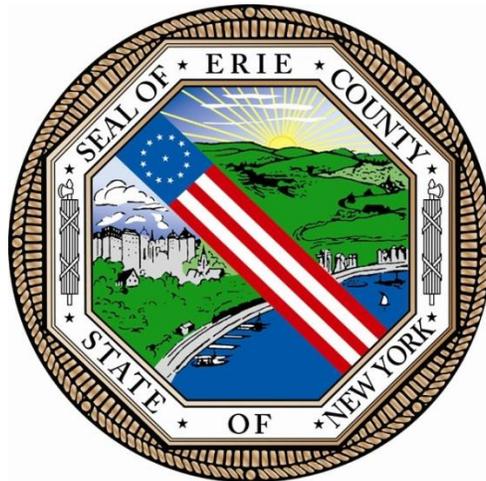


**March 2026**

**Analysis of Assigned Counsel Program Payments to  
Highly Compensated Attorneys for the Period of  
January 1, 2023 through December 31, 2024**



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March 5, 2025

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

Dear Honorable Members:

The Erie County Comptroller's Office completed a procedural analysis of payments to highly compensated attorneys participating in the Erie County Bar Association Aid to Indigent Prisoners Society, Inc., also known as the Assigned Counsel Program (ACP).

### **Purpose and Scope**

The purpose of this analysis was to evaluate the accounting, billing, and related fiscal operations of the ACP during a period of significant financial and operational change. The review focused on compliance with applicable statutes, regulations, contractual requirements, and internal policies, as well as the design and implementation of internal controls over attorney billing and payment processes.

The primary review period covered January 1, 2022 through December 31, 2024. Records outside this period were examined as necessary to establish benchmarks, evaluate trends, and provide contextual understanding. Activities outside the defined review period were not the subject of findings.

The analysis also considered allegations received through the Comptroller's Whistleblower Hotline to determine whether sufficient evidence existed within the scope of work to substantiate or refute those allegations.

### **Methodology**

To accomplish the objectives, the Auditor reviewed financial records, attorney billing vouchers, contracts, policies, Attorney Handbook provisions, reimbursement submissions, and applicable regulatory guidance. Interviews and inquiries were conducted with representatives of ACP, the New York State Office of Indigent Legal Services (ILS), the Erie County Law Department, the Erie County Legislature, and representatives of assigned counsel programs in other counties.

These procedures were performed to obtain sufficient, appropriate evidence to assess fiscal and operational controls, understand administrative practices, and identify comparative benchmarks. Based on the evidence obtained, fiscal and operational practices were evaluated at both the institutional and individual levels, and recommendations were developed to strengthen oversight and internal controls where appropriate.

## Reporting

A draft of this report was provided to ACP for review and comment. Management's response, if received, is included as Appendix A. Comments were considered in finalizing this report.

The Audit Division's mission is to provide independent, objective, and reliable information to the Erie County Legislature and program management to support informed decision-making and promote accountability, transparency, and effective stewardship of public resources.

## Background

Since the 1960s, Erie County has been legally obligated to provide indigent defense services to individuals accused of crimes. In the 1970s, that obligation expanded to include certain Family Court proceedings. Approximately 23,000 individuals are arrested annually in Erie County, and a substantial portion qualify for publicly funded legal representation.

Under New York State law, counties may satisfy their indigent defense obligations by:

- Establishing an Office of the Public Defender;
- Contracting with a nonprofit entity to provide defense services;
- Utilizing private attorneys through an Assigned Counsel Program; or
- Implementing a combination of these models.

ILS has indicated that a system incorporating both an institutional provider and a structured assigned counsel program is generally preferred. Erie County utilizes a hybrid model that includes contracted nonprofit representation and the ACP, administered by a subsidiary of the Erie County Bar Association. Agreements between the County and each entity govern case assignments, reimbursement terms, and operational responsibilities.

## Funding Developments

For approximately two decades, assigned counsel attorneys in Erie County were compensated at statutory rates of \$75 per hour for felony and family court matters and \$60 per hour for misdemeanor matters. Effective April 1, 2023, the New York State Legislature increased the reimbursement rate to \$158 per hour for all case types in response to statewide recruitment and retention challenges. The State currently subsidizes one-half of the difference between the prior statutory rates and the revised rate.

Following implementation of the revised compensation structure, expenditure projections indicated that total program costs would increase substantially. These projections were realized in 2024, when gross ACP expenditures totaled \$20,322,433, compared to \$9,169,256 in 2022, an increase of more than 121% over the two-year period.

The expenditures presented reflect the total cost incurred for assigned counsel services during the respective years and do not include the offsetting effect of State reimbursement. Presenting the gross expenditure amounts provides transparency regarding the full fiscal scale of program operations and the County's underlying financial exposure, particularly given that reimbursement levels are subject to annual State budget determinations and may fluctuate in future fiscal periods.

This marked increase prompted questions regarding:

- The fiscal impact on County funds;
- Billing practices and oversight controls within the ACP; and
- Whether alternative structural models, such as expansion of an Office of the Public Defender, warranted consideration.

Scrutiny intensified upon the availability of full-year data reflecting the new statutory rate. ACP's 2024 IRS Form 990 reported that its highest-compensated attorney received \$465,399.60, and that 13 additional attorneys received between \$219,761.94 and \$385,912.10 during the reporting year.

During this same period, the Erie County Comptroller's Office received whistleblower complaints alleging improper practices, further elevating concerns regarding oversight and billing controls. In a 2023 audit of indigent defense distributions and reimbursements, the Auditor met with leadership of ILS and was advised that funding levels were stable at that time, though subject to annual State budget determinations. During the current review, ILS indicated that it was positioned to maintain existing funding levels and increase allocations in certain areas.

Although the ILS Fund maintains a substantial balance, continued funding remains subject to annual State budget authorization and appropriation. The 2026–27 New York State Executive Budget proposal includes language authorizing the transfer of \$234 million from the ILS Fund to the State's General Fund.

According to information provided by ACP officials and publicly available budget materials, approximately \$114 million of the proposed transfer is intended to support the State's share of increased assigned counsel rate reimbursements. The remaining approximately \$120 million of the proposed transfer is not specifically identified in the Executive Budget as being allocated for indigent legal services purposes.

Because the ILS Fund was established to support improvements in indigent legal representation and assist counties in meeting constitutional and statutory public defense obligations, transfers for purposes not directly related to indigent legal services present fiscal risk. Such transfers may reduce resources available for mandated caseload relief, quality improvements, and rate reimbursement stability, and may create uncertainty for counties engaged in long-term financial planning.

## Summary

This analysis evaluated the accounting, billing, and related fiscal operations of the ACP during a period of substantial statutory reform and changes to the ILS funding framework.

Overall, ACP is administered in a structured and operationally functional manner. Documentation and interviews indicate that management has implemented processes designed to support regulatory compliance and program administration amid evolving legal and financial requirements.

However, the analysis identified areas where internal controls and operational practices could be strengthened, including oversight, caseload monitoring, and billing practices. These deficiencies limit consistent monitoring, reduce alignment with applicable ILS standards, and increase operational and fiscal risk. Certain conditions identified during the review may increase the risk of workload management challenges and billing practices that warrant enhanced supervisory oversight.

The procedures performed were not designed to constitute a forensic examination. Accordingly, additional investigations would be necessary to reach definitive conclusions regarding specific allegations or potential misconduct.

Recent statutory compensation increases and changes to State reimbursement provisions have significantly increased program expenditures. While portions of these costs are reimbursable by New York State, counties remain responsible for the non-reimbursed share, heightening local fiscal exposure. Continued monitoring of funding sustainability, structured oversight, and coordination with State policymakers will assist Erie County in managing long-term financial risk while maintaining effective representation for eligible clients.

## Results

### **Finding #1: Caseload Standards and Workload Monitoring Limitations**

During the period reviewed, analysis of available data indicates that several of the highest-compensated attorneys substantially exceeded caseload standards established by ILS. Excessive caseloads were a central issue in *Hurrell-Harring v. State of New York*, and the resulting settlement addressed attorney workload and capacity as a structural component of effective representation.

ILS caseload standards are designed to promote manageable workloads that allow attorneys sufficient time to provide meaningful representation in each assigned matter. When caseloads significantly exceed established standards, the likelihood increases that time available per case may be reduced. In its 2010 opinion in *Hurrell-Harring v. State*, the New York Court of Appeals described allegations concerning representation in certain counties, including the following:

*“[A]lthough lawyers were eventually nominally appointed for [the defendants], they were unavailable to their clients – they conferred with them little, if at all, were often completely unresponsive to their urgent inquiries and requests from jail, sometimes for months on end, waived important rights without consulting them, and ultimately appeared to do little more on their behalf than act as conduits for plea offers, some of which purportedly were highly unfavorable. It is repeatedly alleged that counsel missed court appearances, and that when they did appear they were not prepared to proceed, often because they were entirely new to the case, the matters having previously been handled by other similarly unprepared counsel.”*

This analysis did not independently evaluate the quality of representation in individual cases. However, the extent to which certain attorneys’ calculated caseload scores exceeded ILS standards represents a potential risk warranting further review and ongoing management oversight.

State law, the ILS Black Letter Standards, and the Representation Plan require that case assignment systems exist and that assignments be distributed fairly on a rotating basis among qualified panel attorneys. These sources provide limited detail regarding operational mechanics. The ACP Handbook provides additional procedural guidance.

Under ACP procedures, the Executive Director and administrative staff coordinate assignments using the electronic legal record (ELR) system. Attorneys must accept or decline assignments within a prescribed timeframe, which ranges from one hour to thirty-six hours depending on case type and urgency. Cases are offered sequentially to attorneys. If an attorney declines or does not respond within the designated timeframe, the case is offered to the next attorney on the rotation list.

Although courts retain ultimate authority to assign cases, ACP reported that judicial assignments from the bench occur in fewer than five percent of cases. ACP indicated that such assignments most frequently occur

in Family Court. ILS advised that, when judicial assignments occur outside the rotation system, fair considerations should inform those decisions.

As part of its implementation requirements, ILS directed ACP to establish systems to ensure compliance with attorney caseload standards. ILS guidelines require consideration of multiple factors, including:

- Case type and complexity
- Attorney qualifications and experience
- Geographic considerations
- Time required for client and witness contact
- Total workload, including private practice activity
- Other relevant case-specific factors

ACP implemented daily intake caps limiting attorneys to five new criminal assignments and three new family court assignments per day. At the state level, the primary directive beyond daily and annual workload limits is equitable rotation among qualified panel attorneys. ILS standards remain applicable, and caseload data must be verified through the Court Report System. ACP is responsible for monitoring compliance over time.

The Auditor reviewed ACP’s attorney caseloads to assess compliance with ILS metrics. ACP indicated that it considered the scoring rules aspirational. However, ILS confirmed that these standards are mandatory and must be followed by all counties, including Erie County.

ILS utilizes weighted metrics to evaluate combined caseloads as follows:

<b>ILS Caseload Metrics - Maximum Total Score Based on Weighted Value</b>		
<b>Case Type</b>	<b>Misdemeanor Equivalent Value</b>	<b>Maximum Annual Assignments</b>
Misdemeanors/Violations	1	300
Non-Violent Felonies	3	100
Violent Felonies	6	50
Post-Disposition	1.5	200
Parole Revocation	1.5	200
Appeals of Trial Verdict	25	12
Appeals of Guilty Pleas	8.57	35

The Auditor reviewed ACP caseloads for 2023 and 2024. In multiple instances, attorneys opened more than 300 cases within a calendar year, exceeding ILS annual caseload limits based solely on raw case counts. Because these totals already surpassed applicable thresholds, further application of weighted case metrics was not necessary to identify potential noncompliance. ACP does not systematically collect data regarding panel attorneys’ private practice activity, which limits the ability to assess total professional workload across all representations.

## Attorney's Caseloads

*(excluding any cases opened in previous years)*

Attorney	2024		2023	
	New Cases	Closed Cases	New Case	Closed Cases
Attorney 1	73	148	115	139
Attorney 2	393	528	707	571
Attorney 3	475	342	200	160
Attorney 4	134	205	114	145
Attorney 5	87	191	218	183
Attorney 6	118	67	41	33
Attorney 7	78	161	113	143
Attorney 8	221	193	208	188
Attorney 9	231	251	202	298
Attorney 10	179	341	285	126
Attorney 11	379	511	492	379
Attorney 12	158	204	222	238
Attorney 13	81	162	123	169
Attorney 14	235	61	7	139
Attorney 15	337	349	286	390
Attorney 16	127	231	217	213
<b>Totals</b>	<b>3306</b>	<b>3945</b>	<b>3550</b>	<b>3514</b>

ILS acknowledged that many counties face attorney supply constraints that make full compliance challenging. Due to the complexity of the assignment process and external variables affecting attorney availability, the Auditor was unable to determine in all instances why certain attorneys exceeded thresholds over multiple years. However, ILS emphasized that ensuring manageable caseloads is a central purpose of its funding framework. ACP noted that its panel roster has grown over the past several years and expects the high caseloads reported above to decline over time.

In addition, ACP reported that it had independently identified concerns regarding one outlier attorney and attributed elevated caseload figures to several contributing factors, including temporary assignment practices and reduced attorney availability following pandemic-related disruptions.

During much of the review period, ACP directly assigned counsel prior to arraignment, which caused the system to record a case as opened. However, at the time of arraignment, several outcomes could occur: the attorney might discover a conflict of interest after assignment, the client could retain private counsel prior to arraignment, or, most notably, the client could fail to appear at the arraignment, prompting the attorney to withdraw. In these situations, the system still recorded the case as assigned, which artificially inflated the reported caseload. Compensation was typically minimal, often less than \$100 because little or no work was performed. This practice ended in July 2025.

ACP also identified instances in which cases were assigned from the bench in a manner inconsistent with established rotation procedures. In addition, ACP reported discovering that a clerical employee responsible for assignments engaged in improper distribution practices that concentrated cases among certain attorneys. According to ACP, corrective personnel action was taken.

Although this analysis did not assess representation quality in individual cases, available data indicates that certain attorneys exceeded ILS caseload standards over multiple years. Given the purpose of those standards and the central role manageable caseloads play in the statewide representation framework, the observed conditions warrant further review and continued monitoring, clarification of expectations between ILS and ACP, and strengthened oversight mechanisms to promote sustained compliance.

**Recommendations:**

The Auditor recommends that ACP conduct a documented review of the attorneys identified as having substantial excessive caseload to determine whether workloads were consistent with ILS standards and whether any corrective measures are warranted. The review should assess compliance with assignment protocols, workload monitoring procedures, and applicable performance expectations.

To the extent the review identifies assignments made outside established rotation procedures, ACP should evaluate whether court practices contributed to those outcomes and determine appropriate follow-up actions consistent with its oversight responsibilities. If evidence suggests potential compliance concerns, ACP should consult with appropriate authorities regarding referral options.

The Auditor further recommends that ACP conduct a comprehensive assessment of its assignment and caseload management systems, including both written policies and actual operating practices. This assessment should evaluate:

- Alignment between ACP procedures and ILS caseload standards;
- The effectiveness of monitoring mechanisms in identifying attorneys approaching or exceeding thresholds;
- Controls designed to prevent disproportionate case concentration; and
- Documentation and transparency of assignment decisions.
- Case deposition to ensure quality representation was provided

ACP informed the Auditor that it is in the process of reforming its assignment system using data collected from July 2025 through June 2026, and that the ACP Board is pursuing enhanced oversight standards. Continued collaboration with ILS during this process would promote consistency in interpretation and application of caseload requirements.

ILS recently established a Regional Support Center in Buffalo to provide technical guidance and assistance to ACPs in western New York. Engagement with this resource may assist ACP in refining recruitment strategies, strengthening caseload tracking mechanisms, and developing clearer operational protocols tailored to Erie County's needs.

Finally, the Auditor recommends that ACP, in consultation with ILS, develop a structured annual disclosure process to obtain information regarding panel attorneys' private practice activity. Current caseload monitoring captures only ACP assigned matters and does not account for attorneys' total professional workload.

An annual disclosure form could require panel attorneys to report:

- The approximate number of private matters handled during the prior year; and
- A reasonable estimate of the percentage of professional time devoted to private practice.

Such a process would not require disclosure of compensation but would provide ACP with information necessary to assess total workload capacity and ensure compliance with ILS standards, thereby strengthening assignment oversight and mitigating operational risk.

## **Finding #2: Monitoring of Attorney Compensation**

### **A. Evaluation of High Annual Compensation**

Annual payment totals to certain ACP panel attorneys appear elevated when viewed solely on a calendar-year basis. However, analysis indicates that these totals largely reflect compensation for work performed over multiple service years rather than excessive hours worked within a single year.

Under ACP procedures, panel attorneys are compensated through a “one case, one voucher” system, whereby payment is generally issued upon final disposition of a case. This structure is consistent with longstanding administrative practice under Article 18-B of New York County Law and guidance issued by the ILS. Because many matters, particularly in Family Court, remain open for extended periods, payments issued each year frequently include compensation for services rendered across multiple prior years.

For example, one attorney received approximately \$340,000 in 2024. At first glance, this amount would suggest approximately 2,160 hours billed at the post April 1, 2023 statutory rate. However, voucher level analysis demonstrated that only 531.2 hours were attributable to work performed in 2024, with the remaining compensated hours attributable to services rendered in prior years. Another attorney paid \$219,761.94 in 2024 was compensated for work performed across six different service years dating back to 2019.

When payments were disaggregated by year of service rather than year of payment, annual hours worked were substantially lower than aggregate annual payment totals initially suggest. Between 2022 and 2024, the 16 highest-paid ACP attorneys averaged \$193,339.70 in annual compensation.

Attorneys are compensated at the statutory rate in effect at the time the billing entry was recorded, not at the time the case is closed. Following statewide rate adjustments effective April 1, 2023, work performed prior to that date was generally compensated at \$75 per hour, while work performed thereafter was compensated at \$158 per hour. These rate changes contributed to higher payment totals beginning in 2023, independent of changes in workload.

To assess annual workload levels, the Auditor analyzed payment data for the 16 highest-paid attorneys for 2022, 2023, and 2024 and allocated each payment to the year in which the underlying billable entry was recorded. Based on this analysis:

- 10 of the 16 attorneys exceeded 1,875 compensated hours in at least one year;
- 5 exceeded 2,250 hours; and
- 3 exceeded 3,000 hours.

ATTORNEY COMPENSATION & HOURS						
ATTORNEY	1099 FILINGS			HOURS		
	2024	2023	2022	2024	2023	2022
Attorney 1	\$385,912.00	\$129,044.00	\$14,963.00	1845	2372.8	1996.7
Attorney 2	\$465,400.00	\$275,935.00	\$32,846.00	2426.5	3331.3	1321.5
Attorney 3	\$292,064.00	\$144,282.00	\$64,650.00	1863.4	1765.1	1954.6
Attorney 4	\$341,551.00	\$162,889.00	\$162,888.00	1536.2	1784	2007.3
Attorney 5	\$309,227.00	\$224,279.00	\$165,044.00	1631.2	2068.4	2197.4
Attorney 6	\$278,686.00	\$171,587.00	\$79,599.00	2054.8	1686.2	1483
Attorney 7	\$287,424.00	\$102,425.00	\$69,091.00	1079.4	1456.2	1088.2
Attorney 8	\$239,432.00	\$161,596.00	\$122,960.00	1283.7	1448.4	1445.2
Attorney 9	\$367,560.00	\$279,825.00	\$140,126.00	2286.2	2593.4	2231.3
Attorney 10	\$338,790.00	\$73,657.00	\$77,964.00	1340.7	1561.4	1360.4
Attorney 11	\$308,461.00	\$227,155.00	\$203,169.00	1343.8	2171.1	3172.6
Attorney 12	\$152,587.00	\$161,199.00	\$162,654.00	742.4	1156.4	2151
Attorney 13	\$219,762.00	\$130,706.00	\$119,402.00	934.1	1463.5	1795.2
Attorney 14	\$33,587.00	\$111,078.00	\$112,388.00	1037.6	1.8	1361.3
Attorney 15	\$350,425.00	\$254,847.00	\$166,378.00	2237.4	2395	3085.1
Attorney 16	\$243,885.00	\$255,806.00	\$135,128.00	1369.6	1793.9	1842.2

For context, 2,080 hours represents a standard full-time working year assuming no leave time. ILS has set a full-time reasonable workload at 1,875 hours<sup>1</sup>. While ILS standards emphasize caseload limits and quality of representation rather than strict hourly thresholds, sustained annual compensated hours substantially above full-time norms may present risks related to workload sustainability, quality of representation, and supervisory oversight.

This risk is heightened where an ACP attorney also maintains a substantial private practice, as total professional workload may exceed reasonable capacity if monitoring mechanisms are not in place to consider both ACP and private practice commitments.

### Recommendations:

To strengthen oversight of attorney compensation and enhance internal controls over workload monitoring, ACP should establish and formally document supervisory review thresholds for annual compensated hours. At a minimum, attorneys whose compensated hours materially exceed full-time workload norms, for example those exceeding 1,875 compensated hours in a calendar year, should be flagged for supervisory review. Review should be prioritized where an attorney also maintains a private practice or other professional obligations that may affect overall workload capacity.

Thresholds should be risk-based and designed to identify circumstances in which total compensated hours raise questions regarding workload sustainability, quality of representation, or compliance with program requirements. Supervisory review should include an assessment of the reasonableness of reported hours, adequacy of supporting documentation, and adherence to applicable statutory, contractual, and ACP policies.

The review process should be applied consistently and supported by written documentation evidencing the supervisory evaluation performed, conclusions reached, and any corrective or monitoring actions implemented.

<sup>1</sup> New York State Office of Indigent Legal Services, *A Determination of Caseload Standards pursuant to § IV of the Hurrell-Harring v. The State of New York Settlement* at 14 (December 8, 2016).

### **Finding #3: Indicators of Atypical Billing Patterns**

The Auditor discussed voucher review practices with ACP personnel, administrators of comparable programs in other counties, and representatives of ILS. Consistent feedback indicated that voucher review processes rely heavily on professional judgment and experience.

Notwithstanding these challenges, the Auditor identified patterns in certain attorneys' billing records that differed significantly from typical peer billing practices. While variation among attorneys is expected based on case complexity and professional approach, three recurring patterns were identified that may warrant enhanced monitoring and further review:

- Aggregated incremental billing
- Potential case-level billing inflation
- Attorney substitution

*These categories are descriptive and are used solely for analytical clarity.*

#### **A. Aggregated Incremental Billing**

The Auditor observed instances in which attorneys recorded numerous small-time increments across multiple matters within a single day. While individual entries appeared reasonable when reviewed in isolation, aggregation of all time entries across cases revealed daily totals that exceeded peer norms.

To evaluate this risk, the Auditor analyzed one week of time entries for a single attorney and organized billing activity by client and by date. During that week, 267 billing actions totaling 74.1 hours were recorded. On one reviewed date, the attorney billed nine hours to one matter while also recording activity on 17 additional cases.

Although no individual entry appeared improper on its face, aggregation by date demonstrated that cumulative daily totals can materially exceed reasonable workload expectations. This pattern reflects a structural control gap: incremental entries that appear reasonable individually may collectively result in excessive daily billings when not evaluated in total.

ACP's current review procedures emphasize identification of unusually large individual time entries rather than systematic assessment of total daily hours billed across all matters. Consequently, the existing review framework is not designed to detect cumulative overstatement risk arising from incremental billing across multiple cases.

Identification of this pattern requires alignment of all time entries by attorney and date to evaluate total daily billable hours. ACP indicated it does not perform comprehensive day-by-day workload reconciliation across its panel.

This analysis demonstrates a measurable monitoring deficiency. In the absence of systematic aggregation and exception-based review of total daily billings, the program lacks an effective internal control to detect excessive cumulative billing.

#### **B. Case-Level Billing Variance**

The Auditor also identified instances where voucher totals exceeded peer benchmarks for similar charges.

In one example, an attorney submitted a voucher totaling \$14,206.20 for a matter involving misdemeanor level charges. The Auditor compared this voucher to 39 other vouchers submitted for similar charges and found an average voucher amount of approximately \$1,126.

The voucher in question included 44.5 hours billed as legal research. While legal research may be appropriate depending on case specific complexity, the variance between this voucher and peer comparables suggests the need for additional supervisory review when billing substantially exceeds historical norms.

Further analysis of case outcomes identified a limited number of matters in which substantial work was billed and the ultimate disposition reflected a plea to the top count. Of 155 vouchers reviewed, six resulted in a plea to the top count; four of those six were handled by a single attorney, and three of those exceeded \$6,000 in total billing.

This analysis does not establish that representation was improper or that case strategy was inappropriate. However, when considered alongside elevated billing totals, such patterns may warrant targeted review to ensure alignment with ILS quality-of-representation standards and program expectations.

### C. Attorney Substitution

ACP has historically operated under a “your client, your case” standard, under which panel attorneys are expected to personally perform assigned work except in limited and documented circumstances. This framework is intended to promote accountability, preserve continuity of representation, and reduce risks associated with informal coverage or substitution arrangements.

To assess potential substitution risk, the Auditor reviewed time records of related attorneys and law partners to determine whether substantial scheduling overlap might indicate coverage activity inconsistent with ACP policy. While ACP’s billing system does not permit multiple attorneys to bill on the same case absent a formal co-counsel designation, identifying potential substitution across separate cases requires reconciliation of time events by date among attorneys practicing in close association.

In one attorney pairing, overlapping time entries were identified that are consistent with potential substitution activity. The pattern observed warrants supervisory review to determine whether services were performed and documented in accordance with program requirements.

In a separate instance, an attorney reported annual billed hours ranging from approximately 2,400 to 3,100 while managing between 300 and 400 cases per year. Although these figures do not independently establish improper billing, they materially exceed typical workload norms and present elevated risk related to capacity, documentation accuracy, and effective case oversight.

Collectively, these observations demonstrate heightened monitoring risk within the current oversight framework. Structured controls designed to evaluate aggregate workload, time allocation patterns, and compliance with substitution policies are necessary to ensure transparency, reinforce accountability, and mitigate operational and financial exposure.

### **Recommendations:**

The Auditor recommends that ACP formalize its billing guidance to clearly define acceptable time reporting practices, including minimum billing thresholds, proper use of billing codes, and documentation standards for all tasks.

This guidance should be reinforced through training for all panel attorneys and review staff and include clear escalation procedures for noncompliance. ACP should implement a structured review process to identify vouchers and time entries that substantially deviate from peer norms or historical averages. This process should prioritize high-risk cases, including attorneys who bill more than 1,875 hours annually, and should include a documented follow-up with the attorney to ensure that explanations and corrective actions are captured for audit purposes.

The Auditor further recommends that ACP clarify policies regarding substitution or coverage among attorneys, including limits on billing for work performed by another attorney and potential consequences for noncompliance. Where appropriate, ACP should leverage ELR or other technology tools to flag overlapping or duplicative billing entries, automate alerts for high-volume hours, and support data-driven oversight.

Finally, the Auditor recommends that ACP conduct periodic reviews of its internal monitoring procedures, including effectiveness of billing guidance, anomaly detection practices, and assignment oversight, to ensure alignment with ILS standards and best practices for risk management. Where gaps are identified, ACP should collaborate with ILS to implement corrective measures and update policies accordingly.

#### **Finding #4: Timeliness of Voucher Submission and Administrative Monitoring**

ACP conducts voucher review at the time of submission. These procedures include comparisons to case-type norms and identification of billing outliers. For example, unusually high hours for a single court appearance are flagged for review and may prompt requests for supporting documentation. When appropriate, ACP seeks recovery of improperly vouchered amounts. Despite these controls, certain weaknesses were identified that affect the timeliness and comprehensiveness of voucher oversight.

##### **A. Late Submission of Vouchers**

One factor contributing to elevated attorney payments, particularly in 2024, was the delayed submission of vouchers. Although certain administrative practices described in Finding #1 were operationally necessary, vouchers were frequently submitted after the deadlines established in ACP policy and the Attorney Handbook, resulting in payments that, under some versions of the Handbook, should have been forfeited.

Over the past five years, frequent changes to ILS standards and funding obligations required ACP to repeatedly revise its Attorney Handbook. The Auditor reviewed five Handbook versions applicable to the period, which contained variable time thresholds for voucher closeout and abandonment. Under current policy, attorneys must submit vouchers within 30 days of final case disposition through ACP's ELR system. Submissions beyond 30 days require explanation, and those beyond six months are deemed abandoned. Some prior Handbook versions permitted submissions up to 18 months after case closure.

All 16 attorneys reviewed had submitted at least one voucher more than 30 days after case closure, and 14 submitted vouchers that were paid despite exceeding the applicable Handbook timelines. Overall, 606 vouchers were submitted more than 180 days after case closure. Of these:

- 259 vouchers were associated with cases closed during periods in which the Handbook did not deem late vouchers abandoned and were therefore payable.
- 264 vouchers were associated with periods in which late submission should have resulted in forfeiture.
- The remaining vouchers, submitted 181–184 days after case closure, were considered questionable.

All 606 vouchers were paid. Based on Handbook provisions, 264 vouchers totaling \$147,711.20 should not have been paid, while 259 vouchers totaling \$221,354.47 were properly payable. The extended delay of six to eighteen months, however, significantly impaired financial reporting and oversight. In total, vouchers submitted 181 days or more after case closure amounted to \$405,204.67.

ACP explained that overlapping funding agreements and Handbook amendments limited strict enforcement of submission deadlines. To address fairness concerns, ACP implemented a 48-day amnesty period in July 2024, resulting in a substantial influx of submissions and contributing to elevated payment totals. ACP also reported that over 1,200 vouchers have subsequently been rejected as untimely. Although ILS does not prescribe a statewide standard for voucher forfeiture, ACP's prior decision to forgive late submissions was not unlawful; nevertheless, the practice directly affected financial reporting and fiscal oversight.

Additionally, the Board of Directors includes a number of panel attorneys who submitted late vouchers and participated in voting on the 48-day amnesty. This composition may create a perceived or actual conflict of interest. Consideration should be given to whether panel attorneys should serve as voting members on the board and how board membership affects oversight of voucher administration and policy decisions.

Delayed voucher submissions create operational and financial risks for both ACP and the County. A substantial portion of indigent defense funding is reimbursed by ILS, which requires quarterly documentation demonstrating compliance with State law and grant requirements. Because reimbursements are processed on a cash basis tied to actual payments, late submissions complicate reporting, increase accounts payable balances, and elevate the risk of discrepancies that could jeopardize reimbursement. Even minor reporting inconsistencies may delay or compromise these submissions. Additionally, late vouchers impair accurate budget forecasting and statistical reporting, increasing the risk of shortfalls and complicating ILS oversight.

#### B. Delay in Comprehensive Voucher Audits

Documentation reviewed during the audit indicates that ACP's voucher review controls are generally effective and that corrective actions, including recovery of improper payments, have been undertaken. In the sample examined, recovered amounts primarily reflected clerical or administrative errors rather than intentional misrepresentation.

However, a notable internal control weakness was identified: comprehensive annual voucher audits are delayed by approximately two years. At the time of fieldwork, ACP was still reviewing vouchers for 2024. Timely monitoring is a fundamental internal control principle. Extended audit lag increases the difficulty of identifying and recovering improper payments and allows attorneys who might otherwise be flagged as billing outliers to continue representing indigent clients without enhanced supervisory oversight. ACP reported that staffing limitations and resource constraints contribute to the delay, highlighting the need for strengthened administrative capacity and timely review procedures.

#### **Recommendations:**

ACP should consistently enforce the 2024 voucher submission standards to promote compliance, fiscal accountability, and timely billing practices.

To further strengthen oversight, the County should incorporate contractual safeguards in future agreements with ACP, including requiring voucher submission within 30 days of case closure and deeming vouchers outstanding after 180 days forfeited. Agreements should also require ACP to provide an annual summary of vouchers submitted more than 180 days after case closure, including their payment status. These provisions would improve transparency and accountability regarding billing timeliness.

### **Finding #5: Limited Individualized Judicial Review of Attorney Vouchers**

Judicial approval is a statutory control within the ACP process, particularly for high-value attorney vouchers. Under New York law and the County contract, attorneys may not collect fees without court approval. Voucher submissions must include supporting documentation demonstrating valid assignments, billing history, and case disposition. Vouchers exceeding the statutory threshold require judicial approval supported by a sworn affirmation detailing excess hours and justification for additional time.

On March 16, 2020, the Administrative Judge for the Eighth Judicial District (District) issued an order approving all previously submitted vouchers and directing that future vouchers would be deemed approved if ACP Administrator approval and procedural compliance were met. The Appellate Division, Fourth Department, issued a similar order that was rescinded in 2022; however, the Eighth Judicial District order remains in effect. Under this framework, vouchers were automatically approved if judicial action was not taken within 30 days. While this ensured continuity of operations during the COVID-19 emergency, it reduced individualized judicial review.

The Auditor analyzed 34 vouchers seeking \$9,900 or more and found that, although all contained time-stamped approval entries, only seven were approved by a judge. The remaining 27 were approved by the ACP Administrator pursuant to the standing order. A broader review of 157 vouchers showed that 29 were approved by a judicial officer, indicating that approximately 18.5% received individualized judicial review.

These approvals were consistent with the standing administrative order and therefore did not constitute noncompliance. However, data analysis and fieldwork observations indicate that individualized judicial oversight has been limited and inconsistently applied during the period the administrative order has remained in effect.

The statutory requirement for judicial voucher approval predates the establishment of the ILS and the expansion of ACP administrative review capacity. Operational conditions have evolved. The requirement that judges review all vouchers, regardless of amount, may not represent the most efficient allocation of judicial resources and may contribute to inconsistent oversight outcomes.

### **Recommendations:**

The Auditor recommends the District consider rescinding the March 16, 2020 administrative order and issuing updated guidance clarifying judicial approval responsibilities and review timeframes.

ACP and the District should collaborate to ensure that judges are familiar with procedural and administrative requirements for voucher approval within the ELR system. ACP's role in this context is limited to providing guidance on system functionality, submission protocols, and documentation expectations, rather than directing legal judgments or statutory interpretation. Such training would support consistent application of procedural requirements, timely processing of vouchers, and accurate documentation, thereby enhancing operational efficiency while respecting judicial authority.

ACP, ILS, and the District should consider developing a policy that preserves statutory judicial review of vouchers exceeding \$10,000 while establishing a structured administrative review process for lower-value vouchers. This approach may improve consistency, maintain compliance, and support timely payment.

ACP should also formalize internal guidance specifying documentation requirements for voucher submissions, including complete billing history, documentation of valid assignment, documentation of case disposition, and sufficiently detailed service descriptions to allow reliable review.

### **Comment #1: Eligibility**

The whistleblower complaint raised concerns that defendants were assigned counsel before eligibility had been verified. As part of a pilot program, ACP assigned counsel prior to arraignment, before formal eligibility determination. This practice drew criticism because it raised questions regarding ACP's adherence to established eligibility standards. The pilot program concluded in July 2025, and pre-arraignment assignment is no longer in effect.

Although assigning counsel prior to formal eligibility verification could theoretically create a risk of billing for ineligible clients, ACP attorneys are not permitted to bill for most substantive case activity until eligibility is confirmed. ACP's responsibility is limited to ensuring that eligibility forms are complete, accurate, and properly submitted. The scope of this analysis did not include an assessment of whether individual defendants met ILS eligibility standards.

Under current standards established by the ILS, eligibility is determined based on whether an applicant lacks sufficient resources to retain qualified counsel, post bond, cover necessary defense-related expenses, and maintain reasonable living expenses for themselves and their dependents.

Data reviewed during this audit indicates that more than 90% of criminal defendants ultimately qualify for appointed representation, with an even higher percentage eligible in Family Court.

### **Recommendations:**

The Auditor recommends that ACP and ILS increase transparency regarding eligibility standards and processes. Specific actions include publicizing eligibility standards in clear, accessible language and communicating verification procedures to panel attorneys, the County, and the public.

ACP should report annually to the County on eligibility determinations, including approvals, denials, and any instances of representation provided prior to formal confirmation. This reporting requirement should be incorporated into future County contracts.

ILS should periodically review eligibility standards to ensure alignment with current economic conditions, best practices, and constitutional requirements, balancing fiscal stewardship with the County's obligation to provide timely, meaningful representation.

ACP should also ensure that documentation, including the Case Reporting and Financial Summary (CRFS), is consistently submitted and verified in accordance with ACP Handbook standards. Greater transparency and systematic reporting will enhance public understanding, reinforce confidence in eligibility determinations, and support effective County oversight.

### **Comment #2: Clawbacks**

During the review, the Auditor noted that ACP required most of the attorneys reviewed to return small portions of previously made payments following an internal review. These returns, known as "clawbacks," primarily resulted from clerical errors and indicate that ACP's review function is actively performed rather than purely procedural. The largest clawback identified was \$3,514.50, with most returns being significantly smaller. For

context, even if each attorney had been required to return an amount of \$250, the total clawbacks would have represented less than 2% of the full refunds.

However, most clawbacks occurred more than a year after the vouchers were originally paid. At that point, the County would have reimbursed ACP for the payment and ILS would have reimbursed the County to the extent the payment was eligible. According to ACP, clawbacks are recorded in its general ledger and included in “unexpended funds” reconciliations, which is the amount it is required to refund the County each year. Because the clawbacks are not specifically documented in ACP’s financial statements or other documentation reviewed, the Auditor could not independently verify whether amounts owed to ILS were properly adjusted.

Without knowing the details behind the clawbacks, the County is unable to return funds that were reimbursed by ILS and recovered later. Because ILS reimburses the County, the County could be responsible for reconciling any applicable State reimbursement adjustments associated with those recovered amounts.

**Recommendations:**

The Auditor recommends that ACP track and report details on clawbacks to the County on a quarterly basis and require its independent auditor to itemize those clawbacks in annual statements. This practice will provide the County with a clear understanding of the portion of the annual refund attributable to clawback offsets and ensure that recovered funds are properly documented and reconciled. These procedures align with ILS oversight expectations and County contractual obligations, which emphasize internal control, transparency, and timely financial accountability.

The Auditor further recommends that the County consider incorporating the quarterly clawback disclosure requirement into the annual funding agreement, with sufficient detail to allow the Law Department to determine what amount, if any, must be returned to ILS.

**Conclusion**

Based on the procedures performed and evidence obtained, the Auditor concludes that the ACP is generally administered in a structured and operationally functional manner.

However, the review identified areas where internal controls and operational practices could be strengthened. Key concerns include delays in comprehensive voucher audits, inconsistent enforcement of submission deadlines, limited individualized judicial review of high-value vouchers, and instances in which attorney caseloads exceeded ILS standards. Additionally, certain billing patterns and potentially excessive billable hours suggest the need for further investigation to ensure accurate, timely, and transparent reporting. The Board composition, including panel attorneys serving as voting members, should also be considered in the context of governance and potential conflicts of interest.

The recommendations provided in this report, if implemented, will strengthen workload monitoring, enhance fiscal oversight, promote compliance with ILS and Erie County requirements, and reduce operational and reputational risk. Periodic monitoring, structured reporting, and continued engagement with ILS and County leadership will help ensure the program remains aligned with statutory obligations, funding requirements, and best practices for the delivery of indigent legal services.

Finally, given potential fiscal exposure related to State funding changes, including the proposed 2027 Executive Budget transfer of \$120 million from the ILS Fund, Erie County officials should continue to monitor

State reimbursement structures and maintain proactive oversight to safeguard public funds while ensuring timely and effective representation for eligible clients.

## Results of Exit Conference

An exit conference was held on March 2, 2026, with the following representatives of the Assigned Counsel Program:

- Kevin Stadelmaier, First Deputy – Criminal
- Hope Keilman, Chief Financial & Technology Officer
- Yvonne Vertlieb, Second Deputy – Family Court
- Peter Vasilion, President of the Board

At the meeting, findings and comments were discussed in detail, and both parties agreed on appropriate minor adjustments to the final report.

The Erie County Comptroller would like to thank the participating members of the Assigned Counsel Program for the courtesy and cooperation extended to the Division of Audit during this review.

## ERIE COUNTY COMPTROLLER'S OFFICE

cc: Hon. Mark C. Poloncarz, Esq., Erie County Executive  
Hon. Dr. Kevin Hardwick, Erie County Comptroller  
Jeremy Toth, County Attorney  
Mark Cornell, Director of Budget and Management  
Erie County Fiscal Stability Authority



**Real Attorneys  
Professional Defenders**

# ASSIGNED COUNSEL PROGRAM

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Deputy for Litigation Support  
And Appellate Bureau

Matthew Powers  
Deputy for Legal Education  
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John R. Nucheren  
Center for Legal Excellence

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Deputy for Child Welfare

Mary Beth DePasquale  
Deputy for Family Court  
Litigation Support

## **Mission Statement**

We strive to help those who cannot help themselves; who face steep odds against the power of the State; and who struggle with poverty, mental issues, helplessness, and dread. We save lives and we save families. We are the first line of defense for the freedoms granted to us by the U.S. Constitution and the Bill of Rights.

March 4<sup>th</sup>, 2026

Hon. Kevin R. Hardwick  
Erie County Comptroller's Office  
Division of Audit & Control  
95 Franklin Street  
Buffalo, New York 14202

Re: Appendix A Submission on Behalf of the Erie County Bar Association's Aid to Indigent Prisoner's Society (Erie County Assigned Counsel Program)

Mr. Hardwick:

On behalf of the Erie County Bar Association's Aid to Indigent Prisoner's Society (Erie County Assigned Counsel Program), as well as its staff and participating attorneys, we wish to thank you for your office's professionalism in conducting the audit that is the subject of the report related to this Appendix. Your principal auditors, Mary Nitz-Hosler and Eric Mikols, conducted an exhaustive analysis of the relevant materials and the report they produced was replete with outstanding recommendations and controls which either have been implemented or will be implemented. We were pleased with the process from start to finish and we greatly appreciate it being conducted with minimal disruption to the important work our agency discharges.

We are pleased that your Office finds that we administer our Program in a structured and operationally functional manner; and that our management has implemented processes designed to support regulatory compliance and program administration. Please know that your goals of fiscal responsibility and limitation of taxpayer liability, now and into the future, are shared by our staff, our Board and our participating attorneys. We welcome suggestions for improvements.

Regarding your recommendations, we have begun implementing more stringent controls on assignments in concert with ILS guidelines. We will implement new processes and seek new technology to improve our voucher review process. A renewed emphasis on contemporaneous billing, close adherence to ILS voucher processing guidelines and close monitoring of attorney hours, will be communicated to our panel and implemented by our staff.

Erie County Bar Association Aid to Indigent Prisoners Society, Inc.

**WWW.ASSIGNED.ORG**

Additionally, we welcome the opportunity to collaborate with both the County and the Office of Court Administration (OCA) on any additional guidance they wish to offer for improved and more timely judicial approval of vouchers. While voucher payment efficiency must always be a consideration, especially considering the County's need to claim reimbursement from the State, we are open to discussions on how improvement of this process may assist ACP with meeting the recommendations outlined by the Comptroller in this report. Any measures which increase transparency and accountability of our office are measures worth taking.

In all, we are grateful to the Comptroller and his staff for their extensive review and thoughtful recommendations. Ms. Nytz-Hosler and Mr. Mikols were great to work with, and we appreciate the hard work they undertook that resulted in this very favorable report. We thank them again for their outstanding work.

Very truly yours,

A handwritten signature in black ink, appearing to read "P. Vasilion", with a long horizontal flourish extending to the right.

Peter P. Vasilion, Esq.  
Board President  
Erie County Bar Association's Aid to Indigent  
Prisoner's Society (Erie County Assigned  
Counsel Program)