

**LIVINGSTON COUNTY
NOTICE OF ADOPTION OF LOCAL LAW NO. 3-2016**

**A LOCAL LAW ESTABLISHING THE OFFICE OF THE LIVINGSTON COUNTY
CONFLICT DEFENDER**

Be it enacted by the Board of Supervisors of the County of Livingston as follows:

Section 1: Legislative Intent

The County of Livingston, through the Board of Supervisors, recognizes its Constitutional responsibility in providing mandated legal representation to indigent persons. Currently, Livingston County provides mandated legal representation through the County Public Defender's Office, a contract with a local legal aid society when a conflict of interest disqualifies the Public Defender and with an Assigned Counsel Program providing mandated representation services when a conflict of interest disqualifies the Public Defender and the local legal aid society. The Board seeks to create a new office to directly provide mandated representation in certain conflict situations, and to otherwise manage, administer and supervise mandated representation services that are not provided by the Public Defender. To that end, the Board seeks to create the Livingston County Conflict Defender's Office, and it is the intent of this Local Law to establish a framework to achieve that goal in accordance with the laws of the State of New York.

Section 2: Conflict Defender: Qualifications; Appointment; Term

The Office of Livingston County Conflict Defender is hereby established and there shall be a Conflict Defender who shall be appointed by the Board of Supervisors. The term of office of the first Conflict Defender appointed pursuant to this local law shall commence on the date of his or her appointment and shall expire on December 31, 2017. The term of office of each subsequent Conflict Defender shall be for four years. The Conflict Defender shall serve at the pleasure of the Board of Supervisors and shall report to the County Administrator pursuant to the provisions of Local Law No. 6 of the year 2007. S/he shall be admitted to the practice of law in the State of New York, and shall be continuously admitted thereto during the term of office. S/he shall have five years' experience as a practicing attorney, three of which shall have been in criminal defense and/or Family Court. The Conflict Defender shall hold no other public or political office, shall not maintain an office for the private practice of law and shall devote full working time to the County. The Conflict Defender shall be a resident of the County of Livingston during the term of office.

Section 3: General Powers

A. Representative of the Board: The Conflict Defender shall, as herein provided, act as representative of the Board of Supervisors in providing mandated representation.

B. Legal Representation Duties:

1. Criminal: In the event primary mandated representation cannot be provided when a conflict of interest exists in the Public Defender's Office, then the conflict defender shall represent, without charge, at the request of the defendant, or by order of the court with the consent of the defendant, each indigent defendant who is charged with a crime as defined in Section 722-a of the County Law in the county or counties in which such conflict defender serves. When representing an indigent defendant, the conflict defender shall counsel and represent him at every stage of the proceedings following arrest, shall initiate such proceedings as in his/her judgment are necessary to protect the rights of the accused, and may, in his/her discretion, prosecute any appeal, if in his/her judgment the facts and circumstances warrant such appeal.

2. Civil: The conflict defender shall also represent, without charge, in a proceeding in family court or surrogate's court in the county or counties where such conflict defender serves, any person entitled to counsel pursuant to §262 and §1120 of the Family Court Act, and §407 of the Surrogate's Court Procedure Act, or any person entitled to counsel pursuant to Article 6-C of the

Correction Law, who is financially unable to obtain counsel, and who, for whatever reason, is not represented by the public defender. When representing such person, the conflict defender shall counsel and represent him at every stage of the proceedings, shall initiate such proceedings as in the judgment of the conflict defender are necessary to protect the rights of such person, and may prosecute any appeal when, in his/her judgment the facts and circumstances warrant such appeal.

3. Resources: Within the appropriations therefore, the Conflict Defender may assign professional, technical and clerical personnel in the investigation, preparation, conduct and appeal in any court proceedings involving indigent defendants or respondents.

C. Administrative and Supervisory Duties:

1. Office Operations: The Conflict Defender shall be responsible for the management and operation of the Conflict Defender's Office in accordance with sound management principles, Board of Supervisor's policies, and Civil Service law, and shall have the powers and duties necessary to carry out the functions of the office as set forth herein and such other responsibilities as may from time to time be imposed by resolution of the Board of Supervisors. S/he shall develop and administer the systems, policies, practices and procedures of the office, and shall coordinate and administer all activities of the office. S/he shall prepare such reports as may be required by the Board of Supervisors, and develop and administer the budgets of the office.

2. Assigned Counsel Plan: The Conflict Defender shall administer the Assigned Counsel Plan to insure quality representation of indigent defendants/respondents; fair and reasonable compensation of assigned counsel; and adequate resources for defense and representation of the indigent. The Conflict Defender shall consult with, and solicit input from, the Livingston County Bar Association, and shall endeavor to develop plans, standards, policies and procedures in cooperation with the Bar, to jointly enhance the quality of mandated representation. In no case shall the Conflict Defender participate as counsel to a defendant/respondent when an attorney or attorneys of the Assigned Counsel Plan are representing indigent defendants/respondents. The Conflict Defender's duties with regard to the plan shall include but not be limited to:

- a. Develop professional standards for panel attorneys, in conjunction with the Livingston County Bar Association, and compile and maintain a list of qualified panel attorneys willing to accept conflict assignments;
- b. Recruit attorneys, in conjunction with the Livingston County Bar Association, develop an application process, and review and select qualified attorneys for conflict assignments on a rotating basis by the courts;
- c. Maintain a record of all attorneys assigned by the courts;
- d. Formulate guidelines for the maximum number of cases to be assigned to panel attorneys to insure that workload does not negatively affect quality of representation;
- e. Develop and implement a complaint procedure regarding attorney performance;
- f. Develop and administer a fair and equitable payment process, review attorney vouchers and make recommendations to the assigning court;
- g. Establish and maintain relevant continuing legal education programs for panel attorneys;
- h. Advise the Board of Supervisors as to such other matters as to the Conflict Defender, in his/her professional judgment, would contribute to enhancing and improving the quality of conflict defense provided by Livingston County.

Section 4: Powers Of Appointment and Removal

The Conflict Defender is vested with the power and authority to appoint, supervise, discipline and remove assistant conflict defenders and employees, and assign and re-assign powers and duties to such employees, consistent with the laws of the State of New York. The Conflict Defender may appoint as many assistant attorneys, clerks, investigators, stenographers and other employees as s/he may deem necessary, subject to the authorization of the Board of Supervisors.

Section 5: Removal of the Conflict Defender

The Livingston County Board of Supervisors may dismiss the Conflict Defender, prior to the expiration of the Conflict Defender's term of office, upon cause, cause being insubordination, immoral character, inefficiency, incompetency, neglect of duty, or inability, by reason of sickness or disability, to discharge the duties and responsibilities of office beyond the period of any leave authorized by the New York State Civil Service Law, subject to the following conditions:

The Board of Supervisors shall adopt a resolution stating their intention to remove the Conflict Defender and the reasons therefore. A copy of the resolution shall be served upon the Conflict Defender. The Conflict Defender may, within ten (10) days, demand a hearing. If the Conflict Defender demands a hearing, the Board of Supervisors shall appoint a committee to hold a hearing, in executive session, not less than ten (10) days nor more than twenty (20) days from the date of the demand. After the hearing, the committee shall recommend dismissal or retention of the Conflict Defender. The Board of Supervisors may accept or reject the recommendation of the committee. The decision of the Board of Supervisors shall be final and binding, subject to the right of appeal in accordance with law. If the Conflict Defender does not demand a hearing, the Board of Supervisors may dismiss the Conflict Defender ten (10) days after service of a copy of the resolution upon the Conflict Defender. Upon the passing of the resolution, the Board of Supervisors may suspend the Conflict Defender from official duties without pay. If the charges against the Conflict Defender are not sustained by the Board of Supervisors or are not sustained after any appeal from the decision of the Board of Supervisors, the Conflict Defender shall be entitled to be paid for the period of suspension.

Section 6: Classification

Pursuant to Municipal Home Rule Law §10, the Conflict Defender shall be placed in the unclassified service.

Section 7: Separability

If any clause, sentence, paragraph or section of this Local Law shall be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not impair or invalidate the remainder hereof, but shall be confined to its operation to the clause, sentence, paragraph or section directly involved in the controversy in which judgment shall have been rendered.

Section 8: Effective Date

This Local Law shall take effect upon its being duly filed in the Office of the New York State Secretary of State.

Dated at Geneseo, New York
September 14, 2016 (Introduced)
October 12, 2016 (Adopted)

Michele Rees
Clerk of the Board