on page 3, section 4(a)(iii) they need to change "and" to "any."

Mr. Paduch asked where the office would be located. Mr. Chapman replied in Goshen with New York State paying for the rental space.

Motion carried. All in favor.

Ms. Stegenga moved request that Orange County State Legislators introduce Home Rule Legislation, in the form of amendments to judiciary law sections 321(i), 322, and 327. Those amendments would permit Orange County to determine the number, residence, and compensation of grand jury stenographers, seconded by Mr. Hines.

Mr. Conflitti addressed the committee stating that the payment for grand jury stenographers in New York State is limited by the judiciary law. The original judiciary law is from 1909 and has not been updated in a long time and Orange County has been paying grand jury stenographers a reasonable rate for their services. However, the judiciary law as written would restrict them from paying them \$1,200.00 a year plus the number of transcripts they produce. For the last fifteen to twenty years, they have hired grand jury stenographers on a contract basis. It is time for them to correct that discrepancy in the judiciary law as Orange County and many other counties have not honored it because they did not notice. Over the last six months they have been using a stopgap by having a County Court Judge approve grand jury stenographer salaries. Their stenographers have requested a raise and it is time they fix this for the long term. They are seeking state legislative action upon the judiciary law to amend sections 321(i), 322, and 327 and permit the District Attorney's Office to pay grand jury stenographers through the county budget, appoint a number of grand jury stenographers over and above what the judiciary law would require and permit grand jury stenographers to live in counties adjoining Orange County not just within Orange County.

Mr. Paduch asked if the Department of Human Resources would be involved to determine the compensation. Mr. Conflitti replied that it would be part of their budget process. Their grand jury stenographers are contracted with their fees negotiated.

Ms. Stegenga asked if they were going from two stenographers to six. Mr. Conflitti replied that they are currently permitted to hire two stenographers as county employees. In past years the county did have a grand jury stenographer that was a county employee until his retirement. Since then, they have been using contract employees; however, they are not full-time county employees nor District Attorney Office employees. They do one or two days a week on a contract basis. They need to ensure that they had enough wiggle room to hire enough grand jury stenographers to handle all their business without violating the provisions of the judicial law.

Ms. Stegenga asked for clarification that they would be per-diem. Mr. Conflitti replied yes.

Mr. Hines asked if the residence stipulation referred to the person or the company. Mr. Conflitti replied that they deal with the grand jury stenographers on an individual basis, and they want to have the flexibility to ensure that if someone is hired from Sullivan County or Ulster County that they are not precluded by the judiciary law.

Motion carried. All in favor.

Mr. Paduch moved resolution recognizing March as Women's History Month, seconded by Ms. Stegenga.

Motion carried. All in favor.

The meeting adjourned at 3:57 p.m.