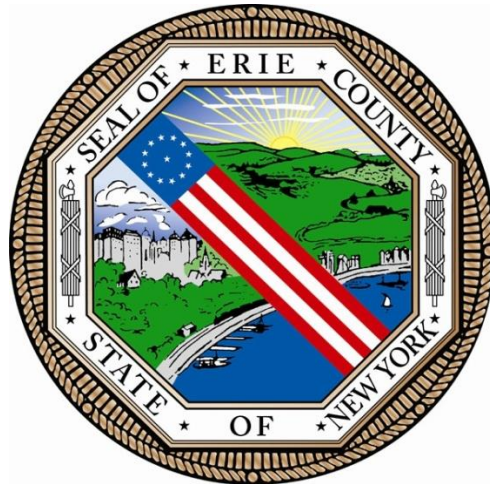


**June 2023**

**Audit of the Erie County Department of Law  
Contract Expenditures for Indigent Services  
January 1, 2022, through December 31, 2022**



**KEVIN R. HARDWICK  
ERIE COUNTY COMPTROLLER**

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**HON. KEVIN R. HARDWICK  
ERIE COUNTY COMPTROLLER'S OFFICE  
DIVISION OF AUDIT & CONTROL  
95 FRANKLIN STREET  
BUFFALO, NEW YORK 14202**



June 29, 2023

Erie County Legislature  
92 Franklin Street, 4<sup>th</sup> Floor  
Buffalo, New York 14202

**Dear Honorable Members:**

The Erie County Comptroller's Office, Division of Audit has completed an audit of the Erie County Department of Law's Indigent Services Contract Expenditures for the period of January 1, 2022, through December 31, 2022.

The Auditor's objectives were to test and evaluate the expenditure transactions in the operating budget and evaluate the internal controls concerning said transactions.

The scope of the audit included testing and evaluation of expenditure transactions with internal controls relevant to County policies, contracts, and New York State statutory and regulatory authority.

The management of the Department of Law (Law Department) is responsible for establishing and maintaining a system of internal controls. The objectives of such a system are to provide management with reasonable, but not absolute assurance that transactions are properly recorded and executed in accordance with authorization. Due to the inherent limitations in the system of internal controls, errors or irregularities could occur and may not be detected.

The Division of Audit's responsibility is to express an opinion based on the audit. The Auditor conducted this audit in accordance with the generally accepted Government Auditing Standards (GAO or Yellow Book). Those standards require the Auditor to plan and perform the audit in a manner that is designed to obtain sufficient, appropriate evidence that will provide a reasonable basis for the results of the audit and conclusions based on stated audit objectives. The Division of Audit believes that based on the audit objectives, the evidence obtained provides a reasonable basis for the results and comments contained herein.

**Opinion**

In the Auditor's opinion, the internal controls over the expenditure transactions and internal controls relevant to policies, contracts and New York State regulations are adequately designed but are not universally adhered to.

No other specific matters adversely affecting compliance and procedures came to the Auditor's attention. The audit was conducted for the purposes previously discussed and would not necessarily disclose all instances of noncompliance with respect to areas of operations not audited.

## BACKGROUND

The Department of Law consists of three major practice areas - Litigation, Transactional and Family Court. The Indigent Defense Program, funded in the Law Department cost center 16010, fund 110, provides legal services to individuals participating in certain legal proceedings in Erie County Courts who are financially unable to retain an attorney to represent them in the matter. These proceedings include all criminal charges faced in Erie County Court, as well as certain matters handled by Erie County Family Court where the New York State Legislature has created a right to counsel. Indigent services strive to help those who are financially unable to help themselves, and who may struggle with poverty or mental health issues. The Law Department administers this program by entering into contractual relationships with two not-for-profit agencies qualified to provide indigent legal services. The two agencies currently contracted by Erie County are the Erie County Bar Association Aid to Indigent Prisoners Society, Inc. (ACP) and the Legal Aid Bureau of Buffalo, LLC. The former is an Assigned Counsel Program (ACP) governed by Article 18-B of New York County Law, while the latter is what is commonly known as an "institutional provider". Per Article 18-B, the contracts that Erie County has entered into with the ACP and LAB are an indispensable requirement. The resolution authorizing the County to enter into the aforementioned contracts was approved by the Erie County Legislature.

ACP and LAB were funded in the calendar year 2022 in the amounts of \$9.16 M and \$4.6 M respectively. Per the contracts, each agency was paid quarterly in four equal installments throughout the contract year based on invoices which required supporting documentation that would allow the Law Department, the Erie County Comptroller, the Erie County Division of Budget and Management (Budget & Management), and the New York State Department of Indigent Legal Services (ILS) to verify the accuracy of the amounts stated. This audit focused on contract payments relating to the Indigent Legal Services Program and how well the contractual parties adhered to the terms contained therein.

## AUDIT RESULTS

All audit results were communicated to the Law Department during the course of the audit.

### **1. Erie County 2022 Indigent Defense Funding Application**

Both LAB and ACP are required to abide by certain rules applicable to their respective legal structures. The *Standards for Establishing and Administering Assigned Council Programs* – a set of governing rules promulgated by ILS applicable to assigned counsel programs – requires ACP to prepare and submit a detailed budget for 2022 titled *Indigent Defense Funding Application* to the county funding authority, Budget & Management here, by September 10, 2021. LAB's reporting requirements are set by contractual and regulatory authority.

The Erie County 2022 *Indigent Defense Funding Applications* were obtained from both LAB and ACP dated September 10, 2021. This occurred after the Auditor requested copies of the 2022 Indigent Defense Funding Applications from both Budget & Management and the Law Department. However, neither entity could produce the 2022 *Indigent Defense Funding Applications* submitted by LAB and ACP.

The Auditor recommends that Budget & Management receive and maintain a copy of the *Indigent Defense Funding Applications* with documented approval of the budget submission before forwarding the approved budget to the Law Department prior to executing the contract for Indigent Legal Services.

### **2. Refund to Erie County of unused surplus monies for Indigent Legal Services**

Contracts 22-96-LA and 22-97-LA, applicable to LAB and ACP, respectively, require those entities to refund all unused monies paid to them by Erie County for the prior fiscal year within 90 days of receiving their annual 2022 audit report.

For 2022, both LAB and ACP have not received their annual audit report from Certified Public Accountants as of June 12, 2023, the last day of fieldwork. The Auditor requested the 2021 calculation of unused surplus monies and evidence, documentary or otherwise, that any unused monies were returned to Erie County.

The total refund amount of \$161,302 was remitted to Erie County from ACP for 2021 and was properly recorded in SAP General Ledger Account #423000 Prior Year Refunds, Department of Law Cost Center BD160. This was supported in ACP's *Annual Audit Report - Notes to the Financial Statements* for 2021, and a copy of the cancelled check was examined. No exceptions or irregularities were noted.

In 2020 and 2021, LAB recorded surplus amounts of \$192,362 and \$362,778, respectively. These amounts, totaling \$555,140, should have been refunded to the County timely, but remain unpaid. These amounts are not supported by LAB's *Annual Audit Report - Notes to the Financial Statements* as requested in an email from the Director of Budget and Management to the Chief Financial Officer of LAB December 30, 2021.

An email from the Chief Financial Officer of LAB to the Erie County Budget Director dated April 14, 2023, disclosed a calculation of the unused surplus monies due Erie County for both 2021 and 2020. The Auditor discussed the calculation with the Chief Financial Officer of LAB on June 7, 2023, attesting the calculation was done based on records from prior calculations by the former CFO of LAB. Budget & Management has recorded these amounts in SAP General Ledger Account #423000 Prior Year Refunds, Department of Law Cost Center BD160.

The Auditor recommends that LAB have their Certified Public Accountants formally certify the calculation of unused surplus monies from LAB for 2020 and 2021.

In addition, the Auditor recommends that Budget & Management request a formal certification from LAB for 2022 and beyond containing future calculations of unused surplus monies to be documented in the *Annual Audit Report - Notes to the Financial Statements*, similar to the formal certification currently filed by ACP. The Auditor further recommends that any surplus moneys be refunded timely to prevent county funds from being at risk.

### **3. Approval for quarterly invoices submitted for payment**

Quarterly invoices received from LAB and ACP were not approved by the Budget Director. Contracts with LAB #22-96-LA § 7 and ACP #22-97-LA § 9, stipulate “payments shall be made on invoices submitted to the County’s Comptroller and approved by its Budget Director.”

The Auditor recommends that the Law Department forward quarterly invoices to the Budget Director for documented approval and verification prior to submitting quarterly invoices to the Comptroller’s Office for payment.

### **4. Supporting documentation for quarterly invoices submitted for payment**

Quarterly invoices submitted for payment in 2022 by LAB totaling \$4,634,862 and the ACP totaling \$9,169,256 were approved for payment by the Law Department and paid by the Comptroller’s Office without supporting documentation.

Per LAB’s contract with the County, administrative costs that LAB incurs over the course of the year may not exceed 10% of the annual value of the full amount paid to LAB by the County. LAB did not submit supporting documentation to the Law Department for 2022 quarterly invoices until May 18, 2023. In addition, the calculated administrative expenses that LAB documented amount to exactly 10% of the invoice total submitted for the year 2022. However, no detail was provided to account for what the 2022 administrative expenses were comprised of.

ACP submitted supporting documentation for 2022 quarterly invoices but not until the following quarter, a 90-day lag after the invoice submission. Erie County Accounting Policy - Accounts Payable/Overview stipulates that transactions must have complete and accurate supporting documentation before the County disburses funds for payment of goods and/or services. Furthermore, the ILS standard for Assigned Council Programs requires ACP to submit records of expenditures to Budget & Management in accordance with laws and regulations.

The Auditor recommends that the Law Department consider revisiting the contracts with LAB and ACP to ensure the quarterly supporting documentation is submitted timely and that the supporting documentation provides detail for the Law Department in order to review and monitor the quarterly invoices for services rendered.

## **RESULTS OF EXIT CONFERENCE**

An exit conference was held on June 21, 2023, with the Erie County Attorney, members of his staff, and the Deputy Budget Director. The draft audit report was reviewed and discussed. The Erie County Attorney and Deputy Budget Director were in general agreement with the audit report. The Erie County Attorney provided a written response to Audit findings 1, 2, 3 & 4.

The Erie County Comptroller's Office would like to thank the Erie County Attorney, the Budget Director, and their staff members for the courtesy extended to the Division of Audit during the course of the audit. The Erie County Comptroller's Office would also like to thank the Erie County Bar Association Aid to Indigent Prisoners Society, Inc. (ACP) and the Legal Aid Bureau of Buffalo, LLC for taking the time to meet with the Auditor and being transparent and responsive throughout the fieldwork and document acquisition stages of the audit.

## **ERIE COUNTY COMPTROLLER'S OFFICE**

cc: Jeremy C. Toth, Erie County Attorney

Hon. Mark C. Poloncarz, Erie County Executive

Hon. Kevin R. Hardwick, Erie County Comptroller

Robert. W. Keating, Director, Division of Budget and Management

Erie County Fiscal Stability Authority

## APPENDIX

### Appendix A:

#### Audit Methodology

The goals of this audit were to test and evaluate the expenditure transactions in the operating budget for Erie County's Department of Law Contract Expenditures of Indigent Services for the period of January 1, 2022, through December 31, 2022.

The scope of the audit included testing internal controls relevant to County policies, contracts, and New York State regulatory and statutory authority.

To achieve these goals, the Auditor tested the eight expenditure transactions for Erie County Bar Association Aid to Indigent Prisoners Society, Inc. and Legal Aid Bureau of Buffalo, LLC. The eight transactions were funded in the calendar year 2022 by contracts in the amounts of \$9.16 M and \$4.6 M respectively. Each agency was paid quarterly in four equal installments throughout the contract year based on invoices and required supporting documentation per the contracts.

In addition, Internal Control Questionnaires were used to document discussions and procedures related to policy and procedures followed by the Department of Law to contract, process and record approved financial transactions in the accounting system ("SAP").

Tests of controls were designed, executed, and then reviewed for adequacy. Tests were performed by testing the entire population of 8 invoices transactions recorded in SAP and comparing them to documentation that included:

- 1) The Quarterly Invoices provided by Legal Aid (4) and EC Bar (4)
- 2) The approved Purchase Order/Encumbrance
- 3) The Goods/Invoice Receipts
- 4) Check Payments
- 5) The approved Contract stipulations with Legal Aid and EC Bar
- 6) Budget Submission and Approval process
- 7) Supporting documentation substantiating invoices received from Legal Aid and EC Bar
- 8) Financial Reports – Annual Audited Financial Statements from Legal Aid and EC Bar
- 9) Refund calculations for unused monies by Legal Aid and EC Bar

This evidence, taken as a whole, was used to form an opinion based on the audit objectives.

## Appendix B: Auditee's Response to the Draft Audit Report



### COUNTY OF ERIE

June 29, 2023

Hon. Kevin R. Hardwick, PhD  
Erie County Comptroller  
95 Franklin St, Floor 11  
Buffalo, NY 14202

**RE: Response to Draft Audit of Erie County Department of Law Contract Expenditures for Indigent Services January 1, 2022 through December 31, 2022**

Dear Comptroller Hardwick:

The Erie County Department of Law (Law) writes to respond to Draft Audit of Erie County Department of Law Contract Expenditures for Indigent Services January 1, 2022 through December 31, 2022.

We thank you and your Audit Division for their thorough analysis and thoughtful recommendations related to the contractual relationships we maintain annually with the Erie County Bar Association Aid to Indigent Prisoners Society, Inc. for the Assigned Counsel Program (ACP) and the Legal Aid Bureau of Buffalo, LLC (LAB) for the provision of the Indigent Defense Program. As you know, the Department of Law has had a significant amount of employee turnover in the last year and with new Assistant County Attorney's in my office taking on new roles, this is an appropriate time to look at the Indigent Defense Program and both suggest and implement new policies related to the administration of these services.

Our responses follow the audit and use the same section titles.

**Erie County 2022 Indigent Defense Funding Application**

As noted, the Erie County Division of Budget and Management (Budget) provides both ACP and LAB with a funding application in conjunction with the County's annual budget process to be completed and submitted to Budget in early September and provide the basis for the budget requests submitted as part of Law's Proposed Budget.

While it is correct that neither Law nor Budget produced a copy of the 2022 Indigent Defense Funding Applications upon initial request it is our understanding that upon realization of the failure to meet this request, Budget immediately located and forwarded both the ACP and LAB applications (dated September 10, 2021) to Audit staff on June 15, 2023 in advance of the Exit Conference the following week.

Going forward, Budget has agreed to forward copies of both applications upon receipt to Law to maintain with all other records pertaining to the Indigent Defense Program.



**Refund to Erie County of unused surplus monies for Indigent Legal Services**

We concur with your recommendations that 1) LAB have their Certified Public Accountants formally certify the calculation of unused surplus monies from LAB for 2020 and 2021, 2) formal certification from LAB of deficit or surplus monies be documented in their Annual Audit Reports – Notes to the Financial Statements, and 3) deficit or surplus monies be paid to or refunded by LAB in a timely manner.

**Approval for quarterly invoices submitted for payments**


While all quarterly invoices received from ACP and LAB are attached to the Contract Encumbrances and visible to the Budget Director within SAP, going forward, Law will forward these quarterly invoices to the Budget Director for documented approval and verification prior to invoices being submitted to the Comptroller's Office for payment.

**Supporting Documentation for quarterly invoices submitted for payment**

We concur with your recommendation that ACP and LAB submit the quarterly supporting documentation in a timely fashion and that such documentation provides adequate detail of invoiced expenses. Law will review the current contracts and consider its own revisions (or any suggested by the Comptroller's Office) to further clarify required information for invoice processing.

I look forward to working with the Comptroller's Office going forward to address these issues that will undoubtedly better facilitate the administration of the Indigent Defense Program.

Sincerely yours,



Jeremy C. Toth, Esq.  
Erie County Attorney

JCT/mc