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AUDIT OF INDIGENT LEGAL SERVICES CONTRACT WITH THE LEGAL AID BUREAU

JANUARY 1, 2014 THROUGH DECEMBER 31, 2014

STEFAN I. MYCHAJLIW
ERIE COUNTY COMPTROLLER

HON. STEFAN I. MYCHAJLIW
ERIE COUNTY COMPTROLLER'S OFFICE
DIVISION OF AUDIT & CONTROL
95 FRANKLIN STREET
BUFFALO, NEW YORK 14202

April 8, 2015

Erie County Legislature
92 Franklin Street 4th Floor
Buffalo, New York 14202

Dear Honorable Members:

The Erie County Comptroller's Office has completed an audit of the Aid to Indigent Prisoners' contract with The Legal Aid Bureau of Buffalo for the period January 1, 2014 to December 31, 2014.

We conducted our audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions. Our objectives were to:

- Document and evaluate internal controls over the program and the attorneys performing the legal work.
- Verify compliance with the County contract for services and reporting and any applicable state and/or federal regulations.

We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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BACKGOUND

The Legal Aid Bureau of Buffalo, Inc. (LAD) was formed in 1912 under Section 501(c)(3) of the Internal Revenue Code as a non-profit. The Public Defender program is resident with The Legal Aid Bureau.

Under Article 18-B of New York State County Law:

> 1. All counsel assigned in accordance with a plan of a bar association conforming to the requirements of section seven hundred twenty-two of this article whereby the services of private counsel are rotated and coordinated by an administrator shall at the conclusion of the representation receive: (a) for representation of a person entitled to representation by law who is initially charged with a misdemeanor or lesser offense and no felony, compensation for such misdemeanor or lesser offense representation at a rate of sixty dollars per hour for time expended in court or before a magistrate, judge or justice, and sixty dollars per hour for time reasonably expended out of court, and shall receive reimbursement for expenses reasonably incurred; and (b) for representation of a person in all other cases governed by this article, including all representation in an appellate court, compensation at a rate of seventy-five dollars per hour for time expended in court before a magistrate, judge or justice and seventy-five dollars per hour for time reasonably expended out of court, and shall receive reimbursement for expenses reasonably incurred.

In the Gideon v. Wainwright (1963), the Supreme Court ruled that the Constitution requires the states to provide defense attorneys to criminal defendants charged with serious offenses who cannot afford lawyers themselves. The Supreme Court, in a unanimous decision, ruled that Gideon's conviction was unconstitutional because Gideon was denied a defense lawyer at trial. The Court ruled that the Constitution's Sixth Amendment gives defendants the right to counsel in criminal trials where the defendant is charged with a serious offense even if they cannot afford one themselves; it states that "in all criminal prosecutions, the accused shall enjoy the right to have the Assistance of Counsel for his defense."

The Comptroller's Office performed an audit of the agency, which handles indigent defense and falls under the New York State Office of Indigent Legal Services whose mission is to monitor, study and make efforts to improve the quality of services provided pursuant to Article Eighteen-B of County Law.

The program coordinates the assignment of attorneys to represent, at no cost to the clients, those who cannot afford to retain an attorney, when these individuals are charged with a crime or a violation in the criminal courts or family court.

Legal Aid initially handles all cases in Buffalo City Court. Some of these continue with the Legal Aid Bureau through to appeal. The agency has attorneys who appear for the client once the person is arrested and the District Attorney has filed charges. At the arraignment, their attorney represents the client with the particular charge and receives background information such as a police report and a criminal record ("rap sheet") and information on the charges from the District Attorney's Office.

In the review of the case being arraigned, if the Legal Aid Bureau determines that it has a conflict of interest because of multiple defendants involved, or it has another case in a different court with the same defendant, it will turn to the Assigned Counsel program of the Erie County Bar Association to take on the counsel role for the other defendants.

Erie County funds their activities based on an annual budget allocation. The annual budgets are fairly uniform from one year to the next. There are also New York State grants which are pass-through grants with Erie County. The budget for Legal Aid for 2014 was $3.6 million. By contract, any unspent monies are eligible to be returned to the County.

OBJECTIVES

- Document and evaluate internal controls over the program and the list of attorneys performing the legal work.
- Verify compliance with the County contract for services and reporting and any applicable state and/or federal regulations.

As part of auditing under these objectives, we interviewed the officials, reviewed any policy correspondence and constructed a workflow diagram of the process. We sought to determine if the attorneys in the program were in fact registered in New York and did not have any suspensions, disbarments or other classifications while conducting their defense in court of the indigent population to whom they serve as counsel.

The contract with the County includes a budgeted amount paid quarterly to The Legal Aid Bureau and periodic reporting to the Legislature of their activity as required under the contract.

The Legal Aid Bureau has files that contain confidential material such as client-attorney discussions, "rap" sheets, etc. We were able to review the procedural steps with a sample file and discussion with attorneys of some cases, including an appellate case. The procedures with the Public Defender Office in City Court were explained in a hypothetical case. We also visited three different Buffalo City courts and observed the arraignment process.

All of the attorneys employed by Legal Aid are in fact registered (status with the Office of Court Administration is on-line). There was an issue with an unregistered attorney performing work but the individual had not worked at the Legal Aid Bureau since 2007, which is outside of our audit period.

AUDIT FINDINGS

A review of the New York Stated Unified Court System on-line system of registered attorneys revealed that all of the attorneys were registered.

Quarterly report to Erie County Legislature

A contract requirement calls for quarterly reports to the Legislature. It appears that since the reports for quarters in 2013, there has been no reporting for 2014. The Legal Aid Bureau has not had a report since February 2013 when they submitted a 2011 Audit Report. The Legal Aid Bureau audited reports were reviewed during our audit. The IRS 990 Information financial reports have been filed through 2013.

The Law Department, in its description of services contained in the annual budget, states:

> "The Division of Law also administers the Indigent Defense Program. This program provides operating funds to assure legal services to individuals who cannot afford a private attorney consistent with a strict screening process."

The payment request from the County Attorney as of March 10, 2014 included a contract with The Legal Aid Bureau with reference to article 18-B of the County Law for Erie County in the amount of $3,597,553 with four equal payments.

> "...the Organization agrees during the term of this agreement to file with the Clerk of the County Legislature on January 1st and July 1st of each calendar year (1) its latest available full financial report dated not more than four months prior to each of such dates, which report shall include sources and uses of funds; (2) a statement of the number of members.... (3) a synopsis of each annual Board of Directors or trustees meeting held during the previous six months...."

RECOMMENDATIONS RELATING TO THESE TYPE OF FINDINGS

The necessary filings required to be made to the Legislature were made available to us, but were not filed with the Legislature. The last report to the Legislature for The Legal Aid Bureau had been on February 21, 2013.

Subsequently, on March 12, 2015, the reports currently available were filed with the Legislature.

We recommend that The Legal Aid Bureau procedure for reviewing new attorneys include a review of their status.

AUDITOR COMMENTS

The sources and uses reporting requirement should reflect that the agency spent the money on the program and on specific line items and that the possibility exists to return any unspent monies. We noted that the financials do not show any dramatic increases in Unrestricted Net Assets from year to year, hence not obviously calling for return of funds. There have been increases of $200-300,000 in the annual budgets corresponding to increases in volume or complexity of defenses.

The contract allows for the Budget and Management Office to require reports and the possibility of an audit from the Erie County Comptroller. The practice has been for the agencies to meet with the Budget and Management prior to submission of the current budget proposals.

The profession needs to be protected and the public served by the employment of sound internal control procedures as well as other practices that are now in place.

We noted that a material number of attorneys were late in their updated payment of license fees.

The state system may in the future require the use of a common system so any automation or system improvement may need to be referenced to that.

Funding from the state has decreased over the past few years and has ended. It might be considered as an unfunded mandate.

RECOMMENDATIONS

We recommend issuing the periodic reporting or making a change in the contract with the County.
The federal law requires the state, which in turn requires the county, to fulfill the mission of providing legal services. The State of New York may in the future assume the funding as other states have done. Reporting into a centralized system required by the State may also be in the future.

We have not considered efficiency of hours and dollars spent, but when a settlement was made public as a result of a class action lawsuit (Hurrell-Haring v. State of New York) in 2014, five other counties were criticized for their service level. Erie County was not one of those counties listed. Formalized procedures to evaluate efficiency and cost-effectiveness of the provision of legal services may be advisable.

RESULTS OF EXIT CONFERENCE

The conference was held on April 1, 2015 and the auditee is in general agreement with the results of the audit. They had established some improvements prior to our audit and will report to the Legislature on a more-timely schedule.

ERIE COUNTY COMPTROLLER'S OFFICE

cc: The Legal Aid Bureau
Mark C. Poloncarz, County Executive
Robert W. Keating, Director of Budget and Management
Michael A. Siragusa, County Attorney
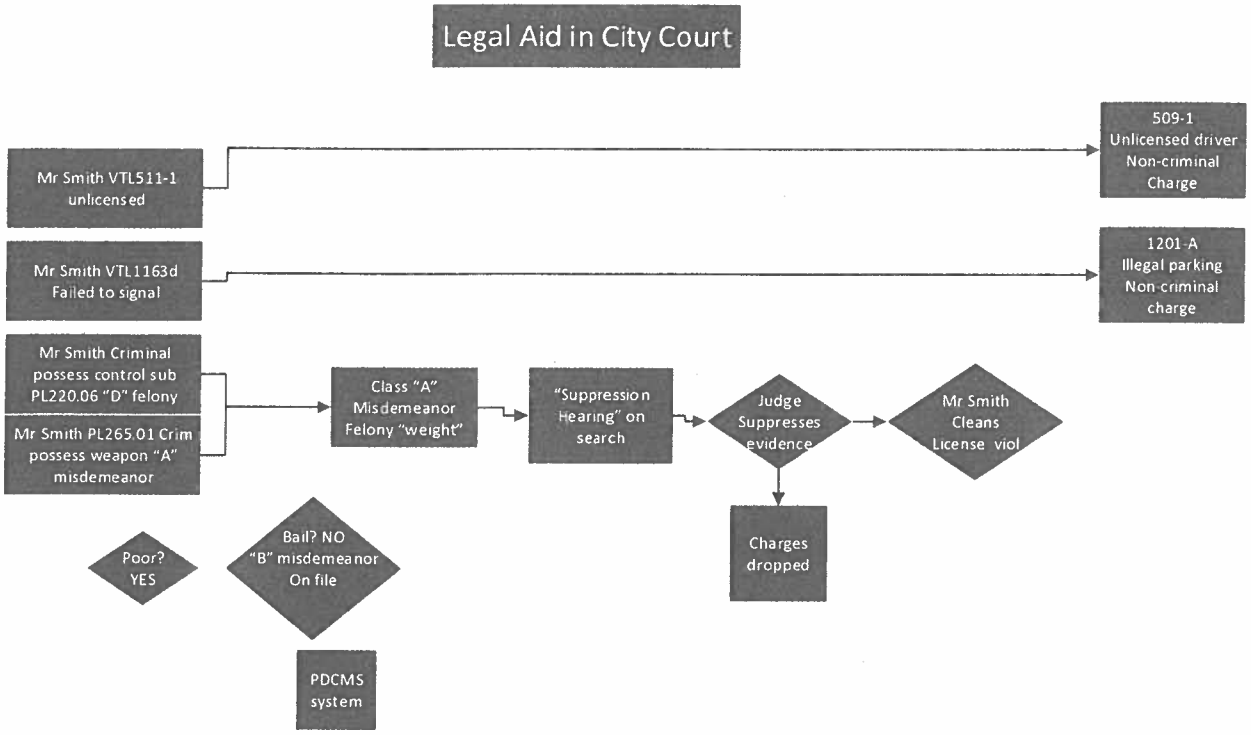
EXHIBIT ONE: WORKFLOW DIAGRAM