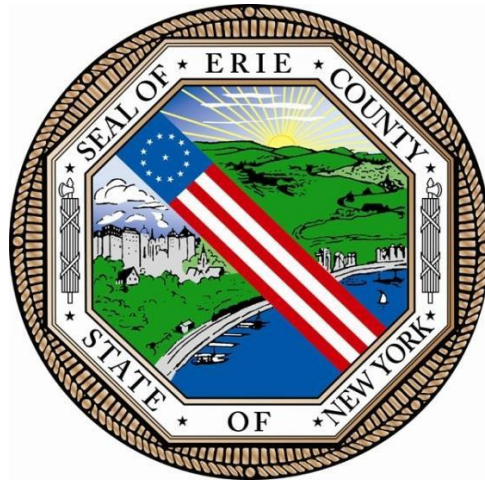


December 2023

**Audit of the Erie County Department of Law
Grant and Claim Reimbursement for
Indigent Legal Services
January 1, 2015, through December 31, 2022**



**KEVIN R. HARDWICK
ERIE COUNTY COMPTROLLER**

**HON. KEVIN R. HARDWICK
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December 18, 2023

Erie County Legislature
92 Franklin Street, 4th 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 Grant Claims and Reimbursements for the period of January 1, 2015, through December 31, 2022.

The Auditor's objective was to test and evaluate the Indigent Legal Services grant claims approval, disbursement and reimbursement processes to determine if the internal controls over the relevant period were adequate and whether the Erie County Department of Law (Law Department) adhered to Erie County Policies during that time.

The scope of the audit included testing and evaluation of the disbursement of payments to grant recipients to facilitate the performance of legal services relating to criminal and family defense matters – collectively referred to as “indigent legal services” – and the claims reimbursement from the grant provider: the New York State Office of Indigent Legal Services (ILS). The internal controls surrounding the processes for grant approvals, payments to vendors providing indigent legal services, along with the preparation and submission of claims for reimbursement, were evaluated and tested for compliance, completeness, and efficiency.

The Law Department management 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 received from ILS. Due to the inherent limitations in the Law Department's 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 facts obtained during the course of the audit. The Auditor conducted this audit in accordance with the Generally Accepted Government Auditing Standards (GAGAS). 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 present conclusions based on stated audit objectives. The Division of Audit believes that based on those objectives, the evidence obtained provides a reasonable basis for the results, findings, comments, and recommendations contained herein.

BACKGROUND

The Law Department principally consists of three major practice areas: (1) Litigation, (2) Transactional, and (3) Family Court¹. The Indigent Defense Program, funded through the Law Department², 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 legal proceedings include all criminal charges faced in Erie County Court – as required by the Sixth Amendment of the United States Constitution – as well as certain matters handled in Erie County Family Court where the New York State Legislature has created a right to counsel³. The Indigent Defense Program strives to help those who are financially unable to afford their own legal representation.

Unlike the majority of counties in New York State, Erie County does not perform indigent legal services itself⁴. Instead, the Law Department administers the Indigent Defense Program and satisfies its constitutional obligations by entering 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. Assigned Counsel Program (ACP) and the Legal Aid Bureau of Buffalo, LLC (LAB)⁵. The former is an assigned counsel program, while the latter takes the form of what is commonly known as an “institutional provider”. Per Article 18-B of the New York County Law, which governs Erie County’s relationship with both entities, the contracts that Erie County has entered with ACP and LAB are an indispensable precondition to either agency performing indigent legal services on behalf of Erie County. A resolution authorizing the County to engage in the aforementioned contracts is approved each year by the Erie County Legislature. Prior to 2023, Erie County spent approximately \$15,000,000.00 per year. Roughly two-thirds of that annual amount is disbursed to ACP, while the remaining one-third is disbursed to LAB.

While most of the funds allocated to the Indigent Defense Program are County charges subsidized by Erie County’s local share, both agencies are indirectly funded in part through ILS⁶. County charges are not eligible for reimbursement while ILS grant funds are. Once a grant award letter is received by the Law Department, it is submitted to the Erie County Legislature for contract approval. The Law Department enters separate contracts with each agency and serves as the administrative entity managing grant funds ultimately destined for ACP and LAB. Erie County fronts the funds to the agencies on behalf of ILS upon receipt of

¹ The Law Department performs various other functions such as providing advice to County departments, arranging for the retention of outside counsel when necessary, and housing the County’s Medicaid Inspector General.

² Specifically, IDP is funded through the Law Department Cost Center 10610, Fund 281.

³ Coverage also includes misdemeanors prosecuted brought in local courts among the various cities and towns.

⁴ It should be noted that among counties with populations similar to or greater than Erie, only Monroe County has a Public Defender.

⁵ At all times during the audit period, ACP and LAB served in the capacity described.

⁶ ILS funding typically comprises between 10% and 15% of the agencies’ total operating budgets. The vast majority is funded directly by Erie County.

expense invoices delivered by the agencies. Invoices must be supported by detailed documentation that describes expenses incurred and validates services performed by the agencies⁷. Typically, these transactions occur on a quarterly basis aligning with the calendar year. Once expense reports are received and reviewed, the Law Department prepares a claim for reimbursement to be reviewed and approved by the Trust Department within the Erie County Comptroller's Office. From there, claims are submitted to ILS for reimbursement of grant funds that were fronted to the agencies by the County.

It must also be noted that the Division of Audit completed a separate audit of the Law Department's Indigent Defense Program operating budget in June 2023, which focused on contract-based expenditures⁸. During this review, the Auditor determined that the scope of the initial audit was insufficient to properly understand the nature of the relationship between ILS, the County, and the agencies. Nevertheless, the Auditor determined that the audit's scope should be expanded to include the grant reimbursement process. Expansion would allow the Auditor to have complete understanding of how the Erie County operating budget funds and the ILS funds awarded for the Indigent Defense Program are determined and if overlap or duplication existed. The Law Department was notified of the expanded scope via letter and subsequently informed that the second audit would be separate and distinct from the initial audit and would commence upon the completion thereof.

This audit focused on two substantial components of the grant-reimbursement process. First, the audit reviewed payments relating to the Indigent Defense Program and the steps toward reimbursement taken by the agencies, the Law Department, and the Comptroller's Accounting Division. Second, the audit tested the adequacy of internal controls related to applicable Erie County policies and how well those policies were followed by the Law Department and the Accounting Division during the relevant period⁹.

AUDIT RESULTS

All audit results were communicated to the Law Department during the audit as required by GAGAS.

Auditor's Opinion:

In the Auditor's opinion, the internal controls governing grant claim transactions and those related to applicable policies, contracts and ILS regulations are adequately designed but are not universally adhered to. Inconsistencies between policy and practice contributed to a revenue deficiency of approximately five hundred and ninety thousand dollars (\$590,000.00) that the Auditor discovered during fieldwork. No other specific issues adversely affecting procedures, internal controls, or compliance came to the Auditor's attention. The audit was conducted for the purposes previously discussed and would not necessarily reveal or disclose all instances of noncompliance with respect to operational areas not within the scope of the audit.

⁷ Erie County Accounting Policy – Special Applications – Grants at 2.

⁸ See Erie County Comptroller - Division of Audit, *Audit of the Erie County Department of Law Contract Expenditures for Indigent Services January 1, 2022 through December 31, 2022*. (June 2023).

⁹ Copies of the relevant policies can be found on: <https://ernie.erie.gov/policies/Accounting%20Policies/Forms/AllItems.aspx>

Auditor's Findings & Recommendations

FINDING #1: Reimbursable Claims and Recoverable Overpayments due Erie County total \$592,774.33

While testing and evaluating claims, accounts payable, and accounts receivable, the Auditor established that Erie County is currently due a total of \$592,774.33 related to the ILS claims reimbursement process under the Indigent Defense Program. While the Auditor established that a wide variety of acts and omissions contributed to the outstanding amounts discovered, these amounts, shown in Table 1 below, can be divided for the purposes of this review into two categories: reimbursable claims and recoverable overpayments.

Table 1

Reimbursable Claims and Recoverable Overpayments Due Erie County		
Table 2 - Summary of Finding #1a	2020 and 2021 Reimbursable Claims from ILS	\$ 462,723.66
Table 3 - Summary of Finding #1b	2021 Recoverable Overpayments from LAB	\$ 130,050.67
Total Reimbursable Claims from ILS and Recoverable Overpayments from LAB		\$ 592,774.33

Finding #1a - Reimbursable Claims Totaling \$462,723.66 Have Not Been Completed

The Auditor examined individual transactions conducted under the Indigent Defense Program as they pertained to any claims for reimbursement under eligible ILS grants. A review of aged receivables, defined as amounts owed to the County which are over 90 days past due, revealed two (2) outstanding reimbursable claims with ILS. These two amounts are shown in Table 2 below.

Table 2

2020 and 2021 Reimbursable Claims to be submitted to ILS							
Item #	Document Date	SAP Posting Date	Document Number	Grant	Contract	Claim Period	Amount in local currency
1	11/23/2020	11/30/2020	1800061431	160HHEXPILS1823	CSTWIDEHH14	July-Sept. 2019	\$172,126.15
2020 Claim total to be submitted to ILS							\$172,126.15
2	4/27/2021	5/3/2021	1800063325	160HHEXPILS1823	CSTWIDEHH14	July-Sept. 2020	\$219,647.05
Increase in Claim for additional incurred costs from LAB							\$ 70,950.46
2021 Claim total to be submitted to ILS							\$290,597.51
Total							\$462,723.66

The first claim dates to the third quarter of 2019 and amounts to \$172,126.15. When asked, ILS informed the Auditor that it had never received a claim from Erie County corresponding with the third quarter of 2019. According to the County's accounting system, this claim was due in November 2020 and has remained outstanding for over three (3) years.

The second claim dates to the third quarter of 2020 and amounts to \$219,647.05. On this claim, ILS informed the Auditor that a claim was received from the County but could not be processed because the total amount submitted for reimbursement was inconsistent with the total derived from the attached supporting documentation. In the following quarterly report, LAB would have been informed that there was a discrepancy of \$70,950.46 between the amount claimed and the amount that was corroborated by supporting documentation. LAB never notified the County of the discrepancy, and the Law Department did not discover the issue until informed by the Auditor during fieldwork. As a result, the County received no reimbursements from ILS relating to this particular claim, which has remained outstanding in the County's accounting system since May 2021.

The Auditor determined that aged receivables were not being reviewed and account reconciliations were not being performed by the Law Department during the audit period. The Law Department is obligated by contract to pay the agencies full amounts up front. Furthermore, Erie County Accounting Policy designates the Law Department responsible for assuring that all claims submitted to ILS are received and that those claims reconcile to the amounts paid to agencies¹¹. Therefore, the responsibility to reconcile accounts and pursue payment lies with the County.

Recommendation: The Auditor recommends that the Law Department formally request revised invoices supporting the claims for \$172,126.15 and \$290,597.51 from LAB in the next thirty (30) days, along with the supporting documentation for each invoice. The Auditor further recommends that the Law Department promptly resubmit each claim for reimbursement to ILS along with the supporting documentation. Copies of each invoice and supporting documentation must be maintained by the Law Department for six years in accordance with New York State Record Retention Schedule.

To address future claim reimbursement, the Auditor recommends that the Law Department develop a written protocol for ILS grant reimbursement. Such guidelines must also explain how to perform the ILS processes in compliance with Erie County Policy. Lost revenue will be kept at a minimum while also reducing the likelihood that staff turnover will hinder a detailed and complicated process going forward.

The Auditor further recommends that the Law Department effectively implement the County's internal control policy by performing quarterly managerial review of outstanding aged receivables for claims submitted to ILS for reimbursement. The Comptroller's Accounting Division should also perform periodic reviews of aged receivables and follow up with the Law Department, as necessary.

The Law Department should perform quarterly reconciliations of the invoices received from the agencies to claims reimbursed from ILS for accuracy and timeliness, which are key internal control objectives outlined in Erie County Policy. Performing regular reconciliations will help to ensure that processes are adequately implemented.

Finding #1b: Undetected Overpayments to LAB due Erie County total \$130,050.67

During the course of fieldwork, the Auditor determined that two amounts totaling \$130,050.67 due Erie County represent overpayments to LAB that the agency failed to return. Prior to the Auditor's finding, LAB had not communicated the overpayment to the Law Department. To date, no attempt has been made by LAB to reimburse Erie County for the overpayment.

¹¹ See Erie County Accounting Policy – Accounts Receivable – Claims

These overpayments had gone undetected by the Law Department and the Accounting Division since 2021. The Auditor established that the amounts shown below in Table 3, were properly categorized as aged receivables at the time they were made.

Table 3

Erie County Recoverable Overpayments to Vendor - LAB										
Item #	Document Date	SAP Posting Date	Document Number	Check #	Check Payment Date	Check Encashment Date	Grant	Contract	Claim Period	Amount in local currency
1	5/10/2021	5/24/2021	1901696902	0691272	6/9/2021	6/2/2021	*160QID8ILS1820	C800014	April-June 2020	\$ 107,614.95
2	5/10/2021	5/24/2021	1901696903	0691272	6/9/2021	6/2/2021	*160CR2ILSF1720	C2ND614	July-Sept. 2020	\$ 22,435.72
Total Recoverable Overpayments due Erie County from LAB										\$ 130,050.67

The Auditor contacted ILS concerning the overpayments to discern how the discrepancy could have occurred. ILS informed the Auditor that in 2021, LAB received a Payroll Protection Program (PPP) loan from the federal government in the amount of \$130,050.57. Therefore, LAB had already been compensated in the amount of \$130,050.67 by the federal government. LAB submitted a reconciliation of the PPP loans received to ILS but did not inform the Law Department that it received an overpayment from the County.

The facts of these transactions changed the character of their status concerning the County's accounting records. Because the payments could not be expected from ILS, these transactions could no longer be considered accounts receivable, and needed to be recategorized. However, there is no way that the Law Department could have known that these amounts were no longer receivable because neither ILS nor LAB notified the Law Department of the unique and largely unforeseeable circumstances regarding these specific transactions.

At the same time, the Law Department should have realized that something was amiss when the reimbursement remained outstanding. At that point, the Law Department had an obligation to follow up with ILS and inquire about the status of the claim. Because the Law Department makes payments to LAB under the Indigent Defense Program up front and seeks reimbursement from ILS at the end of the claim period, the County was the party at risk when ILS reduced the amount of reimbursement.

Recommendation: To address the immediate issue, the Auditor recommends that the Law Department initiate collection efforts for LAB to reimburse the County in separate payments of \$107,614.95 and \$22,435.72, totaling \$130,050.67. Addressing each overpayment separately allows for proper application to the relevant grant claim period. In its request, the Law Department should also ask for accurate invoices and supporting documentation to substantiate full reimbursement of both claims¹². In addition, the Law Department should ensure that proper accounting techniques are used to rectify outstanding debits and credits in the County's accounting system.

The Auditor further recommends that the Law Department reconcile quarterly vendor payments to claims reimbursed from ILS. Quarterly reconciliations will work to ensure Indigent Defense

¹² Copies of all documents must be maintained by the Law Department for six years to comply with New York State's record retention regulations.

Program transactions are being accurately recorded in a timely manner. In addition, Erie County Internal Control Policy requires periodic managerial review of the invoices received from the agencies to reimbursement claims for accuracy, compliance, and timeliness.

Finally, the Auditor recommends that LAB make every conceivable effort to practice full transparency with the Law Department. As recipients of government aid, LAB should be intimately familiar with the applicable laws, rules, regulations, contractual agreements, and administrative guidance that govern its financial operations. By quietly retaining extra funds in 2021, LAB exposed itself not only to liability under its contract with Erie County, but to potential criminal liability as well¹³.

Finding #2: Policy Violations Resulted in Aged Receivables.

The Auditor established that over the course of the audit, each outstanding receivable would have been resolved had the Law Department adhered to the Erie County Accounts Receivable Policy for Claims¹⁴. For the purposes of testing, the Auditor defined an outstanding amount owed to the County is considered “aged” when steps have been taken rendering the amount “receivable”¹⁵, but over ninety (90) days have elapsed since the receivable became due¹⁶.

Five aged receivables, shown in Table 4 below, were recorded in the County’s accounting system as due from ILS. To date, these amounts have yet to be recovered.

Table 4

Aged Receivables								
Item #	Document Date	SAP Posting Date	Document Number	Grant	Contract	Claim Period	Status of Claim	Amount in USD
1	5/10/2021	5/19/2021	1800063587	160QID8ILS1820	C800014	April-June 2020	Uncollectable	\$ 107,614.95
2	5/10/2021	5/19/2021	1800063588	160CR2ILSF1720	C2nd614	July-Sept. 2020	Uncollectable	\$ 22,435.72
3	4/27/2021	5/3/2021	1800063325	160HHEXPILS1823	CSTWIDEHH14	July-Sept. 2020	Rejected	\$ 219,647.05
4	11/23/2020	11/30/2020	1800061431	160HHEXPILS1823	CSTWIDEHH14	July-Sept. 2019	Not filed with ILS	\$ 172,126.15
5	12/13/2016	12/22/2016	1800044716	160ILSF3Y1415	C000214	2015-2016	Uncollectable	\$ 19,050.00
								\$ 540,873.87

Per Erie County policy, the Law Department must prepare claims for reimbursement no later than thirty (30) days following the end of the claim period¹⁷. After a claim is created, the Law Department is responsible for “initial collection efforts”¹⁸.

¹³ See, i.e., *Matter of Carroll*, 194 A.D.2d 921 (3d Dep’t 1993); *People v. Bel Air Equipment Corp.*, 46 A.D.2d 773 (2d Dep’t 1974).

¹⁴ Specifically, Erie County Accounting Policy – Accounts Receivable – Claims.

¹⁵ Per Erie County Accounting Policy – Accounts Receivable – Claims, “accounts receivable should be recorded for all receivables owed to the County which have been claimed, billed, or invoiced.”

¹⁶ Erie County policy does not specifically define when a receivable becomes “aged”. In order to ensure testing consistency, the Auditor deferred to the industry standard of receivable aging schedules.

¹⁷ See Erie County Accounting Policy – Accounts Receivable – Claims; Erie County Accounting Policy – Special Applications – Grants at 2.

¹⁸ See Erie County Accounting Policy – Accounts Receivable – Claims at 1.

If a claim has a rate change or disallowance, the Law Department must investigate, reconcile and resubmit a corrected claim. The Auditor was able to determine that no effort was made to investigate and resolve the above aged receivables.

Only after the Accounting Division receives a “written notification of non-payment” will the Comptroller’s Office initiate its own collection proceedings¹⁹. The Auditor established that during the audit period, neither the Law Department nor the Accounting Division were reviewing or managing aged receivables.

Recommendation: In the immediate term, the five aged receivables require resolution by the Law Department with ILS and LAB. The Auditor further recommends that the Law Department adhere to applicable Erie County Policy²⁰ when handling claims for reimbursement from ILS, especially in light of the fact that the amount of money at issue is substantial and the services provided are critical.

The Auditor further recommends that the Comptroller’s Office, as the provider of accounting services and guidance under the County Charter, institute procedures to review and manage aged receivables and other relevant considerations pertaining specifically to the Indigent Defense Program. At the outset, the Law Department should open a direct line of communication with the Comptroller’s Accounting Division in order to ensure that aged receivables are not left outstanding and that agency overpayments or claims that are returned, reduced, paused, or disallowed are promptly addressed.

Finding #3: Unrecoverable Grant Reimbursement Claim due Erie County from ILS totaling \$19,050.

During the review of aged receivables, the Auditor noted a grant claim that was submitted for reimbursement to ILS in 2016 that has remained an aged receivable²¹.

The Auditor asked the Law Department about this claim and was told that there is no record in the Law Department regarding that submission. In a later conversation with ILS, the Auditor was informed that ILS had no record of the claim. ILS noted, however, that the point was moot, since the window for claiming amounts pursuant to that grant had long since closed, meaning that the claim is no longer reimbursable²². Given the Auditor’s findings, the amount of the claim must be considered a loss to Erie County.

Recommendation: In the immediate term, the Auditor recommends that the Law Department provide the Accounting Division with an entry to charge off the aged accounts receivables for \$19,050. Further, the Law Department should inform the Office of Budget and Management that the value of the claim – totaling \$19,050.00 – can no longer be considered a budgeted amount in the Grant Budget Consumption Report.

¹⁹ *Id.* at 2.

²⁰ Specifically, Erie County Accounting Policy – Accounts Receivable – Claims.

²¹ For reference, the amount described was posted in December 2016 and refers to Document No. 1800044716, Grant No. 160ILSF3Y1415, and Contract No. C000214.

²² See also, Agreement Between the New York State Office of Indigent Legal Services and County of Erie, New York, C000214, Appendix C, February 26, 2013.

In addition, the Auditor recommends that office management in the Law Department perform a managerial review of all open ILS grants on a quarterly basis. Such a review should look for outstanding claims, ensure accurate and timely submission of claims, review aged receivables and confirm grant closing dates as per Erie County Internal Control Policy.

The Auditor further recommends that the Accounting Division perform a similar periodic review and promptly communicate to the Law Department the presence of any outstanding claims.

FINDING #4: Outstanding Payables to Vendor total \$74,843.88

The Auditor confirmed that two invoices sent to the Law Department during the Audit period were not paid. As a result, LAB received nearly \$75,000.00 less from the County than it was entitled to. To date, these amounts have yet to be paid.

Table 5

Erie County Outstanding Payables to Vendor - LAB					
Item #	Grant	Contract	Claim Period	Invoice Date	Invoice Amount
1	160HHEPILS1823	CSTWIDEHH14	July-Sept. 2020	4/27/2021	\$ 70,950.46
2	160CR2ILSF1720	C2ND614	July-Sept. 2021	7/13/2023	\$ 3,893.42
Total Outstanding Payables to LAB from Erie County					\$ 74,843.88

The Auditor tested the accounts payable claims' process in part to ensure that the agencies were paid correct amounts owed. As Table 5 above demonstrates, the Auditor established the existence of two outstanding invoices payable to LAB in the amounts of \$70,950.46 and \$3,893.42. LAB provided the Auditor with copies of the invoices reflecting both amounts that were sent to the Law Department in 2021 and 2023, respectively. After searching the County's accounting system for the two invoices at issue, the Auditor established that there is no record of the two invoices recorded in the system.

Recommendation: The Auditor recommends that the Law Department promptly contact LAB in order to review the invoices representing outstanding payables for \$70,950.46 and \$3,893.42. The Auditor further recommends that the Law Department resolve each amount independently of one another as well as other amounts distributed to LAB going forward. In this instance, if supporting documentation demonstrates that LAB is entitled to the full amount, the Law Department should pay it via two separate ACH payments.

The Auditor also recommends that the Law Department abstain from resolving these outstanding amounts by adding to future payments or offset future reimbursements. While convenient, crediting outstanding payables to existing debts or debiting refunds against future distributions pose several risks. First the Indigent Defense Program reimbursement process is complex on its face. Second, it is unclear whether the Law Department's contracts with the agencies, grant agreements, or ILS regulations permit the application of funds from one claim period to another.

FINDING #5: Vendor Invoices Were Paid Without Supporting Documentation

Quarterly invoices submitted by the agencies were approved and paid by the Comptroller's Office without supporting documentation substantiating the invoice.

During fieldwork, the Auditor sampled fifty-eight (58) accounts payable transactions. Out of the fifty-eight (58), it was determined that forty (40) transactions fell within the NYS retention schedule and were eligible for further testing. The Auditor established that out of those forty (40) transactions, four (4) transactions would not be considered since the Auditor was unable to obtain a precise date in 2018 when both the Law Department and Accounting Division had full access to the OnBase electronic documentation function.²⁴ It should be noted that the Law Department could not provide copies of any supporting documentation for transactions occurring in the first and second quarters of 2018. While the Auditor did not test the 2018 transactions for the purpose of compliance with County policy requiring documentation be uploaded to OnBase, the Law Department should have been able to produce paper copies of supporting documentation corresponding with invoices paid during that time. The Auditor tested the remaining thirty-six (36) transactions described in Table 6 below and found that each transaction lacked any form of supporting documentation.

Table 6

Accounts Payable - Invoices Paid without Supporting Documentation					
Claim Period	Amount	Invoice Attached	Document Date	Supporting Documentation Attached	Transactions falls within the NYS retention period
2017 April-June	\$47,995.38	N	3/29/2018	N	Y - OnBase not available
Nov 2016 - Jan 2017	\$76,569.85	N	9/7/2018	N	Y - OnBase not available
2017 May - Oct	\$164,832.02	N	7/9/2018	N	Y - OnBase not available
2018 Jan-March	\$73,348.97	N	4/30/2018	N	Y - OnBase not available
2019 July-Sept.	\$251,020.06	Y	2/25/2020	N	Y
2019 July-Sept.	\$34,257.56	Y	12/31/2019	N	Y
2021 April-June	\$115,543.69	Y	5/19/2022	N	Y
2020 July-Sept.	\$474,179.34	Y	2/9/2021	N	Y
2018 July-Sept.	\$102,841.22	Y	4/3/2019	N	Y
2022 April-June	\$101,285.00	Y	9/13/2022	N	Y
2019 July-Sept.	\$57,798.23	Y	3/23/2020	N	Y
2020 Jan-March	\$8,205.01	Y	11/18/2020	N	Y
2021 April-June	\$501,779.06	Y	7/15/2022	N	Y
2022 Oct-Dec.	\$107,107.51	Y	3/26/2023	N	Y
2022 Oct-Dec.	\$66,459.43	Y	2/10/2023	N	Y
2021 July-Sept.	\$41,948.08	Y	3/24/2022	N	Y
2020 July-Sept.	\$10,400.00	Y	3/9/2021	N	Y
2022 Jan-March	\$47,043.67	Y	8/2/2022	N	Y
2022 July-Sept.	\$58,469.00	Y	11/1/2022	N	Y
2021 Jan-March	\$397,551.44	Y	3/1/2022	N	Y
2018 July-Sept.	\$13,162.08	Y	3/23/2020	N	Y
2020 April-June	\$56,444.91	Y	8/4/2021	N	Y
2018 Oct-Dec.	\$69,623.31	Y	3/19/2020	N	Y
2022 Oct-Dec.	\$21,123.99	Y	3/13/2023	N	Y
2022 July-Sept.	\$92,101.70	Y	11/10/2022	N	Y
2020 Jan-March	\$24,029.63	Y	12/22/2020	N	Y
2019 Jan-March	\$68,430.96	Y	8/28/2019	N	Y
2023 Jan-March	\$94,905.38	Y	4/13/2023	N	Y
2019 April-June	\$25,046.73	Y	12/31/2019	N	Y
2019 July-Sept.	\$72,406.56	Y	11/5/2020	N	Y
2019 Jan-March	\$26,577.34	Y	12/31/2019	N	Y
2020 Oct-Dec.	\$427,074.56	Y	3/11/2021	N	Y
2022 July-Sept.	\$25,790.90	Y	10/20/2022	N	Y
2020 Oct-Dec.	\$168,960.04	Y	8/27/2021	N	Y
2019 Oct-Dec.	\$67,181.71	Y	11/16/2020	N	Y
2020 Jan-March	\$73,235.19	Y	11/10/2020	N	Y
2019 April-June	\$171,932.75	Y	3/19/2020	N	Y
2021 Oct-Dec.	\$698,444.15	Y	6/21/2022	N	Y
2022 April-June	\$555,505.85	Y	7/8/2023	N	Y
2022 July-Sept.	\$498,171.09	Y	7/12/2023	N	Y

During fieldwork, the Auditor established that the Law Department was not maintaining – in physical or electronic form – the supporting documentation that the agencies are required to submit with their quarterly invoice. Per the Auditee, only the invoices are being retained while the supporting documentation is simply forwarded to ILS without being reviewed or maintained by the Law Department. Without supporting documentation, the Accounting Division is prevented from properly reviewing and approving the transactions, which is one of the primary disbursement internal controls the County has in place.

Erie County policy prohibits the Comptroller’s Accounts Payable Department from approving and paying an invoice without verifying the supporting documentation. Therefore, if an invoice is sent

²⁴ It should be noted that invoices for Quarters 1 and 2 of FY2018 were not in OnBase, while Quarters 3 and 4 of FY2018 were. However, because the specific date that OnBase was fully implemented for this purpose by the Law Department and the Accounting Division cannot be definitively ascertained, the Auditor could not determine that policies were or were not fully complied with in 2018.

to the Accounts Payable Department for approval and it finds that supporting documentation is missing or inadequate, the Department has a duty to request the supporting documentation from the Law Department. Erie County policies require the invoice and all included supporting documentation to be retained in paper form or uploaded to OnBase²⁵, while New York State record retention regulations require the Law Department to maintain this information for six years²⁶.

One consistent explanation provided by the Auditee for the lack of supporting documentation is the volume thereof. Per the Auditee, the volume of supporting documentation has exponentially increased over the past five years, to the point where a cart is needed to transport quarterly invoices from the Law Department to the Accounting Division for approval. While the Auditor understands the tension between the increasing volume of documentation and the Law Department's limited resources, County policies and State regulations demand compliance nonetheless.

Recommendation: In order to reduce the administrative burden that compliance with applicable policy places on the Law Department, the Auditor recommends that provisions be inserted into contracts subsequently entered into by the Law Department under the Indigent Defense Program requiring the agencies to submit all supporting documentation to the Law Department in paper and electronic form. This will alleviate the burden of scanning thousands of documents into OnBase when the Law Department submits the claim for reimbursement to ILS.

Placing the obligation of converting required documents into electronic form is unlikely to cause an undue burden on the agencies, since the Auditor observed that the agencies already scan the majority of those documents for their own purposes and the agencies are reimbursed by the grant for office administrative costs.

FINDING #6: Claims Submitted to ILS for Reimbursement without Final Approval

Claims submitted to ILS for reimbursement require the Law Department to prepare a Claim for Payment Form (AC3253-S) that is to be signed by the Comptroller's Office. The signature by the Comptroller or his designee serves not only as approval to process the claim, but verification that the amount to be paid is substantiated by supporting documentation.

Of the fifty-eight (58) transactions tested by the Auditor, thirty-seven (37) fell within the required retention period as depicted in Table 7 on the following page. Out of the thirty-seven (37) we established that thirty-three (33) transactions would be further tested for purposes of compliance with Erie County policies applicable to claims submission, the Auditor did not consider four (4) transactions occurring in 2018 for the same reasons described in Finding #5.

During the additional testing of the thirty-three (33) remaining transactions, the Auditor found that for two (2) AC3253-S forms could not be provided preventing verification of approval and sixteen (16) AC3253-S forms were submitted without approval from the Comptroller's Office and should not have been processed.

²⁵ See [County of Erie Accounting Policy – Accounts Payable Overview](#); see also [County of Erie Accounting System Policy – Internal Controls](#).

²⁶ See, i.e., C00214 § VI(C).

Table 7

Accounts Receivables - Claims for Reimbursement - Missing Approvals & Supporting Documentation						
Grant	Claim Period	Amount	Claim Form Attached	Claim Form Approval by Comptroller's	Supporting Documentation attached	Within the NYS Retention Period
160QID5ILS1517	2018 Jan-March	\$73,348.97	N	N	N	Y- OnBase not available
160QID5ILS1517	2018 July-Sept.	\$102,841.22	N	N	N	Y- OnBase not available
160QID7ILS1719	2018 July-Sept.	\$13,162.08	Y	N	N	Y- OnBase not available
160QID7ILS1719	2018 Oct-Dec.	\$69,623.31	Y	N	N	Y- OnBase not available
160HHEXPILS1823	2019 July-Sept.	\$251,020.06	Y	N	N	Y
160QID7ILS1719	2019 July-Sept.	\$34,257.56	Y	N	N	Y
160CR2ILSF1720	2019 April-June	\$25,046.73	Y	N	N	Y
160HHEXPILS1823	2019 April-June	\$171,932.75	Y	N	N	Y
160QID5ILS1517	2019 Jan-March	\$68,430.96	N	N	N	Y
160QID7ILS1719	2019 Jan-March	\$26,577.34	Y	N	N	Y
160QID7ILS1719	2019 July-Sept.	\$57,798.23	Y	N	N	Y
160QID9ILS1921	2019 July-Sept.	\$72,406.56	Y	N	N	Y
160QID7ILS1719	2019 Oct-Dec.	\$67,181.71	Y	N	N	Y
160QID7ILS1719	2020 April-June	\$56,444.91	Y	N	N	Y
160CR2ILSF1720	2020 Jan-March	\$24,029.63	Y	N	N	Y
160QID6ILS1618	2020 Jan-March	\$8,205.01	Y	N	N	Y
160QID9ILS1921	2020 Jan-March	\$73,235.19	Y	N	N	Y
160QID5ILS1517	2020 July-Sept.	\$10,400.00	N	N	N	Y
160HHEXPILS1823	2020 July-Sept.	\$474,179.34	Y	N	N	Y
160HHEXPILS1823	2020 Oct-Dec.	\$427,074.56	Y	N	N	Y
160HHEXPILS1823	2020 Oct-Dec.	\$168,960.04	Y	N	N	Y
160QID8ILS1820	2021 April-June	\$115,543.69	Y	Y	N	Y
160HHEXPILS1823	2021 April-June	\$501,779.06	Y	Y	N	Y
160HHEXPILS1823	2021 Jan-March	\$397,551.44	Y	Y	N	Y
160QID8ILS1820	2021 July-Sept.	\$41,948.08	Y	Y	N	Y
160HHEXPILS1823	2021 Oct-Dec.	\$698,444.15	Y	Y	N	Y
160CAFA3ILS2022	2022 April-June	\$101,285.00	Y	Y	N	Y
160HHEXPILS1823	2022 April-June	\$555,505.85	Y	N	N	Y
160QID9ILS1921	2022 Jan-March	\$47,043.67	Y	Y	N	Y
160HHEXPILS1823	2022 July-Sept.	\$496,171.09	Y	Y	N	Y
160QID10ILS2022	2022 July-Sept.	\$58,469.00	Y	Y	N	Y
160QID11ILS2123	2022 July-Sept.	\$92,101.70	Y	Y	N	Y
160QID7ILS1719	2022 July-Sept.	\$25,790.90	Y	Y	N	Y
160QID8ILS1820	2022 Oct-Dec.	\$107,107.51	Y	Y	N	Y
160QID9ILS1921	2022 Oct-Dec.	\$66,459.43	Y	Y	N	Y
160UFDILS2224	2022 Oct-Dec.	\$21,123.99	Y	Y	N	Y
160QID9ILS1921	2023 Jan-March	\$94,905.38	Y	Y	N	Y

The Comptroller’s Office is required to submit the AC3253-S to ILS along with all supporting documentation substantiating the claim. Once the claim and supporting documentation have been completed by the Law Department and uploaded into OnBase, a copy of the file must be delivered to the Comptroller for approval with a properly addressed mailing envelope. The original, in whatever form, should be kept by the Law Department for their records. Once properly reviewed and signed by the Comptroller’s Office, the claim amount is approved and the signed claim form along with supporting documentation are to be promptly mailed to ILS by the Comptroller’s Office. The Accounting Division is responsible for uploading a signed copy of the AC3253-S into OnBase.

The Auditor established that this is not the process that the Law Department and the Accounting Division followed during the relevant period. Instead, the Law Department completed the AC3253-S form, and the Accounting Division did not review supporting documentation prior to signing and approving the claim. Once it was signed, neither department maintained supporting documentation. Rather, the Law Department forwarded the supporting documentation directly to ILS.

RECOMMENDATION: The Auditor recommends that the Law Department and Accounting Division adhere to applicable Erie County Policy as written²⁷. The Auditor further recommends that management in each office conduct periodic oversight to ensure the proper internal controls are being followed and performed correctly. It should be noted that the ILS accepts claims for reimbursement and all supporting documentation electronically.

AUDITOR’S COMMENTS & RECOMMENDATIONS

Comment #1: Noncompliance with Erie County Accounting Grants Policy

Because money paid to the agencies by the Law Department, constitute the expenditure of taxpayer funds, the amount of the annual distribution requires approval by the Erie County

²⁷ See County of Erie Accounting Policy – Accounts Payable Overview; see also County of Erie Accounting System Policy – Internal Controls.

Legislature. To create a grant fund in the County's accounting system, the requesting department is required to submit evidence of legislative approval with its request. Once a completed grant application is received and legislative approval can be confirmed, the Comptroller's Office creates the proper entry in the County's accounting system.

The Auditor established that those approval documents are not being provided to the Trust Department in the Comptroller's Office. Therefore, the Trust Department is not verifying that amounts being paid to the agencies have the requisite Erie County Legislative approval prior to processing payment and establishing a Grant in the County's accounting system.

Recommendation: In accordance with Erie County Policy²⁸, the Auditor recommends that the Trust Department verify that legislative approvals are included in supporting documentation.

Comment #2: Noncompliance with Erie County Accounting Policies and State Laws Relating to Receipt and Maintenance of Supporting Documentation

The vast majority of the Auditor's findings can be connected, directly or indirectly, to failures on the part of the Law Department and Accounting Division to demand, review, economize, or maintain supporting documentation.

Recommendation: The Auditor recommends that both the Law Department and the Accounting Division take advantage of the reliability and convenience that the Erie County Document Management System (OnBase) provides that lends to better internal controls.

For the Law Department, the Auditor recommends that payable entries are not made in the County's accounting system without first uploading supporting documentation that accompanies an invoice into OnBase. The Law Department should develop a policy to ensure that, once received, invoices are promptly uploaded with complete supporting records. The Auditor further recommends that the Law Department, as the "originating department"²⁹ develop a checklist describing documents that need to be maintained in connection with the Indigent Defense Program reimbursement process. These documents include but are not limited to award documents, contracts, correspondences, accounting reports, and other financial documents generated during the course of grant administration.

The Auditor also recommends that the Law Department implement a policy requiring contractors submitting documents to the County to do so in electronic form. The Law Department is particularly well-suited to address this issue, since all contracts executed by the County must be approved as to form by the County Attorney. An e-delivery requirement could be easily added to the list of required clauses included in contracts between the County and its vendors. Thus, a policy requiring documents to be submitted in electronic form would not only address several issues revealed during this audit but could lead to improved internal controls and record keeping practices throughout the County generally.

For the Accounting Division, the Auditor recommends that the Comptroller require the Accounting Division to verify that both invoice and a complete supporting record are present in OnBase in compliance with Erie County policy. No payments should be made without verifying the presence of all necessary records and the approval of the Comptroller or his designee.

²⁸ Specifically, the Erie County Accounting Policy – Special Applications – Grants.

²⁹ See Erie County Accounting Policy – Special Applications – Grants.

CONCLUSION

Given the unique nature of Erie County's arrangements for providing indigent legal services, ensuring that accurate supporting documentation is accounted for serves a critical internal control function. Unlike many Counties which have Offices of Public and Conflict Defender, the agencies providing indigent legal services in Erie County are not under the direct supervision of County officials. Therefore, maintaining meticulous records relating to the Indigent Defense Program is an indispensable responsibility of the Law Department. This is important for multiple reasons.

First, the County is ultimately responsible for the legal services provided. Even though performance is outsourced to non-governmental organizations, it is the County that bears responsibility for complying with the mandates of the United States Constitution and other statutes guaranteeing the right to counsel.

Second, ILS requires the agencies to submit documents and provide information in addition to the County. Thus, ILS can and does confirm that claimed amounts are supported. One of the outstanding claims described in Finding #2 serves as a paradigmatic example of the consequences that can arise from the County's failure to review supporting documentation. Ultimately, the agencies are funded by the County up front, so any discrepancy in an agency's financial records results in funds being withheld from the County.

Third, it is imperative that aged receivables are not left to languish in the County's accounting system for periods of years. It must be noted that under regular circumstances, the amount discussed in Finding #3 would not have been the lone unrecoverable claim. Due to the extended, at times disjointed rollout of the *Hurrell-Harring* settlement implementation, ILS has been lenient with counties from 2015 to 2023³⁰. This leniency is grounded in the understanding that the overlap of *Hurrell-Harring* distributions (which operated on a five-year schedule) and most other ILS grants (which operate on a three-year schedule) had the potential to create considerable confusion for local governments and agencies. The period of overlapping grants is set to end in 2023. Patricia Warth, the Executive Director of ILS, has warned that ILS is prepared to strictly enforce its claim reimbursement windows going forward.

Finally, consistent and proper monitoring of financial and accounting information regarding the Indigent Program is critically necessary in order for the Executive and Comptroller to make informed decisions about current and prospective administration. A thorough accounting review is essential in helping the Director of Budget and Management make regular determinations regarding the value and viability of the current arrangement. As previously noted by this office in 2023, the State Legislature doubled the rates at which assigned counsel are paid, half of which the County is responsible for covering. Failing to adequately review submissions, maintain records, and communicate leaves the County in a vulnerable position.

RESULTS OF EXIT CONFERENCE

An exit conference was held on November 30, 2023, with the Erie County Attorney, members of his staff, the Deputy Budget Director, and the Deputy Comptroller. The audit draft report was reviewed and discussed.

³⁰ It is not lost on the Auditor that the \$19,050 claim is unrecoverable despite the window of reimbursement remaining open for multiple times longer than it typically would have.

The Erie County Comptroller's Office would like to thank the Erie County Attorney, the Director of Budget and Management, the Deputy Comptroller and their respective participating staff members for the courtesy extended to the Division of Audit during the course of the review. The Erie County Comptroller's Office would also like to thank the Erie County Bar Association Aid to Indigent Prisoners Society, Inc. 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. Finally, the Division of Audit would like to thank Patricia Warth, Executive Director of the New York State Office of Indigent Legal Services and her staff for taking time to provide valuable context for the Division of Audit and for answering questions throughout the fieldwork period.

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 Auditor's objective in this review was to test and evaluate the Indigent Legal Services Grant claims approval, disbursement and reimbursement processes to determine if the internal controls over the relevant period (January 1, 2015 – December 31, 2022) were adequate and whether the Law Department adhered to County Policies during that time.

The scope of the audit included testing and evaluation of the disbursement of payments to grant recipients for legal services performed under the Law Department's Indigent Defense Program and the claims reimbursement process necessary to recoup the money from ILS. The internal controls surrounding the processes for grant approvals, payments to vendors providing indigent legal services, and the preparation and submission of claims for reimbursement to ILS, were reviewed, evaluated, and tested for compliance, completeness, and efficiency.

In addition, Internal Control Questionnaires (ICQ) were used to obtain a baseline, document discussions and procedures related to policy and processes followed by the Law Department and Accounting Division. These discussions related to contracts between the County and the agencies, processing and submitting claims for reimbursement with ILS, and recording approved financial transactions in the County's accounting system ("SAP") related to both accounts receivable and accounts payable.

To achieve this objective, the Auditor tested twenty (20) grant awards spanning the relevant period which included testing of the approval process for all twenty (20) grants. Also tested were fifty-eight (58) transactions randomly selected from a population of 276 quarterly claims. For all fifty-eight (58) transactions, the vendor payment process to ACP and LAB was tested. These transactions were also tested as part of the claim reimbursement process relating to ILS.

In addition, Internal Control Questionnaires were used to document discussions and procedures related to policy and procedures followed by the Department of Law and the Comptroller's Office to contract, claim process and record approved financial transactions in the accounting system ("SAP") related to both accounts receivable and accounts payable.

Tests of controls were designed, executed, and then reviewed for adequacy. The audit methodology was executed by testing the fifty-eight (58) out of the total population of 276 claim reimbursement transactions from twenty (20) grants recorded in SAP over the relevant period and comparing them to documentation that included:

- 1) The Grant Award Letters;
- 2) Approvals by the Erie County Legislature;
- 3) The Grant Request Packets from New York State;
- 4) Documentation in SAP showing Aged Receivables;
- 5) The Accounts Receivable Approval Process;
- 6) The Claims Submission and Reimbursement Process from ILS;
- 7) Documentation in SAP showing ACH Payments Received from ILS;

- 8) Supporting Documentation Substantiating Invoices/Payment Transactions between the County, LAB or ACP;
- 9) Canceled Checks for Payments made to LAB and ACP;
- 10) Authorization of Payments to LAB and ACP;
- 11) A/R and A/P transactions within the test sample comply with New York State Retention Schedule.

This documentary evidence and conversations with relevant individuals within the Law Department, Accounting Division, ILS, ACP, and LAB, taken as a whole, were used to form an opinion based on the audit objectives.

APPENDIX B

Auditee's Response to the Draft Audit Report



DEC 15 2023 4:507

COUNTY OF ERIE

JEREMY C. TOTH
COUNTY ATTORNEY

KRISTEN M. WALDER
DEPUTY COUNTY ATTORNEY

DEPARTMENT OF LAW

December 15, 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 Grants
for Indigent Services January 1, 2015 through December 31, 2022**

Dear Comptroller Hardwick:

The Erie County Department of Law (Law) writes to respond to the Draft Audit of Erie County Department of Law's Indigent Services Grant Claims for the period of January 1, 2015 through December 31, 2022.

We thank you and your Audit Division for their thorough analysis and thoughtful recommendations related to the numerous grants the Law Department handles for 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). While we generally agree with the recommendations your office has offered to better monitor these grants, I would like to highlight some contextual information that will likely get lost in the dissemination of this audit.

First, while these programs have been existence for over 50 years, it is my understanding the Law Department has never had an accountant. In fact, our sole employee responsible for both the grant proceeds to the local programs, as well as the reimbursement process from New York State, has a whole host of other responsibilities totally unrelated to any type of accounting activities.

Your audit tested 20 grants Law has received related to Indigent Legal Services during the period of January 1, 2015 through December 31, 2023, which have a total award of more than \$71 million. While no deficiency is acceptable, and we are already working towards remedying those identified, I think it is important to point out that your findings are related to only \$686,668 of a total \$32 million claimed over 7 of 276 quarterly claiming periods. That

means that just over 2% of the funding and claims your auditors examined presented an issue. Stated differently, 98% of the funding and claims your auditors examined presented no issue at all. Similarly, of the 58 transactions reviewed by the audit, only two claims presented deficiencies. Again, that is two too many, but given the age of these programs, the complexity of these programs, and the historical understanding that the Law Department is merely a “pass-through” for these programs, I am relieved that more problems were not uncovered. Indeed, given the fact that only one employee in the Law Department is responsible for the administering of these grants, and has been responsible for administering these grants for the past several decades as a small part of her overall workload, it is a testament to her capabilities that there are not more significant problems.

It is also critically important to note just how complex New York State has made the funding of indigent legal services. This complexity is exacerbated by the County’s long-standing policy of funding two separate programs as well as significant changes made by New York State in the past five years. Your own audit calls these recent changes “extended and at times disjointed...” Your audit goes on to explain how New York State’s Office of Indigent Services recognizes how complicated these grants are for administration purposes.

This leniency is grounded in the understanding that the overlap of *Hurrell-Harring* distributions (which operated on a five-year schedule) and most other ILS grants (which operate on a three-year schedule) had the potential to create considerable confusion for local governments and agencies. The period of overlapping grants is set to end in 2023.

I would point out that, while not mentioned in the audit, your auditing team required months just to come to understand the various grants, the reimbursement processes and the way in which New York State has changed its own administration of these funds in recent years.

In addition, while neither of your audits from this year mention this fact, there was an audit performed of these contracts by your predecessor in 2020. That audit found no deficiencies. At the recent exit conference related to the 2023 audit, your auditors explained that the 2020 audit’s scope was so limited that its findings were entirely meaningless. While I understand this now, at the time, in October of 2020, I sincerely took that audit’s lack of findings as a seal of approval as to how these programs were being administered, as did the previous County Attorney. It is disheartening that an audit that required significant work on behalf of Law Department staff was utterly useless and gave this Department an entirely false impression that there were no areas in which we could improve on managing these programs.

Finally, as explained, these programs have been in existence for over 50 years. As best as I can tell, until this audit, every previous County Attorney relied upon the two individual programs, and their accounting staff, to properly account for their own budget. Obviously, that

reliance was misplaced. While I now understand the responsibilities of the Law Department to more closely monitor the claims and the reimbursements, this is a paradigm shift for this office. As such, the 2024 budget includes an accounting position for the Law Department. While we will strive to implement all of the recommendations immediately, in cooperation with your office and the Budget Department, it is likely that until we are able to hire an accountant, we will not reach optimum efficiency.

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

Finding #1: Reimbursable Claims and Recoverable Overpayments due Erie County total \$592,774.33

Finding #2: Policy Violations Resulted in Aged Receivables

Finding #3: Unrecoverable Grant Reimbursement Claim due Erie County from ILS totaling \$19,050

Findings #1-3 are all issues related to “aged receivables.” While the reason why each of these became an “aged receivable” is different, some of which were completely outside of the Department’s control, we ultimately agree that each of these would have been resolved had the Department adequately adhered to the County’s Accounts Receivable Policy for Claims. The Department will immediately take steps to follow your outlined recommendations that include:

- seeking reimbursement for \$462,724 in eligible claims from ILS;
- seeking recovery of \$130,051 in overpayments made to LAB; and
- authoring an entry with the Comptroller’s Accounting Division to write off \$19,050 that is no longer reimbursable.

Additionally, we will institute a regular process to regularly verify our outstanding accounts receivable entries to ensure that any future issues or miscommunications between Law, ILS and LAB are promptly resolved.

I would like to take a moment to acknowledge that because your office chose to engage in this audit, we are in a position to rather easily resolve most of these issues with only \$19,050 of \$611,824 remaining uncollectable. Again, I am acutely aware of the value of every dollar, and in no way mean to minimize the loss of nineteen thousand dollars, but given the enormous dollar amount of funding that flows in and out of this office for these programs, this is literally a very small fraction. Moreover, it is worth repeating, that had the Comptroller Audit from 2020 actually been helpful, we may have been alerted to the loss of these funds when it was still possible to recover them from New York State.

Hon. Kevin R. Hardwick, PhD
December 15, 2023
Page 4

Finding #4: Outstanding Payables to Vendor Total \$74,843.88:

We agree with this finding and will implement your recommendation to promptly contact LAB in order to review the invoices representing the outstanding payables. We also agree that these should be addressed separately from other findings and not simply offset by future reimbursements.

Finding #5: Vendor Invoices Were Paid Without Supporting Documentation:

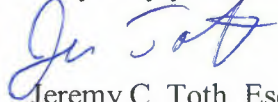
Finding #6: Claims Submitted to ILS for Reimbursement without Final Approval:

Findings #5-6 are a result of the same issue, with #5 relating specifically to the invoice payment process with LAB and #6 the claim reimbursement process with ILS. While we understand current County policy does not allow for exceptions to be made, the volume of hard copy documentation that is presented by LAB and EC Bar for each of their claims and subsequently presented to ILS for reimbursement of those claims has made it impractical to convert to a digital form for upload into OnBase in accordance to official policy. A long-standing arrangement has existed with the Comptroller's Office Accounting Division in acknowledgement of that impracticality and they have consistently posted AR and IR documents allowing invoices to be paid and claims to be reimbursed without any objection. As such, it was our impression that, though technically outside of official County policy, we were engaging in an otherwise officially approved process.

Nonetheless, we will accept these findings and work towards creating a better process with your office that allows for all supporting documentation to be specifically presented and maintained in OnBase going forward. We have already instructed the two programs to submit claims in hard copy and digital form and I have met with your Deputy Comptroller of Accounting to ensure that we follow an agreed upon process that allows us to send these claims on to New York State expeditiously, as well as maintain back up documentation in our own custody.

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.

Very truly yours,



Jeremy C. Toth, Esq.
Erie County Attorney

cc: Hon. Mark C. Poloncarz, County Executive
Robert Keating, Budget Director