

**Nassau County
Office of the Comptroller**



**Audit Report
of the
Legal Aid Society of Nassau County**

GEORGE MARAGOS

Comptroller

March 22, 2017

NASSAU COUNTY
OFFICE OF THE COMPTROLLER

George Maragos
Comptroller

James A. Garner
Chief Deputy Comptroller

Michael A. Scotto, Esq.
*Deputy Comptroller - Audit and
Investigations*

Karen C. Green
Director of Communications

Audit Staff

JoAnn Greene, MBA, CPA
Director of Field Audit

Aurora Scifo, CPA
Assistant Director of Field Audit

Linda Leung, CPA
Inspector, Comptroller's Office

Debra Foster-Alston
Field Audit Supervisor

Judith Mullings
Field Auditor

Executive Summary

Introduction:

The Legal Aid Society of Nassau County (“Legal Aid”) is a Section 501(c)(3) non-profit organization located in Hempstead, New York. It was created to provide legal representation to persons who are unable to hire attorneys in criminal legal matters and in certain family court matters, including child custody and support issues in Nassau County pursuant to New York County Law, Article 18, §722.¹

The Legal Aid Society receives its funding from Nassau County and State grants to pay for salaries of attorneys, paralegals and administrative staff to provide free legal services for the indigent.

Purpose:

The purpose of this review is to determine whether the funds received by the Legal Aid Society are properly used and documented to support legal services provided to indigent persons in accordance with the Nassau County’s contracts from January 1, 2012 to December 31, 2015.

Key Findings:

- The Legal Aid Society did not remit cash receipt rebates and refunds totaling \$38,296² or reduce the claim vouchers submitted to the County. (Their response indicates they attempted to return the various rebates but were unable to do so as the fiscal period had ended. Instead, they retained the rebates to use for operations and documented expenses.)
- The payroll time and leave policy allowed employees to use unearned vacation time (borrowed). Records of their time accrual and leave usage were inadequately maintained on handwritten records that lacked supervisory oversight.
- Cash disbursements of \$444,305 were unauthorized (not approved by management), improper payments of \$227,662 for operating expenses were made from the Petty Cash bank account and expenses of \$4,696 were misclassified in the accounting records.
- Standard cash controls to prevent or detect possible errors or irregularities were not found during the review of cash disbursements and the bank reconciliations. The detail support for bank reconciliations was not retained, the stale dated checks over a year old were not investigated, resolved or escheated to New York State, the void checks and the reasons for the voids were not retained or documented and checks were issued out of sequence.

¹ New York County Law, Article 18-B, §722, Representation of persons accused of crime or parties before the Family Court or Surrogate’s Court.

² For the period January 1, 2012- December 31, 2015.

Executive Summary

- The contract requires Legal Aid Society to determine the financial ability of a person to pay for legal assistance; however, the current law gives judges this responsibility. The contract states that Legal Aid will make a diligent inquiry of the financial ability of persons to pay for legal assistance and although they assist clients in filling out a questionnaire, there is no verification for accuracy except in family court alimony cases.
- The Legal Aid Society did not provide financial reports on salaries, fringe and other benefits on a quarterly basis as required by the contract.
- The prior audit recommendation to properly account for assets purchased with County funding was not implemented. The Legal Aid Society inventory records had missing inventory information such as purchase date, description, cost, location and disposal date and method.
- There is no comprehensive personnel manual. Memos that address compensation, benefits, office policies and leave time were found. Missing were business policies including Legal Aid's mission, equal employment opportunity policy, employees' conduct, conflict of interest and procedures for making and resolving complaints. Also needed were office policies on educational programs, travel and expense reimbursements, policy on use and monitoring of computers and equipment and employment separation and termination procedures.
- The Finance Administrator is responsible for performing incompatible functions resulting in an inadequate segregation of duties. This, coupled with the lack of supervisory sign off, increases the risk that errors and irregularities can go undetected.

Key Recommendations:

- A record of all rebates and refunds receipts should be maintained. These rebates and refunds should be listed as a reduction on subsequent claim vouchers to the County.
- Legal Aid should modify its vacation policy to no longer allow unearned leave time to be taken, develop a standard electronic record to track leave time and implement procedures for a supervisory review.
- A supervisory review of all disbursements and postings to accounting records should be implemented. Legal Aid should ensure that operating expenses are paid from the operating bank account and the Petty Cash bank account is used only for the purchase of time sensitive items that do not exceed the \$500 limit established by the Board.
- Legal Aid should retain bank reconciliations with supporting detail information signed by the preparer and supervisor. They should also investigate checks outstanding over one year,

Executive Summary

determine whether uncashed checks should be escheated to New York State, retain and document reasons for void checks, issue checks in sequential order and account for all issued checks.

- Legal Aid should work together with the Nassau County Attorney's Office to revise the contract requirement to concur with the law regarding Legal Aid's role for determining assigned counsel eligibility. Legal Aid should comply with the contract by providing the total compensation by position for each employee on a quarterly basis.
- An accurate inventory listing should be prepared and maintained which reflects the description of item, date of purchase, cost, inventory number, item location and upon disposal, the date and method of disposition.
- Legal Aid should develop personnel policies and incorporate them into a personnel manual which is distributed to all employees. They should also develop procedures for updates to policies.
- An appropriate level of checks and balances should be implemented and a detailed supervisory review over the activities should be performed by the Finance Administrator. Legal Aid should consider hiring additional accounting staff to realign responsibilities within the department and to assist the Finance Administrator.

The matters covered in this report have been discussed with the officials of The Legal Aid Society. On February 8, 2017, we submitted a draft report to Legal Aid for their review. The Legal Aid Society provided their response on February 27, 2017. Their response and our follow up to their response are included as an Appendix to this report.

Table of Contents

	<u>Page</u>
INTRODUCTION.....	1
Background.....	1
Audit Scope, Objectives and Methodology	7
FINDINGS AND RECOMMENDATIONS	9
(1) Rebates and Refunds Totaling \$38,296 Were Not Deducted from Claim Vouchers Submitted to the County	9
(2) Payroll Time and Leave Records Revealed a Policy Allowing the Use of Unearned Vacation Time and Inadequate Recordkeeping	11
(3) Unauthorized Cash Disbursements of \$444,305, Improper Use of Petty Cash Bank Account of \$227,662 and Misclassified Expenses of \$4,696	12
(4) Standard Cash Controls Designed to Prevent or Detect Possible Errors or Irregularities Were Not Found	17
(5) One Contract Requirement Does Not Conform With Current Law And Another Requirement Was Not Adhered To By Legal Aid.....	22
(6) The Prior Audit Recommendation to Properly Account for Assets Purchased with County Funding Has Not Been Implemented.....	24
(7) A Comprehensive Personnel Manual was not Maintained	25
(8) Lack of Segregation of Duties.....	26
Appendix – Legal Aid Society Response and Auditor’s Follow-up.....	29

Introduction

Background

The Sixth Amendment to the United States Constitution guarantees the right to counsel for every individual accused of a crime. In 1963, the Supreme Court decided *Gideon v. Wainwright*, 372 US 335 (1963), which granted the right to court-appointed counsel for those unable to hire an attorney. In 1964, New York enacted County Law Article 18-B §722³ and created the Legal Aid Society (“Legal Aid”), a county-based system of delivering mandated legal services to persons who are financially unable to obtain counsel.

The Legal Aid Society of Nassau County is a Section 501(c)(3) non-profit organization that provides free legal representation, in criminal and some family court cases, to persons unable to hire private attorneys. It is devoted to helping low-income persons obtain quality legal representation.

Its mission is “securing justice for, protecting the rights of, and rendering legal assistance & representation for needy residents & non-residents of Nassau County”.

Nassau County provides most of the funding to the Legal Aid Society to cover the operating expenses for attorneys and administrative staff salaries and fringe benefits, experts, witnesses, investigators and office furniture and equipment. Funding is received from State grants to cover certain attorneys and paralegal salaries and fringe benefits, and funding may also be provided from private donations such as gifts of cash, gifts of stock, charitable gift annuities, charitable trusts, wills and bequests, and gifts of real estate. Legal Aid is required to file IRS Form 990 for each fiscal year in operation.

Legal Aid is primarily a criminal defense organization. The majority of its clients have been charged or convicted of a crime in Nassau County. It does not represent persons facing federal criminal charges or civil matters. However, certain cases in family court are allowed legal representation by the Legal Aid Society. These include paternity cases, child support order violation, child custody and visitation, child neglect and abuse and termination of parental rights.

Attorneys for the Legal Aid Society do not choose the persons they represent. The ultimate obligation to make eligibility determination to provide legal representation is the responsibility of the courts under the New York Criminal Procedural Law §170.10 (3)(c),(4)(c); §180.10 (3)(c), (4); §210.15 (2)(c),(3).⁴ In Nassau County, the person accused of a crime completes an “Assignment

³ New York County Law, Article 18-B, §722, Representation of persons accused of crime or parties before the Family Court or Surrogate’s Court.

⁴ New York Criminal Procedural Law §170.10 (3)(c),(4)(c), Assignment upon information, simplified traffic information, prosecutor’s information or misdemeanor complaint: defendant’s presence, defendant’s rights, court’s instructions and bail matters; §180.10 (3)(c), (4), Proceedings upon felony complaint; arraignment; defendant’s rights, court’s instructions and bail matters; §210.15 (2)(c), (3), Arraignment upon indictment; defendants’ rights, court’s

Introduction

of a Lawyer” questionnaire that asks for their monthly income, bank account balance, number of dependents and whether the person owns a home or vehicle. The presiding judge reviews the questionnaire, may ask the person additional questions and then determines if the person is eligible for free legal counsel. The judge assigns the person to a legal aid attorney or an 18-b attorney⁵ depending on the type of case. The questionnaires are retained by the court and are not given to the Legal Aid Society.

There are two exceptions where persons can be represented by the Legal Aid Society before seeing the judge. Legal Aid can represent persons at the District Court following an arrest, if such persons have no legal representation at the time of arraignment. And secondly, Legal Aid can provide basic services in certain pre-arrest situations.

Bureaus

The Legal Aid Society has five bureaus to handle the criminal and family court cases listed as follows:

- County Court (felony offenses, those for which a sentence of more than one year in jail is authorized);
- District Court (misdemeanor offenses, those for which a sentence of less than one year in jail is authorized);
- Family Court (child neglect, abuse, custody and family protection order, termination of parental rights, violations of support orders);
- Appeals Court (both criminal and family court cases); and
- Social Work (assist clients in a variety of ways).

Expenses

As shown in Exhibit I, Legal Aid’s operating expenses consist of salaries, fringe benefits and payroll taxes totaling \$23.3 million and other expenses of \$2.6 million for the four year period from 2012 to 2015.

instructions and bail matters. See Determining Eligibility for Appointed Counsel in New York State by the New York State Defenders Association, Inc., page 4.

⁵ 18-b lawyers are private attorneys who handle court appointed cases.

Introduction

Exhibit I

**Legal Aid Society Expenses
For The Years Ending December 31, 2012 to December 31, 2015**

<u>Expenses</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>Total</u>	<u>%</u>
Salaries	\$ 3,874,613	\$ 4,039,971	\$ 4,108,442	\$ 4,338,821	\$ 16,361,847	63%
Health & Pension	1,408,633	1,367,591	1,422,743	1,414,997	5,613,964	22%
Payroll Taxes	309,900	357,991	335,736	361,704	1,365,331	5%
Other Expenses	634,008	644,642	657,593	711,206	2,647,449	10%
	<u>\$ 6,227,154</u>	<u>\$ 6,410,195</u>	<u>\$ 6,524,514</u>	<u>\$ 6,826,728</u>	<u>\$ 25,988,591</u>	<u>100%</u>

Source: Legal Aid Society Financial Statements and Independent Auditor's Report.

Staff

As shown in Exhibit II, Legal Aid had approximately 66 employees as of December 31, 2015, consisting of 50 attorneys, 8 professionals and 8 administrative staff. Attorneys hired by the Legal Aid Society are expected to serve a three-year probationary term and at the end of the period, may be asked to remain as a tenured member of the staff based on performance during probation, and the current need for staff.

Exhibit II

**Legal Aid Society of Nassau County
Summary of Court and Staff Head Count
As of December 31, 2015**

<u>Court Attorneys</u>	<u>Count</u>	<u>Non Attorney Staff</u>	<u>Count</u>
District	23	ADP	1
County	15	Investigators	2
Appeals	5	Paralegals	2
Immigration Unit	1	Social Work	3
Family	6	Total Non Attorney Staff	<u>8</u>
Total Court Attorneys	<u>50</u>		
<u>Administrative Staff</u>			
Attorney In Chief	1		
Administrative Assistant	1		
Finance Administrator	1		
Secretaries	4		
Receptionist	1		
Total Administrative Staff	<u>8</u>		
Total Head Count	<u>66</u>		

Source of Data: Legal Aid Society Quick Books Payroll.

Introduction

Case Statistics

The Legal Aid Society represents clients involving felonies, misdemeanors, violations/infractions, family court matters, parole revocations and pre-arrest matters. Exhibit III shows the number and type of cases handled by Legal Aid for the period January 1, 2012 to December 11, 2015. The average number of cases handled by the Legal Aid Society was approximately 12,803 for 3.95 years.

Exhibit III

**Legal Aid Society of Nassau County
Number and Type of Cases
1/1/2012 to 12/11/ 2015**

Number of Cases by Type of Case

<u>Year</u>	<u>Felonies</u>	<u>Misdemeanors</u>	<u>Violations</u>		<u>Total</u>
			<u>Infractions</u>	<u>Others ⁽¹⁾</u>	
2012	3,752	6,324	786	2,309	13,171
2013	3,491	6,380	623	2,405	12,899
2014	3,473	6,507	554	2,503	13,037
2015	3,140	5,823	393	2,107	11,463
	<u>13,856</u>	<u>25,034</u>	<u>2,356</u>	<u>9,324</u>	<u>50,570</u>

Source of Data: New York Public Defenders Criminal Management System.

⁽¹⁾ Other cases include family court matters, parole revocations and pre-arrest matters

Contracts with Nassau County and New York State

In 2009, Legal Aid entered into a five-year contract agreement (CQBU10000001) with the County to fund Legal Aid's expenses from January 1, 2010 to December 31, 2014. This contract provided that Legal Aid receive \$5.5 million in 2010, \$5.7 million in 2011, \$5.9 million in 2012, \$6.1 million in 2013 and \$6.2 million in 2014. The contract covered salaries and fringe benefits to attorneys and administrative staff to provide legal assistance and representation to indigent persons who are charged with the commission of a crime or who are parties in certain mandated civil matters.

The second five-year contract agreement (CQBU15000001) is from January 1, 2015 to December 31, 2019. The second contract provided that Legal Aid receive \$6.4 million in 2015 and \$6.5 million in 2016. Each year, the funding amount is renegotiated over the five year contract period. The contract is for salaries, benefits and fringes totaling \$5.9 million, \$332,150 for office expenses and \$102,000 for insurance. This contract represents an increase of \$155,146 or a 2.5% annual

Introduction

percentage increase from prior year 2014. A total of \$9.1 million was remitted to Legal Aid from January 1, 2015 to April 30, 2016.

The New York State Office of Indigent Legal Services provides grants to assist the County in improving the quality of indigent legal services. The contract agreements are between Legal Aid and New York State to pay Legal Aid for salaries and fringe benefits for staff attorneys, paralegals, experts, witnesses and investigations. The contracts are 100% funded by the State and are listed by contract number below:

- CQBU12000007 for \$16,386 from June 1, 2011 through March 31, 2013, for experts and witnesses including investigations;
- CQBU13000007 for \$603,000, a three year agreement from June 1, 2012 to May 31, 2015, for three staff attorneys' salaries and fringe benefits for \$201,000 per year;
- CQBU14000003 for \$363,000, a three-year agreement from June 1, 2013 to May 31, 2016, to provide \$121,000 per year towards the salaries and fringe benefits of a Society attorney and paralegal;
- CQBU14000006 for \$641,646, a three-year contract period from June 1, 2013 to May 31, 2016, securing salary and fringe benefits for one full-time immigration attorney, one full-time Part IX⁶ attorney, one full-time paralegal, one part-time paralegal and file storage rental. Maximum payout should not exceed \$212,281 in the first year, \$213,691 in the second year and \$215,674 in the third year;
- CQBU14000008 for \$299,529, a three-year contract period from January 1, 2014 to December 31, 2016, with yearly disbursement of \$99,843 to cover salary and fringe benefits for a full-time Trial Supervisor and Expert services; and
- CQBU15000003 for \$502,084, a three-year contract period from January 1, 2014 to December 31, 2016, to establish an Attorney Retention Fund for salary issues with junior attorney staff and also for the continuation of three positions within the Legal Aid Society, dedicated to certain specialty courts. Of this, \$100,000 is earmarked for a one year period from January 1, 2014 to December 31, 2014 and \$201,042 subsequently for each remaining contract year.

All records to support expenses are required to be retained for review by the County for a period of six years as required by the contracts. Legal Aid submits monthly claim vouchers to the County

⁶ Part 9, although technically a District Court part, serves as a felony screening part and consists of cases on which felony complaints have been filed.

Introduction

for the reimbursement of salaries, fringe benefits and operating expenses with supporting documentation attached. Also, monthly claim vouchers for specific staff salaries and fringe benefits are submitted to the State through the County's Office of Management and Budget. The County pays Legal Aid for the expenses paid by State grants and recoups the money directly from the State. Also, Legislative awards paid directly to Legal Aid are remitted to the County or reduced from claim vouchers.

Financial Information

As shown in Exhibit IV, for the period January 1, 2012 to April 30, 2016, Nassau County paid the Legal Aid Society \$27,299,801 for amounts due under the contract and \$572,297 of grant monies from New York State.

Exhibit IV

**Legal Aid Society of Nassau County
Nassau County Payments
January 1, 2012 to April 30, 2016**

<u>Period</u>	<u>Contract</u>	<u>Grants</u>	<u>Totals</u>
1/1/12 -12/31/12	\$ 5,904,000	\$ -	\$ 5,904,000
1/1/13 -12/31/13	6,054,467	16,386	6,070,853
1/1/14 -12/31/14	6,205,830	147,706	6,353,536
1/1/15 -12/31/15	6,360,976	117,848	6,478,824
1/1/16 -04/30/16	2,774,528	290,357	3,064,885
Total	\$ 27,299,801	\$ 572,297	\$ 27,872,098

Source of Data: Nassau Integrated Financial System ("NIFS")

Recent Development – Attempt to Remove Financial Burden on Counties

New York Senate Bill Number S8114 ("Bill"), is waiting for approval from the Governor. This Bill will amend Section 722-e of the County law to require the State to reimburse, over a seven year phase in period, counties and cities the full amount of expenses of counsel services for indigent legal defendants. The Bill will ensure all persons accused of crimes in New York are able to receive effective legal representation whether or not they have the ability to pay for a lawyer by establishing a system of direct state funding to eliminate the geographic disparity in representation. Once the Bill is approved it would effectively save the County approximately \$6.5 million annually in payments to Legal Aid.

Introduction

Residents and Non-County Residents Are Provided Legal Aid Services

The County is required to provide legal counsel to all eligible persons accused of a crime regardless of where they reside. There are no statutes between states, counties, and local municipalities that require repayment for legal services provided to individuals that do not live in the County, therefore the cost is an added burden to the County and its taxpayers. County Law §722-e, does not authorize the court to act with regard to payment for legal services of assigned counsel.

Exhibit V shows the number of residents and non-residents provided with legal counsel by year for the period January 1, 2012 to December 11, 2015. Nassau County residents represented an increasing majority of the people provided with legal aid services from 2012-2015. The majority of the non-residents provided with legal services resided in New York City, followed by Suffolk County and residents of other states. The remainder represents the percentage of people initially assigned legal aid counsel and then later in the day switched to a private attorney. The County paid the cost to provide legal aid counsel to non-residents who commit crimes in the County. For non-residents who do not reside in Nassau County, the law does not allow for repayment of the legal aid cost from the states in which the individuals reside.

Exhibit V

Legal Aid Society of Nassau County
Resident and Non-Resident Persons Provided with Legal Counsel
January 1, 2012 - December 11, 2015

<u>Location</u>	<u>2012</u>		<u>2013</u>		<u>2014</u>		<u>2015</u>	
	<u>Count</u>	<u>%</u>	<u>Count</u>	<u>%</u>	<u>Count</u>	<u>%</u>	<u>Count</u>	<u>%</u>
Nassau	7,386	56%	6,982	54%	8,819	68%	7,682	67%
NYC	2,065	16%	2,273	18%	2,245	17%	1,720	15%
Suffolk	828	6%	942	7%	890	7%	964	8%
Other States	282	2%	274	2%	242	2%	226	2%
Unknown⁽¹⁾	2,610	20%	2,428	19%	841	6%	871	8%
Totals	<u>13,171</u>	<u>100%</u>	<u>12,899</u>	<u>100%</u>	<u>13,037</u>	<u>100%</u>	<u>11,463</u>	<u>100%</u>

Source of Data: New York Public Defenders Criminal Management System.

⁽¹⁾ Unknown location is due to the case initially assigned to the legal aid counsel and later in the day the case is handled by private attorney.

Audit Scope, Objectives and Methodology

The audit period was from January 1, 2012 to December 31, 2015.

Introduction

The objective of the audit of the Legal Aid Society was to determine whether:

- services provided by Legal Aid were in compliance with County contracts.
- County funds were used and accounted for appropriately.
- Legal Aid reimbursed the County for any County funded expenses for which Grant funding was received.

We reviewed written policies and procedures and interviewed employees to determine their responsibilities, duties and work procedures. We also obtained and reviewed Legal Aid's Board minutes, annual audited financial statements, management reports, audit reports and tax forms.

Specifically, we reviewed:

- billable costs and tested for double billing by examining a sample of vouchers submitted to the County for reimbursement.
- health insurance expenditures to verify that Society employees/former employees remitted any required health insurance premiums to Legal Aid. We performed tests to verify that the County was not billed for any health insurance costs due to Legal Aid by employees/former employees.
- Legal Aid's flex benefit plan costs to identify any unallowable self-funded employee medical reimbursement costs.
- Legal Aid's property lease and tested for compliance with rental requirements.
- the fixed assets inventory report for compliance with County contracts.
- life insurance policies established for administrators and staff to ensure cost are reasonable.

We believe our review provides a reasonable basis for the findings and recommendations contained herein.

Findings and Recommendations

Audit Finding

(1) Rebates and Refunds Totaling \$38,296 Were Not Deducted from Claim Vouchers Submitted to the County

Our review found that controls did not exist to ensure that all required rebate and refund receipts are remitted or deducted from claims to the County. Cash receipt testing found that health insurance rebates, refunds for polygraph tests, legislative awards and short-term disability receipts were not refunded to the County as required by the contracts. The contract states that all balances of unexpended funds remaining shall be repaid to the County when Legal Aid files its final claim voucher and reconciliation report.⁷ Exhibit VI is a list of the receipts totaling \$38,296 that were not refunded to the County.

Exhibit VI

**Legal Aid Society of Nassau County
Cash Receipts Not Remitted to the County
January 1, 2012 to October 31, 2015**

<u>Date</u>	<u>Description</u>	<u>Amount</u>
Jul-12	Health Insurance Rebate	\$ 14,412
Aug-13	Polygraph Tests	11,100
Mar-13	Legislative award	7,820
Jul-13	Health Insurance Rebate	4,726
Apr-14	Short-Term Disability	238
	Totals	<u>\$ 38,296</u>

Source: Cash Receipt Ledgers.

The Auditors spoke with the Finance Administrator regarding the receipts and were told the rebate and refund receipts were not deducted or remitted to the County in error. Cash receipt refunds received by Legal Aid are to be reduced from expenses paid on claim vouchers submitted for reimbursement to the County.

The aforementioned testing was performed of cash receipts posted to the operating and petty cash accounts from January 1, 2012 to October 31, 2015. The sample included 32 operating receipts totaling \$8,096,382 or 16% of the total operating receipts and 13 petty cash receipts totaling

⁷ Contract Agreement with Legal Aid Society and the County for the period 1/1/15 to 12/31/15, page 3.

Findings and Recommendations

\$40,670 or 16.8% of the total petty cash receipts. We compared cash receipts to deposit slips, bank statements and the accounting records to determine whether the receipts were properly recorded and that any refunds or rebates were applied to reduce expense amounts on vouchers submitted to the County. As summarized in the sections below, we found that rebates and refunds totaling \$38,296 were not used to reduce expenses.

Health Insurance Rebates totaling \$19,138

The Legal Aid Society received rebate checks of \$16,649 in July 2012 and \$5,129 in July 2013, for the 2011 and 2012 United Health Care Oxford Insurance Premium Rebate. Legal Aid had already been reimbursed by the County for the full health insurance premium. Part of the rebate was refunded to employees who had paid health insurance premiums and the remaining \$14,412 and \$4,726 were retained by Legal Aid and not returned to the County, as required.

Polygraph Refund of \$11,100

Our review found two prepaid retainers for 60 polygraph tests totaling \$18,000 that were submitted on claim vouchers and paid by the County in 2012 and 2013. In August 2013, Legal Aid received a refund of \$11,100 for 37 of the prepaid tests that were never used and the refund was not remitted to the County, as required.

New York State Legislative Award of \$7,820

Legal Aid submitted a claim voucher totaling \$7,820 that was paid by the County for expenses covered by a New York State Legislative award. When Legal Aid received the award monies from the State in March 2013, Legal Aid failed to reduce a future claim voucher and the County was never reimbursed.

Short-Term Disability Reimbursement of \$238

Our review found that Legal Aid received a disability reimbursement from the insurer totaling \$238 in April 2014 for an employee who Legal Aid had already been reimbursed for by the County, but the \$238 was not remitted, or deducted from a future claim voucher, to the County.

It is important that there are procedures to track the rebate and refund receipts and to have a supervisor review the process to ensure the receipts are remitted to the County or reduced from claim vouchers to prevent overpayment of expenses by the County.

Audit Recommendation(s):

We recommend that Legal Aid should:

- a) remit all refunded receipts to the County promptly by direct payment or by reducing the claim vouchers to the County; and

Findings and Recommendations

- b) develop procedures to track rebate and refund receipts and establish a process for a supervisory review to ensure they are properly deducted from claims or remitted to the County.

Audit Finding

(2) Payroll Time and Leave Records Revealed a Policy Allowing the Use of Unearned Vacation Time and Inadequate Recordkeeping

Our testing revealed the existence of a policy that would allow employees to borrow vacation time not yet earned; a salary adjustment would be made should the employee terminate employment having taken unearned vacation time. This policy is documented in a separate memorandum dated April 16, 2012, which was not attached to, or incorporated by reference in, the Society's vacation policy. Further, the memorandum does not require the employee to document or formally acknowledge each instance where unused vacation is requested and taken.

We also noted that leave time accruals and usage were handwritten on the same calendar which was difficult to read, making it confusing and time consuming to verify the accuracy of leave time taken. Further, there was no notation on these calendars that a supervisory review was performed to ensure that leave time earned and taken was accurately recorded and monitored.

Our review of the handwritten entries on calendars for the five employees in our test sample found two employees had taken unearned vacation time as follows:

- One employee had taken a half a day extra in 2012 and 2013, totaling \$196 in unearned leave time. A review of the employee's 2014 records showed the employee ended the year with two unused days. Since the Society has a "use it or lose it" policy, the employee repaid the full day owed the Society in 2014.
- Another employee had taken one extra day in 2013, totaling \$565 in unearned leave time. A review of the employee's 2014 records showed the employee ended the year with four unused days and effectively repaid the one day owed the Society in 2014.

Other testing of attendance records noted the records were accurate and properly supported. This consisted of comparing attendance records that indicated the employee was in court to court calendars and to the list of court cases from the New York Public Defenders Criminal Management system for four days in each year for 2013, 2014 and 2015. No exceptions were noted.

Testing of information reported on Form 1099's noted the information was in agreement with the supporting invoices and the general ledger and the amounts paid were for legitimate operating

Findings and Recommendations

expenses. No exceptions were noted. This testing was performed on three of the 18 Form 1099's issued in 2012, totaling \$9,790 or 29.6%, five of the 16 Form 1099's issued in 2013 totaling \$33,587 or 72.2% and 2 of the 19 Form 1099's issued in 2014 totaling \$36,105 or 30.5%.

We also tested salaries to determine whether the amounts paid and deductions for health insurance premiums were correct and recorded properly on the general ledger and claim vouchers. We compared the payroll registers to the attendance records to verify the days worked and verified the salary expenses and health insurance deductions to claim vouchers submitted for reimbursement to the County. This testing was performed using the test samples listed above and found no exceptions.

Audit Recommendation(s):

We recommend that Legal Aid:

- a) modify its vacation policy to no longer allow unearned leave time to be taken;
- b) develop a standard electronic record to track leave time earned and used. The elimination of handwritten record keeping and the use of an automated electronic leave time record is more efficient in monitoring and preventing errors in employee leave time and will aid in the review and analysis of employees time and leave by management; and
- c) develop and establish procedures that require a supervisory review of leave time records to ensure leave time is properly recorded and only used as earned.

Audit Finding:

(3) Unauthorized Cash Disbursements of \$444,305, Improper Use of Petty Cash Bank Account of \$227,662 and Misclassified Expenses of \$4,696

Our review of disbursements found that expenses were not always approved by management. Operating expenses were sometimes paid from the petty cash account and expenses were not always classified correctly in the accounting records.

We selected payments from the Operating and Petty Cash check registers to determine whether the expenses were approved, properly supported and recorded in accordance with the County contract. Our sample included 44 operating disbursements totaling \$917,917 or 7.2% of the total operating disbursements and 12 petty cash disbursements totaling \$109,405 or 45.2% of the total petty cash disbursement from January 1, 2012 to September 30, 2015. The disbursements were checked for proper authorization and compliance with County contracts and compared to invoices and accounting records.

Findings and Recommendations

Our testing found that:

- twenty disbursements totaling \$444,305 were not approved prior to being paid;
- 50 petty cash disbursements totaling \$227,662 represented operating expenses that exceeded the \$500 allowable limit set by Legal Aid’s Board; and
- three disbursements totaling \$4,696 were posted to the incorrect accounts in the accounting records.

Details about these findings are summarized as follows:

Disbursements Totaling \$445,305 Missing Management Approval

Cash disbursements are required to be approved by management before payments are made to prevent improper purchases and misappropriation of funds. Furthermore, the Office of the Comptroller’s Control Directive 2: Internal Financial Control⁸ states that “management should establish clear and documented approval paths necessary to confirm or sanction decisions or transactions”.

In our review of disbursements, we noted that invoices for payment were approved by the Attorney-in-Chief or the Office Administrator depending on the type of expenses. As shown in Exhibit VII, the test of disbursements identified nine operating disbursements totaling \$336,900 and eleven Petty Cash disbursements totaling \$107,405 that were missing required approvals.

⁸ Nassau County Office of the Comptroller Control Directive 2: Internal Financial Control, page 3.

Findings and Recommendations

Exhibit VII

**Legal Aid Society of Nassau County
Operating and Petty Cash Disbursements
Missing Management Approval
January 1, 2012 - September 30, 2015**

<u>Date</u>	<u>Type</u>	<u>Vendor Name</u>	<u>Amount</u>
01/01/12	Operating	The Hartford	\$ 11,304
01/26/12	Operating	GE Capital-lease	3,616
03/20/13	Operating	MetLife	100,000
05/31/13	Operating	AXA Equitable	1,200
05/31/13	Operating	T. Rowe Price	2,069
07/01/13	Operating	MetLife	125,000
07/25/13	Operating	MG Trust Co.(Expert Plan)	39,883
12/27/13	Operating	MetLife	50,000
02/06/14	Operating	Everyone's Computer Expert	3,828
Subtotal			\$ 336,900
04/11/12	Petty Cash	Oxford Health Plans	\$ 66,804
06/18/12	Petty Cash	Earthlink Business	1,287
02/19/13	Petty Cash	Nassau County Treasurer	6,114
07/22/13	Petty Cash	Dr. Lone Thanning	5,000
01/01/14	Petty Cash	The Hartford	14,117
04/03/14	Petty Cash	American Express	1,514
07/17/14	Petty Cash	Swan Club (Note 1)	6,500
12/12/14	Petty Cash	Kasey's (Note 1)	3,102
01/08/15	Petty Cash	Optimum-Cablevision	879
07/20/15	Petty Cash	American Express	1,004
08/19/15	Petty Cash	American Express	1,084
Subtotal			\$ 107,405
Grand Total			\$ 444,305

Source: Operating and Petty Cash Check Registers.

Note 1: The Swan Club and Kasey's represent office parties. The Attorney-in-Chief stated that office parties were paid out of petty cash and are reimbursed by staff and members of the Board who attended the office functions.

Operating Expenses Totaling \$227,062 Paid From the Petty Cash Account Circumvented Internal Controls

The Petty Cash bank account was established by the Legal Aid Society Board on November 14, 2006 with a maximum limit of \$500, to be used for such items as subpoena fees, client birth certificates and other time-sensitive documents that must be obtained immediately.

Our review of the Petty Cash check register found that the Petty Cash account was used improperly to pay recurring and non-recurring operating expenses (insurance, internet/telephone, computer software, office parties) and other expenses totaling \$227,662 (or 94% of total Petty Cash

Findings and Recommendations

disbursements) that by-passed the Board's approval process and/or exceeded the allowable Petty Cash limit of \$500.

Exhibit VIII shows the detail payments identified during our testing that were made from the Petty Cash account for operating and other expenses over the authorized limit of \$500.

Exhibit VIII

Legal Aid Society of Nassau County
Detail Petty Cash Payments for Operating and Other Expenses => \$500
January 1, 2012 - September 30, 2015

Description	2012	2013	2014	2015	Total
Insurance Health	\$ 135,560	\$ -	\$ -	\$ -	\$ 135,560
Insurance Workmen Comp	1,000	12,522	16,962	-	30,484
Office Party	2,000	1,391	10,102	-	13,493
Cable/ Internet/Telephone	4,599	5,001	877	2,638	13,115
Medical Expert	-	9,800	800	-	10,600
Nassau County Treasurer	1,559	6,114	1,183	-	8,856
Software, Upgrades, Seminars, etc.	-	824	2,993	2,088	5,905
Pension	2,100	-	1,660	-	3,760
Transit Flex Plan	2,405	-	-	-	2,405
Insurance Liability /Malpractice	-	1,281	500	-	1,781
Staff Mileage	552	563	-	-	1,115
Office Supplies	-	-	-	588	588
Total Operating Paid from Petty Cash	\$ 149,775	\$ 37,496	\$ 35,077	\$ 5,314	\$ 227,662
Number of Checks => \$500	16	15	13	6	50
Total of All Petty Cash Payments	\$ 153,796	\$ 40,713	\$ 39,669	\$ 7,871	\$ 242,049
% Used for Operating Expenses	97%	92%	88%	68%	94%

Source: Petty Cash Check Registers.

The practice of using Petty Cash to pay operating expenses or other expenses over the authorized limit is not in compliance with the Nassau County Office of the Comptroller Control Directive 1: Petty Cash Accounts.⁹

The Directive states Petty Cash accounts, under no circumstances, may be used for the recurrent monthly expenditures, payment of purchase orders and personal loans of any nature. The guidelines also state individual purchases must not exceed the allowable limits unless authorized.

We also noted that the signatory on the account is the Attorney-in-Chief who is also one of the individuals who approves invoices for payment. As a result, there is a lack of segregation of duties and a weakness in internal controls when operating payments are paid from the Petty Cash account.

⁹ Nassau County Office of the Comptroller Control Directive 1: Petty Cash Accounts dated May 13, 2011 page 5.

Findings and Recommendations

The Directive states that it is imperative that the account functions be adequately distributed and no single employee should be responsible for all aspects to prevent potential misuse of funds.

We were informed that management authorized payments be made from the Petty Cash account to pay operating expenses that had to be paid immediately to avoid late charges when the Board President and Treasurer were not available to sign and approve checks from the operating account. The Attorney-in-Chief affirmatively stated the Board was aware of this practice and the purpose of the Petty Cash account.

He also stated office parties are paid for with checks issued from the Petty Cash account and are reimbursed from deposits from monies paid by staff, management and members of the Board who attended the office functions. We tested three Petty Cash disbursements for office functions totaling \$11,602 from our test sample in 2012 and 2014, and found deposits of \$11,550 applied to these payments resulting in balance owed to Legal Aid of \$52.

It is important that Petty Cash is only used to pay for time sensitive documents within the dollar threshold limit and not for operating expenses and office parties, to ensure there are controls over the cash disbursement process to prevent misappropriation of funds. Operating expenses should be paid from the operating bank account and approved by management and the Board before payment is made.

Disbursements Totaling \$4,696 Were Classified Incorrectly in the Accounting Records

Our test of the 44 operating and twelve Petty Cash disbursements found that two operating disbursements in 2015 for printers and computer software totaling \$3,182, were improperly classified as stationery and office maintenance and one Petty Cash disbursement of \$1,514 in 2014 for computer software was improperly classified as office maintenance in the accounting records. As a result of the misclassification, the actual cost, when compared to the budgeted cost for these expenses, would be incorrectly reported in the Legal Aid accounting records. The Petty Cash disbursement of \$1,514 is over the \$500 authorized limit which is discussed above.

It is important that there is management oversight to review entries recorded in the accounting records to ensure all financial information is accurately and properly reported to prevent any reporting misstatements from occurring.

Audit Recommendation(s):

We recommend that the Legal Aid Society:

- a) implement a supervisory review and approval of all disbursements and postings to accounting records to ensure all required approvals are obtained prior to payment and the payments are posted to the appropriate account in the financial records;

Findings and Recommendations

- b) take the necessary steps to ensure that operating expenses are always paid from the operating account and approved by management and the Board; and
- c) take the necessary steps to ensure that Petty Cash funds are only used for purchases of time sensitive items that do not exceed the \$500 limit established by the Board.

Audit Finding:

(4) Standard Cash Controls Designed to Prevent or Detect Possible Errors or Irregularities Were Not Found

During our review of cash disbursements and bank reconciliations, auditors noted a lack of standard cash controls. The auditors found the use of non-sequential numbered checks, the lack of detail support for bank reconciliations, no requirement to document the reason why checks were voided or to retain the voided checks, and no investigation of stale dated checks totaling \$58,290.

The importance of these standard controls are as follows:

- The use of, and accounting for, sequentially numbered checks is important to prevent and detect the unauthorized use of bank accounts and missing checks.
- Detail support for bank reconciliations is necessary for validating the accuracy of the reconciliations, identify inconsistencies and perform any required follow up.
- Retention of voided checks guards against the improper use of information on the face of check or of the check itself.
- Investigation of stale dated checks could reduce future stale dated checks in similar situations, or to the same payee, and helps to ensure compliance with escheatment regulations.

Legal Aid maintains three operating bank accounts (Operating, Payroll and Special (fund transfers between accounts)) and a Petty Cash account. Monthly bank reconciliations are performed for all accounts. In addition, there are two bank accounts that are not recorded on the general ledger, the Escrow and Pension Trust accounts. The Escrow bank account is used for monies collected from defendants and disbursed to beneficiaries through court orders. The Pension Trust account is used to pay pension benefits to retirees and is considered a separate entity and not part of the Legal Aid Society's assets. Monies in this account are held in trust for employees of the Legal Aid Society according to the outside accountant.

Accuracy of Bank Reconciliations Could Not Be Tested Because Detail Support Documents Were Not Maintained

Our review revealed that the Operating and Petty Cash bank reconciliations were performed monthly by the Finance Administrator; however, the detailed information to support the

Findings and Recommendations

reconciliations were not retained from January 1, 2012 through July 31, 2015.¹⁰ This detailed information is considered part of the bank reconciliations and in its absence, the auditors could not verify whether the reconciliations were performed properly for this period should have been maintained.

The detail information not retained included the outstanding check listing, support for deposits in transit and the list of reconciling items. After informing the Finance Administrator of our findings, the Society commenced printing and retaining the detail bank information, beginning with the month ending August 31, 2015.

We also noted the summary reconciliations for all bank accounts were not dated and signed by the preparer and approved by management as required by the New York State Accounting System User Procedures Manual - Guide to Financial Operations (“NYS Guide”)¹¹.

The following summarizes the audit work performed:

Stale Dated Checks Over One and Three Years Old

Our review of the reconciling items, as of September 30, 2015, found there was no evidence that stale dated checks over one year old were investigated and resolved or escheated to New York State in accordance with the Abandoned Property Law.¹²

Further, the NYS Guide states, “A critical element of the reconciliation process is the resolution of differences. Differences should be identified, investigated, and explained - corrective action must be taken.”¹³ Exhibit IX summarizes the stale dated checks by bank account and shows that most of the stale dated checks were issued from the Escrow Account.

¹⁰ The operating bank reconciliation for August 31, 2015 was missing the detail for cleared and new checks issued and the deposit listing. The August 31, 2014 had the detail reconciliation information.

¹¹ Guide to Financial Operations, Section XIV. 4. C. - Special Procedures – Agency Bank Accounts – Bank Account Reporting and Reconciliations, Revised 09/14/15.

¹² The Laws of New York, Abandoned Property, Article 6, §600(c).

¹³ New York State Accounting Systems User Procedures Manual, Guide to Financial Operations, Section XIV. 4.C.- Special Procedures – Agency Bank Accounts – Bank Account Reporting and Reconciliations, Revised 09/14/15.

Findings and Recommendations

Exhibit IX

Legal Aid Society of Nassau County
Amount of Outstanding Checks
As of September 30, 2015

<u>Year Check</u> <u>Issued</u>	<u>Operating</u>	<u>Petty Cash</u>	<u>Escrow</u>
2010	\$ -	\$ -	\$ 37,540
2011	-	45	2,503
2012	121	49	4,513
2013	141	120	4,819
2014	36	125	8,280
Total	<u>\$ 297</u>	<u>\$ 339</u>	<u>\$ 57,654</u>

Source of Data: Bank Reconciliation as of 9/30/2015.

Note: Outstanding escrow checks over 3 years old total \$44,556.

According to the Attorney-in-Chief, the disposition of the stale dated checks in the escrow account has to be decided by court orders from a judge; and Legal Aid cannot request the necessary court orders without evidence of the research performed. The portion of the escrow checks in Exhibit IX that were over three years old totaled \$44,556.

When the auditors inquired about the reason the stale dated checks were not resolved, the Attorney-in-Chief stated that, with the assistance of the Nassau County District Attorney's Office, attempts were made to return the monies held in escrow by contacting the beneficiaries and defendants. The Attorney-in-Chief also stated many of the persons could not be located because they moved and the contact numbers were no longer valid. The auditors requested proof to support Legal Aid's efforts to locate the beneficiaries and defendants; however, the only documentation provided was a letter dated January 6, 2016 from the Attorney-in-Chief to the District Attorney asking for the District Attorney's general assistance in locating and returning monies owed to the beneficiaries.

Voided Checks Were Not Retained and the Reason for Each Voided Check Was Not Documented

During our review of the check registers from January 1, 2012 to September 30, 2015, we found a total of 75 voided checks in the Operating and Petty Cash bank accounts that were discarded and the reasons for the void checks were not noted in the accounting records as required by the contract between Legal Aid and the County. It is important that accounting records are retained for six years as required by the contract including voided checks and the reasons for the voids are noted to ensure checks are not misused and to safeguard assets.

Findings and Recommendations

The contract requires that accounting records be retained for six years and available for review. Exhibit X shows that there were 65 Operating and 10 Petty Cash voided checks that were not retained. We examined the check registers for the voided checks that were missing and compared the checks numbers to the bank statements and found none of the checks had been paid.

Exhibit X

**Legal Aid Society of Nassau County
Number of Voided Checks Not Retained
January 1, 2012 - September 30, 2015**

<u>Year Check Issued</u>	<u>Operating Checks</u>	<u>Petty Cash Checks</u>
2012	7	1
2013	24	
2014	28	7
2015	6	2
Total	<u>65</u>	<u>10</u>

Source of Data: Check Registers.

Checks Issued Out of Sequence

Our review of the check registers from January 1, 2012 to September 30, 2015 identified 134 checks from the Operating and five checks from the Petty Cash bank account that were issued out of sequence. There was no evidence that a control procedure exists that requires the individual who prints checks to verify that the checks numbers used are in sequential order. It is important that the checks be issued in numerical order and each number is accounted for in order to prevent misuse of assets. The preparer did not check the previous check number used to ensure check numbers are issued in sequential order. This should have been caught when the reconciliation was performed. At that time, all missing check numbers should have been investigated and the reasons for the missing checks documented.

Exhibit XI, shows the number of checks issued out of sequence from January 1, 2012 to September 30, 2015.

Findings and Recommendations

Exhibit XI

**Legal Aid Society of Nassau County
Number of Out of Sequence Checks
January 1, 2012 - September 30, 2015**

<u>Year Check</u>	<u>Issued</u>	<u>Operating</u>	<u>Petty Cash</u>
2012	13	1	
2013	41		
2014	42		3
2015	38		1
Total	<u>134</u>		<u>5</u>

Source of Data: |Check Registers.

Audit Recommendation(s):

We recommend that the Legal Aid Society:

- a) retain bank reconciliations with supporting detail information signed by preparer and supervisor to ensure reconciliations are monitored and maintained;
- b) investigate checks outstanding over one year;
- c) create an escheatment process for uncashed checks over three years and determine whether the monies are to be remitted to the New York State Comptroller as required by the New York State Abandoned Property Law; The investigation should include attempts to locate and return monies owed to the designated beneficiaries on the uncashed outstanding checks and to determine whether the unclaimed funds in the escrow account are to be escheated to the New York State Comptroller;
- d) retain and document reasons for void checks as required by the contract;
- e) establish control procedures to issue checks in sequential order by implementing a computer process that will automatically generate sequential numbers on the checks at the time of printing; and
- f) account for all issued checks including voided checks.

Findings and Recommendations

Audit Finding

(5) One Contract Requirement Does Not Conform With Current Law and Another Requirement Was Not Adhered To By Legal Aid

Our review revealed that page 3 of the County contract requires Legal Aid to make a diligent inquiry and, where appropriate, seek the aid of the court to determine the financial ability of persons to pay for any legal assistance. However, the responsibility for determination in Nassau County currently resides with the judges and not Legal Aid.

The audit also found that Legal Aid does not provide the salary, fringes and other benefits by position for each employee on a quarterly basis as required in Section 4(b) of the contract.

Determining Eligibility for Legal Aid Services

The Attorney-in-Chief stated that the Legal Aid Society used to obtain and review financial statements from defendants and made recommendations to the court judge who ultimately decided whether the defendant could not afford counsel. Then, a County Defendant Counsel Screening Bureau (“Bureau”) was established by the Office of the Commissioner of Accounts to be more effective in screening out ineligible applicants. In the early 1980’s, the Bureau was disbanded by the County Executive’s Office due to budget cuts and the responsibility for screening was given to the court judges. The Attorney-in-Chief believes the contract language was not revised to reflect this change. He stated it has always been the case that judges, and not Legal Aid or the Bureau, made the final determination on financial eligibility.¹⁴

Per the former Attorney-in-Chief of Legal Aid, a person that is accused of committing a crime in the County is arraigned and asked to complete a questionnaire.¹⁵ This is currently done in court with the assistance of an intern or paralegal from Legal Aid. The judge ultimately decides whether to assign a legal aid attorney to the case. The questionnaires are retained by the courts and are not provided to Legal Aid.

The questionnaires in use at the District and County courts and the financial affidavit used by Family Court varies from court to court and only include questions to obtain such information as name, employment status, income, marital status, number of dependents, own or rent residence or own a vehicle, etc.

¹⁴ See People v. McKiernan, 84 NY 2d 915 (1994).

¹⁵ Assignment of a Lawyer questionnaire is used in District and County court and Financial Affidavit in Support of Request for a Court Appointed Attorney questionnaire is used in Family Court.

Findings and Recommendations

The questionnaires do not solicit information such as:

- the client's address,
- date of birth,
- citizenship (this is not required for free counsel) Social Security number: and
- the amount of any income from public assistance.

We were informed that the information on the questionnaires is not verified for accuracy by the court, except in family court alimony cases. We noted that documents such as W-2's, bank statements and/or tax returns are not required to support the information provided on the questionnaires, except in Family Court, where two years' tax returns are required.

The lack of complete and verified client data and uniform standards increases the risk that legal aid services may be provided to individuals with the ability to pay.

Comparison with Other NY Counties Eligibility Determination Practices

We determined that in other counties, such as Oneida, Monroe and Onondaga¹⁶, the eligibility screening for legal assistance has been delegated to each county, using the Federal Poverty Guidelines as the criteria for eligibility. We noted the following:

- The questionnaires used by Oneida and Monroe County Public Defender's Office ask some additional questions such as date of birth, Social Security number, address, gender, citizenship and public assistance.
- Oneida and Monroe Counties do not obtain documents to support the questionnaires such as W-2's, bank statements and tax returns.
- One county stated there is "no time for all that and our clients are not great record keepers."
- Onondaga County's Legal Aid Society requires documents to support proof of eligibility when handling divorces and landlord/tenant evictions.
- The three counties are responsible to work with clients to complete questionnaires that are used to determine whether a client is eligible for legal counsel.

New York State Office of Indigent Legal Services to Establish Standardized Procedures and Criteria for Eligibility

The Executive Law Section 832¹⁷, requires the New York State Office of Indigent Legal Services ("ILS") to establish the criteria and procedures to guide courts in determining whether a person is eligible for representation.

¹⁶ Onondaga handles divorces and landlord/tenant eviction cases and Appeals, Parole and Extradition are assigned by the court. Misdemeanors and Criminal cases are handled by 18b Attorneys.

¹⁷ Laws of New York, Article 30 – Indigent Legal Services, Sections 832 and 833.

Findings and Recommendations

The ILS conducted a series of public hearings and established criteria, procedures, and model forms for use by the courts to determine eligibility for mandated legal representation in criminal and family court proceedings¹⁸.

Noncompliance with Quarterly Financial Reporting Requirement

Our review revealed Legal Aid does not provide financial reports on a quarterly basis. Such reporting is needed to demonstrate that each salary line item includes fringes and other benefits by position to reflect the total compensation for each employee. The contract requires that this level of data be provided quarterly to OMB, the Comptroller's Office and the Nassau County Legislature. The quarterly reporting helps to monitor whether each salary line expense is in compliance with the budget amounts. We were informed by the Attorney-in-Chief that Legal Aid has limited staff and it was not possible to prepare this financial information on a quarterly basis.

Audit Recommendation(s):

We recommend that:

- a) the Legal Aid Society and the Nassau County Attorney's Office work together to revise the contract requirement on page 3. They should ensure it coincides with the law when stating Legal Aid's role in implementing the Criteria and procedures issued by the New York State Office of Indigent Legal Services for determining Assigned Counsel eligibility; and
- b) the Legal Aid Society comply with Section 4(b) of the contact by providing the salary, fringes and other benefits by position for each employee on a quarterly basis.

Audit Finding:

(6) The Prior Audit Recommendation to Properly Account for Assets Purchased with County Funding Has Not Been Implemented

Our review found that Legal Aid does not have an adequate process to properly account for fixed assets purchased with County funding by Legal Aid. Three different equipment lists were provided by the Office Administrator which were sometimes found to be missing important inventory information such as purchase date, description, cost, inventory tag, location, and if disposed of, the date and method of disposal. Legal Aid's failure to properly maintain complete inventory records was cited in a previous audit report dated August 7, 1996.

¹⁸ New York State Office of Indigent Legal Services in accordance with Section VI of the *Hurrell-Harring v. State of New York* Stipulation and Order of Settlement and Executive Law §832(3)(c) – Criteria and Procedures for Determining Assigned Counsel Eligibility, April 4, 2016.

Findings and Recommendations

An inventory list totaling \$55,109 from January 1, 2012 to September 4, 2015 was prepared by the Office Administrator during our audit since a current inventory list was not being maintained. The inventory list included the date of purchase and the description and cost of the asset, but did not contain the inventory tag numbers, locations or disposal dates, if applicable. The missing information is needed for the inventory records to be complete.

In order to perform inventory observation testing of the computer items, the auditors referred to a service maintenance schedule that included equipment service tag numbers and locations and also more items that had not been included on the list prepared by the Office Administrator. Unfortunately, the service maintenance schedule did not include dates or dollar amounts.

Using the list prepared by the Office Administrator and the service maintenance schedule, the auditors observed the computer equipment and furniture listed below since the items were located in the Legal Aid building where the auditors were working. The items that were located in the courts buildings were not selected for observation.

- 66 desktops and 5 laptops
- 2 servers and 60 printers
- 6 pieces of furniture

Since only the list prepared by the Office Administrator included dollars amounts, the auditors could only dollarize a portion of what they observed as follows: half of the desktops, 5 laptops, 1 server, 15 printers and the 6 pieces of furniture. The amount totaled \$50,802 or 92% of the total dollars shown on the list created by the Office Administrator. The other 8% represented the items that were located off premises in the court buildings.

While performing the inventory observation testing, the auditors observed obsolete computer equipment that was to be donated or taken to a recycling center. An inventory disposal list which included these items was not maintained by Legal Aid.

Audit Recommendation(s):

We recommend that the Legal Aid Society prepare and maintain an accurate inventory listing which reflects the date of purchase, description of item, cost, inventory number, item location and upon disposal, the date and method of disposition.

Audit Finding:

(7) A Comprehensive Personnel Manual was not Maintained

Our review found that Legal Aid does not have a comprehensive up-to-date personnel manual that clearly provides Legal Aid's business and office policies and benefits. Personnel policies provide

Findings and Recommendations

a framework for uniform and consistent administration and help implement a consistent approach to management. Further an important aspect of any personnel manual is that it be kept current.

We were provided with a series of memos addressed to the staff regarding employees' compensation, benefits, leave time and office policies; some were not dated.

Specifically, there was no comprehensive personnel manual which covered the following:

- business policies including Legal Aid's mission, equal employment opportunity policy, employees conduct, conflict of interest and procedures for making and resolving complaints;
- employee compensation, benefits and compensated leave time; and
- office policies including educational programs, travel and expense reimbursements, policy on use and monitoring of computers and equipment and employment separation and termination procedures.

Audit Recommendation(s):

We recommend that the Legal Aid Society Board of Directors:

- a) develop personnel policies and incorporate them into a personnel manual and distribute to all employees for all business polices, employee compensation, and employee benefits including time off and office policies; and
- b) develop a procedure for updates to make sure that updates to policies are documented and dated in the personnel manual.

Audit Finding:

(8) Lack of Segregation of Duties

Our review and testing of cash receipts and disbursements, payroll, inventory and compliance with contract terms revealed that the Finance Administrator is responsible for performing too many incompatible functions resulting in an inadequate segregation of duties. Although the audit testing did not uncover any loss of funds, the risk that errors and irregularities could exist and go undetected still remains.

“Segregating the incompatible duties for the custody of cash, record-keeping, authorizations, and reconciliations prevents an employee or official from controlling all phases of the accounting function.”¹⁹ Internal control weakness exists when duties are not segregated and errors and fraud

¹⁹ New York State Comptroller's Local Government Management Guide, The Practice of Internal Controls, Bank Reconciliation Procedures, Section 3-2-2, dated October 2010.

Findings and Recommendations

may go undetected. When duties cannot be segregated, supervisory oversight is needed to mitigate the risks resulting from inadequate segregation of accounting duties.

Legal Aid has only one Financial Administrator who performs all the cash receipts related duties, processes cash disbursements and records transactions in the accounting records, with limited review by management. The following summarizes the incompatible functions performed by the Financial Administrator:

- **Cash Receipts** – The Financial Administrator receives, deposits and records cash receipts. These are incompatible functions. For example, internal control of cash is improved when money handling duties are separated from the record keeping duties. By separating these duties, the likelihood of theft is reduced because it would now require two dishonest people working together to steal the money *and* enter a fictitious amount into the records. Best practices would be to ensure that the responsibilities of receiving cash, deposit preparation and posting activity to the general ledger are separated.
- **Cash Disbursements** – The Financial Administrator prepares checks and also enters disbursements into the Quick Books general ledger. This person also enters salary and deductions into the payroll program, prepares payroll checks for new employees and replacement checks to correct any errors, prepares and submits salary and expense claim vouchers with support documents to the County for reimbursement of Society’s expenses. These are incompatible functions. Best practices would be to ensure that the responsibilities of preparing voucher packages, approving checks for payment, mailing checks and posting activity to the general ledger are separated. Furthermore, no one person should have both cash receipts and cash disbursements responsibilities.

Further, we noted there was no review of the approved changes to salaries and deductions entered in QuickBooks to determine they were entered correctly. The only payroll related review we identified was a supervisory review and sign-off performed on attorneys and staff employees’ attendance records before payroll checks are processed. The supervisory review of payroll attendance records are performed by the Attorney-in-Chief for the administrative staff, Bureau Chiefs for the attorneys and a Secretary Supervisor for the clerical staff.

We determined that Legal Aid’s Board President and Treasurer review of vendor invoices just prior to signing checks, is not the best compensating control because reliance is placed on the work done prior to their receiving the invoices and they do not initial and date the invoices to evidence their review.

- **Reconciliation** – The Financial Administrator receives the unopened bank statements and reconciles the banks accounts to the general ledger with no supervisory review. These are incompatible functions. Best practices for preparing the bank reconciliation would be for

Findings and Recommendations

the bank statement to be opened by someone who has no daily cash responsibilities; the reconciliation to be performed by someone who is not involved in the cash receipts or disbursement functions; and for the bank reconciliation to be approved by supervisory level personnel who are not involved in the daily cash activities.

Audit Recommendation(s):

We recommend that the Legal Aid Society implement an appropriate level of checks and balances over the activities performed by the Finance Administrator. Consideration should be given to hiring additional accounting staff and/or realigning responsibilities within the department so that no one person handles cash receipts, cash disbursements, posts to the general ledger and reconciles bank accounts. If duties cannot be sufficiently segregated, it is important that adequate mitigating controls, such as detailed supervisory reviews of the incompatible activities, be implemented. Such reviews should be documented, signed by the reviewer and retained.

LEGAL AID SOCIETY OF NASSAU COUNTY, NY
40 Main Street, 3d. Fl., Hempstead NY 11550
(516) 560-6400
FAX: (516) 572-1959

N. Scott Banks
Attorney in Chief
516-560-6412

February 27, 2017

Via Email and Regular Mail

Hon. George Maragos
Office of the Comptroller, Nassau County
240 Old Country Road, # 211
Mineola, New York 11501
Attention: JoAnne Greene, Director of Field Audit

Re: **Audit Report of the Legal Aid Society of Nassau County**

Dear Ms. Greene:

I completed my review of the Nassau County Comptroller’s (“Comptroller”) Draft Audit Report (the “Report”) of the Legal Aid Society of Nassau County (hereinafter referred to as “Legal Aid” and/or the “Society”). While I concur with the Report’s underlying determination that the Society properly used and applied budgeted funds to fulfill its constitutional mandate to provide legal representation to those unable to afford counsel¹, I appreciate this opportunity to address some of the issues presented in the Report. I thank the auditors for the Comptroller’s Office who worked with members of my staff in an extremely professional and courteous

¹ In the seminal case Gideon v. Wainwright, 372 US 335 (1963) the United States Supreme Court determined the Sixth Amendment to the United States Constitution guaranteed the right to court appointed counsel for those defendants charged with felonies who are financially unable to afford counsel. The New York Court of Appeals in People v. Witenski, 15 NY 2d 392 (1965) extended this constitutional right to appointed counsel in non-felony cases as well. See Matter of Stream v. Beisheim, 34 AD 2d 329, 333 (2nd Dept. 1970) (trial court has the “inherent power [as part of] its constitutional and statutory duty to furnish counsel to every indigent defendant charged with a crime, and thus determine when a defendant is unable to afford counsel. In response to Gideon and Witenski, New York enacted County Law Article 18-B §722, and the Nassau County Legal Aid Society, a county based system of delivering mandated indigent legal services, was created.

Appendix – Legal Aid Society Response and Auditor’s Follow-up

manner to prepare the audit. As will be explained below, the auditors made several reasonable suggestions to modify and/or change some of Legal Aid’s financial, banking and accounting practices and procedures, most of which the Society has already implemented. Notably, since I only became Attorney in Chief of the Legal Aid Society on September 1, 2016, I forwarded and discussed the findings and recommendations in the Report with my predecessor, Kent V. Moston, prior to submission of this response.

Background:

The Legal Aid Society of Nassau County is a Section 501 (c) (3) non-profit organization located at 40 Main Street, Hempstead, New York. Legal Aid was formed in or about 1964, pursuant to County Law Article 18-b §722, as a County based organization to deliver constitutionally mandated services to individuals financially unable to obtain counsel in criminal matters. Legal Aid’s role in dispensing legal services in Nassau County has grown exponentially throughout the years with the formation of mandated specialty courts such as: Integrated Domestic Violence (“IDV”), Domestic Violence, Mental Health, Veterans, Treatment and Adolescent Diversion parts. Legal Aid is required to fully staff these specialty courts, provide representation in all other criminal matters pending in the District and County Courts of Nassau County (including parole cases), and process appeals to the Appellate Term, 9th and 10th Judicial District and Appellate Division, Second Department. Additionally, Legal Aid provides representation in certain defined family court proceedings for individuals financially unable to retain private counsel.²

In January 2015, Legal Aid entered into another five year contract with Nassau County to fund its expenses through December 31, 2019. Pursuant to the contract, Legal Aid’s funding is renegotiated on an annual basis. Each year, Legal Aid submits its budgetary requests to the County’s Office of Management and Budget (“OMB”) and the Comptroller’s office for review, and ultimate approval by the Nassau County Legislature. The contract defines Legal Aid’s continued role in providing constitutionally mandated legal services in the criminal and Family courts of Nassau County. Notably, Legal Aid handles nearly three times the number of cases than are handled by the Nassau County Bar Association’s Assigned Counsel Plan, at

² Legal Aid represents individuals in family court matters, including: (i) Support Proceedings; (ii) Custody Proceedings; (iii) Paternity Proceedings; (iv) Family Offense Proceedings; (v) Child Abuse and Neglect Proceedings; and (vi) Termination of Parental Rights cases.

Appendix – Legal Aid Society Response and Auditor’s Follow-up

substantially less cost to Nassau County and its taxpayers.

The New York State Office of Indigent Legal Services (“ILS”) also provides grants to assist the County and Legal Aid in providing improved indigent legal services. While the contract agreements for these grants are funded entirely by the State of New York, grant contracts are reviewed and approved by the County prior to the distribution of funds to the Society.

The majority of Legal Aid’s funding is provided by Nassau County³, which funds the expenses of the Society, including salaries and fringe benefits (health/dental and retirement benefits) for attorneys, administrative staff, investigators, social workers and retirees.⁴ Funding is also provided for experts, office expenditures (including equipment and furnishings), operating expenses and to pay for various required insurances.⁵

³ The Comptroller’s Report references New York State Senate Bill S8114 (“Bill”), which would have amended Section 722-e of the County Law by requiring the State to reimburse counties and municipalities (outside of the five boroughs of New York City) the cost and expenses of indigent legal services, over a seven year phase in period. Governor Cuomo vetoed the bill at the close of 2016.

⁴ In order to retain seasoned, qualified and experienced attorneys, who unfairly work at significantly lower salaries than attorneys in the Nassau County District Attorney’s Office (our counterpart in the court system), Legal Aid, with Board of Directors authorization, provides certain fringe benefits including pension, health insurance and dental insurance coverage for all employees, including our long-term retirees who remained in the Society’s employ and devoted their time and efforts to the office at significant personal financial sacrifice. Dental benefits provided to these retirees are quite modest, and are administered through Guardian Insurance. In order to be eligible for dental benefits a retiree must have at least 15 years of employment. Plan benefits are subject to individual caps, and a retiree is required to pay 50% of uncovered dental expenses, including implant procedures. Currently, there are six retirees receiving dental benefits. Until recently, the cost for dental insurance and coverage has always been vouchered by the Society and approved by Nassau County without question. The Comptroller’s office recently questioned whether dental coverage should be provided to Legal Aid’s retirees. In response to the Comptroller’s concerns, Legal Aid provided documentation to the Nassau County Attorney’s Office, OMB and the Comptroller’s Office documenting that dental benefits have been provided to the Society’s retirees since the 1970’s, and we the County not to interfere or force the Society to terminate this benefit. Upon review, the Nassau County Attorney’s Office determined in December 2016 there was no basis to discontinue dental benefits for the Society’s long-term retirees.

⁵ While the Report indicates Legal Aid receives “private donations”, such donations are minimal at best. Funds received from donations or “annual dues” paid by members of the Society’s Board

Appendix – Legal Aid Society Response and Auditor’s Follow-up

All non-management staff attorneys are members of the Association of Legal Aid Attorneys (UAW 2325-AFL-CIO), whose salaries and fringe benefits are governed by a Collective Bargaining Agreement (“CBA”). The CBA expired on December 31, 2016, and the Society’s management and union are in the process of negotiating a new agreement. Legal Aid’s current salary scale is established pursuant to the CBA. Notably, our current salary schedule and benefits are well below that of the Nassau County District Attorney’s Office. Indeed, the starting salary for entry level attorneys is also well below attorney salaries paid by the District Attorney’s Office, Suffolk County Legal Aid and the Legal Aid Society of New York City.⁶

Legal Aid does not choose the clients it represents. The determination of a client’s eligibility for Legal Aid representation is the responsibility of the courts. A judge assigns an individual to either Legal Aid or an 18-b attorney (private attorney qualified to serve on the Assigned Counsel Defender Plan) depending on the type of case, the number of defendants, and/or to avoid conflicts in representation. In 2007, the New York Civil Liberties Union (“ACLU”) sued New York State alleging the State systematically and structurally denied meaningful and effective representation to defendants entitled to publically funded representation. In this lawsuit, Hurrell-Harring v. State of New York (“Hurrell-Harring” or “lawsuit”), several flaws in the delivery of indigent legal services were identified, including issues related to the eligibility determination for the appointment of assigned counsel. A global settlement of the lawsuit, required ILS to establish uniform State-wide eligibility criteria for the assignment of counsel.

The County of Nassau reviews all records of expenses submitted by the Legal Aid Society. Legal Aid submits monthly claim vouchers to the County, as required by the contract, for reimbursement of salaries, fringe benefits and operating expenses with supporting documentation attached. Additionally, monthly claim vouchers for specific staff salaries and fringe benefits are submitted through the County’s OMB. The County pays Legal Aid for the

of Directors are primarily used to supplement transportation expenses for clients who cannot otherwise afford to attend court appearances, or on occasion to pay for a client’s meals during trial or hearing proceedings. These expenses are not submitted to the County.

⁶ Upon information and belief the Legal Aid Society of Suffolk County’s entry level annual salary for admitted attorneys is \$55,000, or \$4,000 more than the entry level salary paid by the Society. Likewise, the entry level salaries for attorneys at the Nassau County District Attorney’s Office and the Legal Aid Society of New York City exceeds \$55,000 per year.

Appendix – Legal Aid Society Response and Auditor’s Follow-up

expenses paid by State grants and the County is reimbursed for these monies directly from New York State. Furthermore, legislative awards paid directly to Legal Aid are remitted to Nassau County or reduced from claim vouchers.

The Audit:

The period of review of the Comptroller’s audit was from January 1, 2012 through December 31, 2015. Although the Report concluded some of the accounting and banking procedures employed by the Society were not completely adequate or transparent, and certain rebates and refunds received by the Society were not properly refunded to the County during the audit period, the Report nevertheless determined that:

- a) The Legal Aid Society of Nassau County is in substantial compliance with its obligations pursuant to its contract with Nassau County;
- b) The Legal Aid Society of Nassau County is appropriately using appropriated funds and accurately accounting for all its funding as required in its County contract; and
- c) The Legal Aid Society of Nassau County appropriately reimburses Nassau County for any unused County funding at the end of the fiscal year, as well as County funded expenses for which Grant funding is received.⁷

Upon information and belief, Legal Aid routinely made changes to its bookkeeping and accounting practices, upon suggestions by the Comptroller’s Office, following previous audits.

At all times, the Society has complied with the requirements of the Comptroller’s office, by submitting monthly vouchers with applicable paid bills, canceled checks or other documentation required to substantiate payments made for salaries, fringe benefits and operational expenses. During the course of the audit, certain recommendations were made by the auditors to correct the Society’s accounting, record-keeping and banking practices. Although many of these recommendations are referenced in the Report, Legal Aid has already acted upon these recommendations, and instituted several structural financial changes on its own to promote increased oversight over the Society’s financial processes, in accordance with the auditor’s suggestions.

⁷ Notably on March 31, 2016, Legal Aid returned \$188,854.81 of unused funds to Nassau County for fiscal year 2015, and on March 17, 2015 remitted \$223,550.06 to the County.

Audit Finding

(1) Rebates and Refunds Totaling \$38,296 Were Not Deducted from Claim Vouchers Submitted to the County

Audit Recommendation(s):

We recommend that Legal Aid should:

- a) remit all refunded receipts to the County promptly by direct payment or by reducing the claim vouchers to the County; and
- b) develop procedures to track rebate and refund receipts and establish a process for a supervisory review to ensure they are properly deducted from claims or remitted to the County.

Legal Aid Society Response:

Refunds and Rebates

On page 9 of the Report, the auditors found the sum of \$38,296, representing certain “health insurance rebates, refunds for polygraph tests, legislative awards and short term disability receipts” was not properly returned to the County between January 1, 2012 - December 31, 2015 as required pursuant to the contract with Nassau County.

Upon information and belief, the auditors were given a verbal explanation by our former financial manager explaining why the rebates and refunds were not remitted to Nassau County. With respect to the July 2012 and July 2013 Health Insurance Rebates, it was explained that Legal Aid attempted to return the rebates of \$14,412 and \$4,726 to the County at the close of the respective fiscal years, but in each instance could not do so since the fiscal year had ended. Accordingly, the Society retained these funds in its operations account to pay ongoing documented expenditures.⁸

Likewise, the legislative refund of \$7,820 was received after the close of the 2012 fiscal year, and the Society retained these funds as well. With respect to the refunds of \$11,100 in August 2013 for polygraph tests and \$238.00 in April 2014 for Short Term Disability, upon information and belief, these refunds were erroneously not returned to the County, but the funds

⁸ On February 19, 2013, the Society refunded \$6,113.81 to the County representing unused funds from its 2012 budget and on February 27, 2014 the Society refunded the sum of \$1,183.39.

Appendix – Legal Aid Society Response and Auditor’s Follow-up

were deposited into Legal Aid’s operations account and used for appropriate purposes of the Society.

Notably, since the auditors discussed this issue with the Society’s Finance Administrator and Mr. Moston all cash refunds received by Legal Aid are now returned to the County, and procedures to track rebates and refund receipts were implemented to ensure such refunds/rebates are properly remitted or applied to reduce claim vouchers to prevent overpayment of expenses by Nassau County.

It is respectfully urged the Comptroller’s office not reduce its payments to the Society or the Society’s claim vouchers by \$38,296 as proposed in the draft Report. Indeed, while the Report concluded these funds were not remitted to the County, the funds were nevertheless appropriately used to pay legitimate expenses of the Society, and thereafter substantial unused funds were remitted to the County at the close of the fiscal year.

The Comptroller’s office is reminded that when the auditors conducted their review of the Society’s records, our former Financial Manager pointed out significant reporting errors in the Society’s favor of \$36,817.35 for the Society’s under-reporting of payroll expenses in 2014. This error should be corrected, and at the very least, the sum of \$36,817.35 should be credited against any monies Legal Aid the Comptroller’s office determines should be returned to Nassau County.

Furthermore, the Comptroller’s office should be mindful that from February 19, 2013 through March 31, 2016, Legal Aid returned over \$349,700 to Nassau County representing unused appropriated funds. Certainly, Legal Aid should not be penalized whatsoever for not returning funds to the County during the subject time periods since the monies were properly used for the office operations, and since substantial sums of money were actually returned to the County.

Auditor’s Follow-up Response:

We concur with the corrective action taken by the Legal Aid Society to implement procedures to track rebates and refund receipts, to ensure they are properly remitted or applied, in order to reduce future claim vouchers to the County.

Audit Finding

(2) Payroll Time and Leave Records Revealed a Policy Allowing the Use of Unearned Vacation Time and Inadequate Recordkeeping

Audit Recommendation(s):

We recommend that Legal Aid:

- a) modify its vacation policy to no longer allow unearned leave time to be taken;
- b) develop a standard electronic record to track leave time earned and used. The elimination of handwritten record keeping and the use of an automated electronic leave time record is more efficient in monitoring and preventing errors in employee leave time and will aid in the review and analysis of employees time and leave by management; and
- c) develop and establish procedures that require a supervisory review of leave time records to ensure leave time is properly recorded and only used as earned.

Legal Aid Society Response:

Payroll Time and Leave Records

After the auditors raised concerns regarding the Society’s record-keeping for vacation and unused vacation time, the office instituted a policy where it no longer permits an employee to borrow unearned leave time. Furthermore, the office no longer relies upon handwritten notes to keep track of an employee’s vacation or other leave time. Our Financial Administrator created an Excel spreadsheet for each employee which tracks vacation, sick time, personal days, jury duty, bereavement leave, or other excused time off for each employee. Bureau supervisors also maintain handwritten records which record an employee’s weekly attendance, which is reviewed and signed off by the respective Bureau Chief and Attorney in Chief on a weekly or bi-weekly basis. It is noteworthy, that in those circumstances identified by the auditors where an employee borrowed unearned vacation time, an appropriate salary adjustment was made to ensure the employee was not compensated for unearned vacation time.⁹

⁹ Notably, the Report confirms Legal Aid’s attendance records are “accurate and properly supported” (see Page 12 of Report). Indeed, attendance records are consistent with court calendars and the list of court cases reported by the New York State Defenders Criminal Management system from 2013-2015. Significantly, the Report also confirms the Society accurately reported salaries and deductions for health insurance premiums on the Society’s general ledger and claim vouchers, all consistent with payroll records.

Appendix – Legal Aid Society Response and Auditor’s Follow-up

Auditor’s Follow-up Response:

We concur with the corrective action taken by the Legal Aid Society with respect to the recommendation (a), (b) and (c), to modify its vacation policy to no longer permit employees to borrow unearned leave time, develop an electronic record to track leave time and establish supervisory review of leave time records.

However, the Bureau Supervisor’s handwritten records of employees’ weekly attendance should also be maintained on an electronic record.

Audit Finding:

(3) Unauthorized Cash Disbursements of \$444,305, Improper Use of Petty Cash Bank Account of \$227,662 and Misclassified Expenses of \$4,696

Audit Recommendation(s):

We recommend that the Legal Aid Society:

- a) implement a supervisory review and approval of all disbursements and postings to accounting records to ensure all required approvals are obtained prior to payment and the payments are posted to the appropriate account in the financial records;
- b) take the necessary steps to ensure that operating expenses are always paid from the operating account and approved by management and the Board; and
- c) take the necessary steps to ensure that Petty Cash funds are only used for purchases of time sensitive items that do not exceed the \$500 limit established by the Board.

Legal Aid Society Response:

Unauthorized Cash Disbursements of \$444,305, Improper Use of Petty Cash Bank Account of \$227,662 and Misclassified Expenses of \$4,696

During the audit process, the examiners raised concerns regarding alleged “unauthorized” cash disbursements from the Society’s operating account to pay operating expenses. Apparently, the auditors found there were disbursements for operating expense invoices totaling \$444,305, during the subject period of the audit, purportedly not “approved” by the Attorney in Chief. Notably, all checks issued from the operating account allegedly missing management approval were for legitimate and documented operating expenses. Upon information and belief, these

Appendix – Legal Aid Society Response and Auditor’s Follow-up

payments were authorized and approved by the Attorney in Chief, but the checks may erroneously have been issued without the endorsement of the NCLAS Board of Directors President or Treasurer, or the Attorney in Chief, because of their unavailability, and to avoid late payment charges with respect to a billing invoice.

Notwithstanding, corrective measures have been instituted to avoid any “unauthorized” checks or payments from being issued in the future. Presently, no billing invoices are paid without review by either the Attorney in Chief, who examines each check and signs off on each billing invoice, or by the President and Treasurer of the Board of Directors who review the respective invoices and sign expenditure checks on a monthly or semi-monthly basis. Additionally, the Attorney in Chief reviews bank statements and checking account invoices on a regular basis to ensure appropriate procedures are being adhered to, and all voided checks are appropriately accounted for.

Petty Cash Account:

The Petty Cash bank account was established by the Society in November 2006 to be used for such items as subpoena fees, obtaining client birth certificates and other time-sensitive documents that needed to be obtained immediately. During the audit review period, it was discovered there have been instances where the Petty Cash bank account was used to pay some recurring and non-recurring operation expenses; i.e. insurance, internet, computer software expenses. Legal Aid has completely eliminated the use of the Petty Cash bank account to pay any of its operational expenses. The Society no longer uses the Petty Cash account to pay recurrent expenses, purchase orders or any operational expenditures. The Petty Cash account has never been used to float any personal loans.

Suggested limitations on the balances retained in the Petty Cash account to just \$500 is problematical and unworkable. In addition to using the funds in the Petty Cash account to pay for time-sensitive expenses, the account is also used as a vehicle to deposit checks for office parties; i.e. Christmas party and retirement parties. When a party is scheduled, checks are received and deposited into the Petty Cash account to fund the catering facility or restaurant. Such checks cannot be deposited in any other account, and exceed the suggested \$500 deposit cap. The \$500 cap on the Petty Cash account does not make sense at all since deposits for office

Appendix – Legal Aid Society Response and Auditor’s Follow-up

functions far exceed that amount. Such funds are segregated from County funding and grant funds, and bank statements for the Petty Cash account are routinely reviewed and reconciled by the Attorney in Chief.¹⁰

The signatory on the Petty Cash account is the Attorney in Chief. Although the Attorney in Chief reviews and approves payment invoices, there is certainly sufficient internal control and review of the account since operating expenses are **not** paid from the Petty Cash account. The Petty Cash account is used for very limited purposes as described herein, and is subject to control and oversight not only by the Attorney in Chief but by the Financial Administrator of the Society.

Auditor’s Follow-up Response:

We concur with the corrective action taken by the Legal Aid Society with respect to the recommendation (a) and (b), to institute a supervisory review and approval of all disbursements and to eliminate the use of the Petty Cash account to pay for its operating expenses.

With respect to recommendation (c), we reiterate that the Petty Cash funds are only to be used for purchases of time sensitive items that do not exceed the dollar limits established by the Board. All expenses related to office parties are personal in nature and petty cash should never be used. Further, we disagree that the Attorney in Chief’s review and approval of the nonbusiness use of the petty cash account serves as a sufficient internal controls over these payments.

Audit Finding:

(4) Standard Cash Controls Designed to Prevent or Detect Possible Errors or Irregularities Were Not Found

Audit Recommendation(s):

We recommend that the Legal Aid Society:

- a) retain bank reconciliations with supporting detail information signed by preparer and supervisor to ensure reconciliations are monitored and maintained;
- b) investigate checks outstanding over one year;

¹⁰ The Society will be mindful in the future to properly classify disbursements in our accounting records. The errors cited on Page 16 certainly are not significant since they only mistakenly classified the purchase of computer software and a printer as “stationary”

Appendix – Legal Aid Society Response and Auditor’s Follow-up

- c) create an escheatment process for uncashed checks over three years and determine whether the monies are to be remitted to the New York State Comptroller as required by the New York State Abandoned Property Law; The investigation should include attempts to locate and return monies owed to the designated beneficiaries on the uncashed outstanding checks and to determine whether the unclaimed funds in the escrow account are to be escheated to the New York State Comptroller;
- d) retain and document reasons for void checks as required by the contract;
- e) establish control procedures to issue checks in sequential order by implementing a computer process that will automatically generate sequential numbers on the checks at the time of printing; and
- f) account for all issued checks including voided checks.

Legal Aid Society Response:

Standard Cash Controls

The auditors findings regarding the use of non-sequential checks, the lack of detailed support for bank reconciliations and lack of adequate explanation for voided checks have been addressed by the Society. Not only are the accounts and disbursements reviewed by the Financial Manager and Attorney in Chief, backup documents supporting all checks issued against the account are reviewed as well.

The Society will ensure that all checks are numbered and issued in sequential order. This is being achieved by engaging in monthly bank reconciliations for all accounts. All voided or stale cancelled checks are accounted for in bank reconciliations and will be retained as required for seven years.

Escrow Bank Account

The Escrow bank account is maintained to collect and disburse Court ordered restitution from the Society’s clients. Legal Aid is directed to retain the funds and pay restitution as part of a defendant’s sentence. Information regarding the payee (including address and the amount of restitution) is provided by the District Attorney’s Office, and the restitution payments are forwarded to the payee through our office. Over the years, many restitution payments are returned for many reasons, including the lack of an appropriate address for the payee, or invalid contact numbers. Efforts are made to locate the correct address, however if unsuccessful the

Appendix – Legal Aid Society Response and Auditor’s Follow-up

funds remain in our escrow account. Legal Aid has absolutely no authority to disburse these funds other than to the designated payee. Indeed, it would constitute contempt of court if the unused/unclaimed funds are redirected elsewhere absent a court order.

It is my understanding the Department of Probation has similar issues with unclaimed restitution funds. Since the disposition of these funds can only be resolved by the courts and the District Attorney’s Office, I intend to address this issue with Supervising Judge [REDACTED] [REDACTED].¹¹ In the interim, the Society will maintain the Escrow account and ensure that the account is properly reconciled on a monthly basis.

Auditor’s Follow-up Response:

We concur with the corrective action taken by the Legal Aid Society with respect to recommendations (a), (d), (e) and (f), to retain bank reconciliation support and voided checks, issue checks in sequential order, account for all issued checks and monitor and perform a supervisory review.

With respect to recommendation (b) and (c), we reiterate that checks outstanding over a year be investigated to locate and return monies owed to beneficiaries and to determine whether monies are to be escheated to the State. Although the Legal Aid Society’s response stated that efforts are made to locate and return monies owed and that funds cannot be redirected elsewhere without a court order, the checks are still outstanding for over a year. We commend the Legal Aid Society’s intent to address this issue with the Supervising Judge to resolve the stale dated checks in the escrow account.

Audit Finding

(5) One Contract Requirement Does Not Conform With Current Law and Another Requirement Was Not Adhered To By Legal Aid

Audit Recommendation(s):

We recommend that:

- a) the Legal Aid Society and the Nassau County Attorney’s Office work together to revise the contract requirement on page 3. They should ensure it coincides with the law when

¹¹ The Society attempted to work with the District Attorney’s office to help locate complaining witnesses to tender restitution payments. Unfortunately, those efforts have not resulted in the payment of stale escrow proceeds.

Appendix – Legal Aid Society Response and Auditor’s Follow-up

stating Legal Aid’s role in implementing the Criteria and procedures issued by the New York State Office of Indigent Legal Services for determining Assigned Counsel eligibility.

- b) the Legal Aid Society comply with Section 4(b) of the contract by providing the salary, fringes and other benefits by position for each employee on a quarterly basis.

Legal Aid Society Response:

Eligibility Requirements for Legal Aid Services

The Report correctly states the determination of a client’s eligibility for Legal Aid services in determined by the court. In the 1980's the courts were assisted in that determination by the Defense Counsel Screening Bureau (“DCSB”) which purportedly examined the financial circumstances of all defendant applications for court appointed counsel. The DCSB was disbanded by Nassau County because of budget cuts and thereafter courts individually screened defendants for assignment of counsel.

The Society assists the court by providing a one-page questionnaire which seeks information about the defendant, including name, employment (if any), income, marital status, number of dependents, home and car ownership.

As stated above, in 2007, the New York Civil Liberties Union (“ACLU”) sued New York State in the Hurrell-Harring lawsuit, alleging the State systematically and structurally denied meaningful and effective representation to defendants entitled to publically funded representation. A settlement of this lawsuit required ILS to establish and implement uniform State-wide eligibility criteria for the assignment of counsel.

On April 4, 2016, after approximately eight (8) public hearings regarding the eligibility determination processes employed by the 57 counties outside of New York City, which hearing included testimony and input of providers of mandated services, judges, magistrates, county officials, etc., ILS issued an extensive report entitled, “Criteria and Procedures for Determining Assigned Counsel Eligibility” which set forth new criteria and procedures to determine an individual’s eligibility for the assignment of counsel in criminal and family court proceedings.

A copy of the criteria and procedures recommended by ILS in its report is annexed hereto as **Exhibit “A”**.

Alleged Non-Compliance with Quarterly Financial Reporting Requirements

The Society retains a accounting firm at considerable annual expense to prepare its year end financial statements and tax returns. Only if additional funds are allocated by the County, can we request the accounting firm to prepare quarterly financial reports.

The Society has limited staff and just one Financial Manager, whose substantial responsibilities include administering payroll, OMB filing, grant work, etc., and accordingly her duties will not permit her to prepare quarterly financial reports. If required, the Society can furnish the Comptroller’s Office and OMB with quarterly payroll reports which will provided salary line items, including fringes and other benefits provided to our employees.

Auditor’s Follow-up Response:

We reiterate with respect to recommendation (a) and (b), that the Legal Aid Society and the Nassau County Attorney’s Office revise the contract requirement to state Legal Aid’s role for determining Assigned Counsel eligibility and to provide the salary, fringe and other benefit by employee on a quarterly basis. Although the Legal Aid Society’s response stated that the quarterly financial report cannot be performed due to limited staff and the inability of their accountant to prepare the reports in a timely basis, it is still their responsibility to comply with the terms of the contract.

Audit Finding:

(6) The Prior Audit Recommendation to Properly Account for Assets Purchased with County Funding Has Not Been Implemented

Audit Recommendation(s):

We recommend that the Legal Aid Society prepare and maintain an accurate inventory listing which reflects the date of purchase, description of item, cost, inventory number, item location and upon disposal, the date and method of disposition.

Legal Aid Society Response:

Accounting of Assets Purchased with County Funding

With respect to the claim Legal Aid does not properly maintain complete inventory records of equipment or furnishings, including the description of property, purchase price, dates of disposal etc., the Society responds as follows:

Appendix – Legal Aid Society Response and Auditor’s Follow-up

When our office was located at the Helen Keller Building we maintained an office by office inventory of furnishings and computer equipment. When the County moved the office with just two weeks notice in December 2013, the County movers, led by [REDACTED], commingled the Helen Keller items with those at 40 Main Street. Many desks and other furnishings never made it to our current location, and we are currently utilizing furnishing left here by the prior tenant. Notably, the furnishing at the Helen Keller building were old, having been purchased on or before 1996 when the County relocated Legal Aid to the Helen Keller building from its previous office location at 250 Fulton Avenue, Hempstead, New York.

Presently, our IT person retains all documentation regarding computer, software and printer purchases. All new purchases for furnishings are included in separate inventories.

Auditor’s Follow-up Response:

We concur with the corrective action taken by the Legal Aid Society with respect to the recommendation to prepare and maintain accurate inventory records and to retain all documents regarding computer, software, printers and office furnishings.

Audit Finding:

(7) A Comprehensive Personnel Manual was not Maintained

Audit Recommendation(s):

We recommend that the Legal Aid Society Board of Directors:

- a) develop personnel policies and incorporate them into a personnel manual and distribute to all employees for all business polices, employee compensation, and employee benefits including time off and office policies; and
- b) develop a procedure for updates to make sure that updates to policies are documented and dated in the personnel manual.

Legal Aid Society Response:

Comprehensive Personnel Manual Was Not Maintained

Based upon the recommendations of the auditors, Legal Aid has prepared a comprehensive personnel manual which is distributed to new employees. Union employees also

Appendix – Legal Aid Society Response and Auditor’s Follow-up

have a copy of the Collective Bargaining Agreement which also sets forth responsibilities of management and employees, as well as attorney compensation.

Auditor’s Follow-up Response:

We concur with the corrective action taken by the Legal Aid Society with respect to our recommendation (a), to develop and prepare a comprehensive personnel manual. However, we note that you mention “distribute to new employees”. As travel, education, ethics and numerous other policies affect all employees, all employees should receive the manual.

The Board should adopt the Personnel Manual at the next meeting.

With respect to recommendation (b), we reiterate that procedures for updates be developed to ensure personal manuals are current and accurate.

Audit Finding:

(8) Lack of Segregation of Duties

Audit Recommendation(s):

We recommend that the Legal Aid Society implement an appropriate level of checks and balances over the activities performed by the Finance Administrator. Consideration should be given to hiring additional accounting staff and/or realigning responsibilities within the department so that no one person handles cash receipts, cash disbursements, posts to the general ledger and reconciles bank accounts. If duties cannot be sufficiently segregated, it is important that adequate mitigating controls, such as detailed supervisory reviews of the incompatible activities, be implemented. Such reviews should be documented, signed by the reviewer and retained.

Legal Aid Society Response:

With respect to the recommendation Legal Aid hire additional accounting staff and/or realign the responsibilities of the Financial Administrator, the Comptroller’s Office should be mindful of the fact that budget considerations preclude the office from hiring an additional financial assistant. Upon information and belief, when the contract provision requiring audited quarterly reports was added in 2002, the Society tried its best to comply with this provision. It was explained to the auditors that it was impossible to get our accountants to prepare the quarterly reports in a timely fashion. Indeed, despite our best efforts, even the annual audited report is not completed until August of the following year. Notwithstanding, the Society’s

Appendix – Legal Aid Society Response and Auditor’s Follow-up

expenditures are audited every month by the Comptroller’s office when claim vouchers are submitted.

Notably, an application has been made to ILS to modify a State grant, seeking funding to hire a part-time person to assist the Financial Manager in her duties. To date, that modification request remains outstanding. Certainly, the Society would not object to the County increasing funding to hire additional accounting staff to assist the Financial Manager.

Auditor’s Follow-up Response:

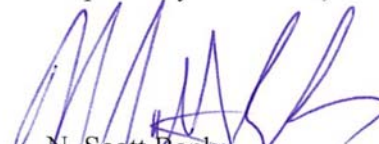
We reiterate the recommendation that the Legal Aid Society institute a supervisory review over the activities performed by the Finance Administrator. Although the Legal Aid Society’s response to prior findings stated they implemented procedures for refund receipts, monitoring and performing supervisory reviews and approval of accounts and disbursements and bank reconciliations, they did not address specific functions in the finding such as the review and approval of changes to salaries and deductions before preparing and recording of payroll checks into the Quick Books general ledger.

With respect to their response to the recommendation to consider hiring additional accounting staff, we concur with the Legal Aid Society’s efforts to obtain a State Grant to fund the hiring of a part-time person to assist in the Finance Administrator’s duties since the office budget precludes hiring an additional person.

I am available to discuss the contents of this response and the Comptroller’s determination prior to the finalization of the Report at the convenience of your office.

Thank you for your consideration and attention to this matter.

Respectfully submitted,



N. Scott Banks
Attorney in Chief

EXHIBIT “A”

**CRITERIA AND PROCEDURES FOR DETERMINING
ASSIGNED COUNSEL ELIGIBILITY**

CRITERIA

- I. An applicant shall be eligible for assignment of counsel when the applicant’s current available resources are insufficient to pay for a qualified attorney, release on bond, the expenses necessary for a competent defense, and the reasonable living expenses of the applicant and any dependents.
 - A. Whether an applicant is eligible for assignment of counsel shall be determined in accordance with the criteria and procedures set forth below.
 - B. Counsel shall be assigned unless the applicant is conclusively ineligible.

- II. To streamline the eligibility determination process, there shall be presumptions of eligibility. A presumption of eligibility is rebuttable only where there is compelling evidence that the applicant has the financial resources sufficient to pay for a qualified attorney and the other expenses necessary for a competent defense.
 - A. Applicants are presumptively eligible for assignment of counsel if their net income is at or below 250% of the Federal Poverty Guidelines.
 - B. Applicants who are incarcerated, detained, or who are confined to a mental health institution shall be presumed eligible for assignment of counsel.
 - C. Applicants who are currently receiving, or have recently been deemed eligible pending receipt of, need-based public assistance, including but not limited to Family Assistance (TANF), Safety Net Assistance (SNA), Supplemental Nutrition Assistance (SNAP), Supplemental Security Income (SSI)/New York State Supplemental Program (SSP), Medicaid, or Public Housing assistance, shall be deemed presumptively eligible for assignment of counsel.
 - D. Applicants who have, within the past six months, been deemed eligible for assignment of counsel in another case in that jurisdiction or another jurisdiction shall be presumed eligible. Appellate courts shall assign appellate counsel to appellants who were deemed eligible for assigned counsel by their trial court.

- III. Ability to post bond shall not be sufficient, standing alone, to deny eligibility for assignment of counsel.

- IV. The resources of a third party shall not be considered available to the applicant unless the third party expressly states a present intention to pay for counsel, the applicant gives informed consent to this arrangement, and the arrangement does not interfere with the representation of the applicant or jeopardize the confidentiality of the attorney-client relationship.
 - A. The resources of a spouse shall not be considered available to the applicant, subject to the above exception.
 - B. The resources of a parent shall not be considered as available to minor applicants, subject to the above exception.

- V. Non-liquid assets shall not be considered unless such assets have demonstrable monetary value and are readily convertible to cash without impairing applicants’ ability to provide for the reasonable living expenses of themselves and their dependents.
 - A. Ownership of a vehicle shall not be considered where such vehicle is necessary for basic life activities.
 - B. An applicant’s primary residence shall not be considered unless the fair market value of the home is significant, there is substantial equity in the home, and the applicant is able to access the equity in a time frame sufficient to retain private counsel promptly.

- VI. Any income from receipt of child support or need-based public assistance shall not be considered as available to applicants in determining eligibility for assignment of counsel.

- VII. Debts and other financial obligations, including the obligation to provide reasonable living expenses for the applicant and his or her dependents, shall be considered in determining eligibility for assignment of counsel.

- VIII. Eligibility determinations shall take into account the actual cost of retaining a private attorney in the relevant jurisdiction for the category of crime charged.

PROCEDURES

- IX. These criteria and procedures shall be applied uniformly, consistently, and with transparency.

- X. Courts have the ultimate authority to determine eligibility, but may delegate the responsibility for screening and making an eligibility recommendation.
 - A. Entities responsible for screening and making a recommendation should be independent and conflict-free.
 - B. Where there is no entity that is independent and conflict-free, courts may delegate the screening responsibility to the provider of mandated representation.

- XI. The confidentiality of all information applicants provide during the eligibility determination process shall be preserved.
 - A. The eligibility screening process, whether done by another entity or the court, shall be done in a confidential setting and not in open court.
 - B. Any entity involved in screening shall not make any information disclosed by applicants available to the public or other entities (except the court).
 - C. Any documentation submitted to the court shall be submitted *ex parte* and shall be ordered sealed from public view.

- XII. Counsel shall be assigned at the first court appearance or immediately following the request for counsel, whichever is earlier.
 - A. Eligibility determinations shall be done in a timely fashion so that assignment of counsel is not delayed.
 - B. Counsel shall be provisionally appointed for applicants whenever they are not able to obtain counsel prior to a proceeding which may result in their detention, or whenever there is an unavoidable delay in the eligibility determination.

- XIII. The eligibility determination process shall not be unduly burdensome or onerous.

Appendix – Legal Aid Society Response and Auditor’s Follow-up

- A. Applicants shall not be required to attest under penalty of perjury to the truth of the information provided as part of the eligibility determination process.
 - B. Applicants shall not be denied assignment of counsel for minor or inadvertent errors in the information disclosed during the eligibility determination process.
 - C. Applicants shall not be required to produce unduly burdensome documentation to verify the financial information provided; nor shall they be denied assignment of counsel solely for the failure to produce documentation where they have demonstrated a good faith effort to produce requested documentation.
 - D. Applicants shall not be required to demonstrate that they were unable to retain private counsel to be deemed eligible for assignment of counsel.
- XIV. The determination that applicants are ineligible for assignment of counsel shall be in writing and shall explain the reasons for the ineligibility determination. Applicants shall be provided an opportunity to request reconsideration of this determination or appeal it, or both.
- A. Screening entities shall promptly inform applicants of their eligibility recommendation. If their recommendation is that the applicant be denied assignment of counsel, they shall provide the reason for the denial in writing along with written notice that the applicant can ask the screening entity to reconsider or can appeal to the court, or both.
 - B. If a court determines that an applicant is ineligible for assignment of counsel, the court shall inform the applicant of this decision in writing with an explanation as to the reason for the denial. The court shall also entertain an applicant’s request to reconsider a decision that the applicant is ineligible for assignment of counsel.
- XV. A determination of eligibility for assignment of counsel shall not be re-examined absent a substantial change of circumstances such that the defendant can pay for a qualified attorney and the expenses necessary for a competent defense.
- A. County Law § 722-d shall be used only after an assignment of counsel has been made, only if prompted by defense counsel, and only after a finding of a substantial change in the defendant’s financial circumstances.

- B. Counsel shall not be assigned contingent upon a requirement that the defendant make partial payments to the provider of mandated representation or to the county.**

XVI. Procedure regarding data maintenance

- A. Data shall be maintained regarding the:**
 - i) number of applicants who apply for assignment of counsel;**
 - ii) number of applicants found eligible;**
 - iii) number of applicants found ineligible and the reasons for the ineligibility determination;**
 - iv) number of reconsiderations and appeals requested;**
 - v) results of these reconsiderations and appeals;**
 - vi) number of reports made pursuant to County Law § 722-d regarding the assignment of counsel; and**
 - vii) number of orders issued for partial payment or termination of the assignment of counsel under County Law § 722-d.**
- B. To ensure the confidentiality of information submitted during the eligibility determination process, the data shall be made available in aggregate form only, meaning that no individual applicant can be identified in the data itself.**