

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing will be held before the Allegany County Board of Legislators in the County Legislative Chambers, Room 221, County Office Building, 7 Court Street, Belmont, New York 14813, on November 23, 2022, commencing at 2:00 p.m. in connection with a proposed local law, entitled " A Local Law Establishing The Office of The Conflict Defender in The County of Allegany," the text of which is as follows:

Section 1. Office of the Conflict Defender. The County of Allegany, through its Board of Legislators, recognizes its Constitutional responsibility in providing mandated legal representation to indigent persons. The County currently provides mandated legal representation through the County's Office of the Public Defender, as well as through an Assigned Counsel Program providing mandated representation services when a conflict of interest disqualifies the Public Defender in criminal and Family Court matters. The County Board of Legislators' purpose for creating the Office of the Conflict Defender is to directly provide mandated representation in certain conflict situations, and to otherwise manage, administer, and supervise mandated representation services that are not provided by the Public Defender. It is the intent of this Local Law to establish a framework to achieve this purpose, in accordance with the applicable laws of New York State.

Section 2. Conflict Defender; Appointment; Term of Office.

- a. The head of such office shall be a Conflict Defender. The Conflict Defender shall be appointed by the County Board of Legislators, and shall report directly to the County Administrator.
- b. The term of office for the first Conflict Defender appointed pursuant to this Local Law shall commence on the date of their appointment, and shall expire on December 31, 2025.
- c. The term of office for each subsequent Conflict Defender shall be for four years; in no event shall the County Board of Legislators appoint a Conflict Defender to a term of office that exceeds the tenure of the County Board of Legislators making such appointment.

Section 3. Qualifications. At the time of the appointment, the Conflict Defender shall have the following education, training, and/or experience:

- a. Graduation from a regionally accredited or New York State accredited law school; and
- b. Admission to practice law in New York State at the time of appointment and be continuously admitted during their term of office; and

- c. Minimum of five (5) years as a practicing attorney, with experience in criminal defense and/or Family Court.

Section 4. Salary. The Conflict Defender shall receive an annual salary to be fixed by the County Board of Legislators.

Section 5. Powers and Duties. Without curtailing, diminishing, or transferring the powers of any elected County official, the Conflict Defender shall act as the representative of the County Board of Legislators in providing mandated legal representation to indigent persons. Such powers and duties shall include the following:

- a. Legal Representation Duties

- i. In the event that mandated representation cannot be provided when a conflict of interest exists in the Office of the Public Defender, then the Conflict Defender shall represent each indigent defendant in the County of Allegany who is charged with a crime, as defined in County Law § 722-a, at every stage of the proceedings following arrest, without charge, and at the request of the defendant, or by order of the court with the consent of the defendant. Such representation shall include, but not be limited to, initiating proceedings that, in the judgment of the Conflict Defender, are necessary to protect the rights of the accused and may, in the Conflict Defender's discretion, involve prosecuting any appeal if, in its judgment, the facts and circumstances warrant such appeal.
- ii. In the event that a conflict of interest exists in the Office of the Public Defender, then the Conflict Defender shall represent any indigent person in the County of Allegany who is entitled to counsel in a proceeding, pursuant to Family Court Act §§ 262 and 1120 and Surrogate's Court Procedure Act § 407, without charge, at every stage of the proceedings, who is financially unable to obtain counsel. Such representation shall include initiating proceedings that, in the judgment of the Conflict Defender, are necessary to protect the rights of the indigent person and may, in the Conflict Defender's discretion, involve prosecuting any appeal if, in its judgment, the facts and circumstances warrant such appeal.
- iii. May assign professional, technical, and clerical personnel in the investigation, preparation, litigation, and appeal in any court proceeding involving indigent defendants or persons subject to the appropriations approved for these services by the County Board of Legislators.

b. Administrative and Supervisory Duties

- i. Responsible for the management and operation of the Conflict Defender's Office in accordance with New York State Civil Service Law, the County of Allegany's policies and procedures, any applicable collective bargaining agreements, and sound management principles, and shall have the powers and duties necessary to carry out the functions of the office as set forth herein, and as may from time to time be amended by resolution of the County Board of Legislators.
- ii. Develop and administer the systems, policies, practices, and procedures of the office, and shall coordinate and administer all of the activities of the office.
- iii. Prepare reports as may be required by the County Administrator, the County Board of Legislators, and/or the New York State Office of Indigent Legal Services.
- iv. Develop, prepare, and administer the budget of the Office of the Conflict Defender.

Section 6. Assigned Counsel Plan.

- a. The Conflict Defender may, if directed by the County Board of Legislators, assist in administering the Assigned Counsel Plan to ensure quality representation of indigent defendants/respondents; fair and reasonable compensation of assigned counsel; and adequate resources for defense and representation of the indigent.
- b. The Conflict Defender shall solicit input from the Allegany County Bar Association, and shall endeavor to develop plans, standards, policies, and procedures to jointly enhance the quality of mandated representation.
- c. The Conflict Defender will not represent a defendant and/or a respondent when an attorney or attorneys of the Assigned Counsel Plan is assigned to indigent defendants and/or respondents on the same matter.
- d. The Conflict Defender's duties associated with the Assigned Counsel Plan under this section may include, but not be limited to, the following:
 - i. Develop professional standards for Assigned Counsel Panel attorneys, and compile and maintain a list of qualified panel attorneys willing to accept conflict assignments.
 - ii. Recruit attorneys, develop an application process, and review and select qualified attorneys for conflict management on a rotating basis by the courts.
 - iii. Maintain a record of all attorneys assigned by the courts.

- iv. Formulate guidelines for the maximum number of cases to be assigned to panel attorneys to ensure that the workload does not negatively affect the quality of representation.
- v. Develop and implement a complaint procedure regarding attorney performance.
- vi. Develop and administer a fair and equitable payment process, review attorney vouchers, and make recommendations to the assigning courts.
- vii. Establish and maintain relevant continuing legal education programs for panel attorneys.
- viii. Advise the County Board of Legislators about such other matters as to the Conflict Defender, that in its professional judgment, would contribute to enhancing and improving the quality of conflict defense provided by the County of Allegany.

Section 7. Assistant Conflict Defender(s) and Support Staff.

- a. The Conflict Defender shall have the power to appoint Assistant Conflict Defender(s) and Support Staff pursuant to County Law § 716 and as authorized by the County Board of Legislators.
- b. If the Assistant Conflict Defender(s) are determined to be in the exempt class for purposes of Civil Service Law, then the Assistant Conflict Defender(s) shall serve at the pleasure of the Conflict Defender.

Section 8. Other Powers and Duties. The Conflict Defender shall have such other related powers and duties and perform such other duties as may now or hereafter be confirmed or imposed by the County Board of Legislators.

Section 9. Limitations. Nothing contained herein shall be deemed to alter or impair any powers, duties, or responsibilities which are provided to the County Board of Legislators under law, nor shall anything herein be deemed to curtail, diminish, or transfer the powers of any elected County official.

Section 10. Separability of Powers. If any clause, sentence, paragraph, subdivision, section, or part of this Local Law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment, decree, or order shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation of the clause, sentence, paragraph, subdivision, section, or part thereof directly involved in the controversy in which such judgment, decree, or order shall have been rendered.

Section 11. Conflict with Previous Local Laws or Resolutions. In the event of a conflict or inconsistency between this Local Law and any previous Local Law or Resolution of the County Board of Legislators, the terms of this Local Law shall govern.

Section 12. Effective Date. This Local Law shall take effect immediately upon filing and publication in accordance with Section 27 of the Municipal Home Rule Law.

Dated at Belmont, New York,
the 9th day of November 2022.

Brenda Rigby Riehle, Clerk of the Board
Allegany County Board of Legislators