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Improving the Quality of Mandated Representation Throughout the State of New York

**NOTIFICATION REGARDING REPRESENTATION
AT ARRAIGNMENTS**

June 29, 2021

In notifications issued March 19, 2020 and December 2, 2020, the Office of Indigent Legal Services acknowledged the necessity for virtual arraignments because of the public health crisis, the statewide state of emergency, and Executive Orders issued by Governor Cuomo allowing for electronic court appearances. In these notifications, we emphasized that ILS has always maintained that representation at arraignment must be in person. We further observed that “conducting arraignments virtually is a temporary, emergency exception to the legal requirements of personal appearance by the defendant, and in person representation by counsel. When virtual arraignments are no longer a public health necessity, justified by a valid Executive Order, in-person arraignments must resume...in-person representation must be provided in compliance with the *Hurrell-Harring* Settlement and Executive Law § 832 (4).”¹

On June 24, 2021, Governor Cuomo issued Executive Order 210, rescinding Executive Orders 202 through 202.11, effective June 25, 2021, including those orders allowing for electronic court appearances. The Governor noted that the emergency measures set forth in Executive Orders are no longer necessary because of the statewide vaccination rate and the significant reduction in the Covid-19 positivity rate.

Given the Governor’s June 24 announcement, the end of the public health emergency that allowed for virtual arraignments, and the *Hurrell-Harring* Settlement Agreement and statutory requirements for in-person arraignments, **ILS will no longer support representation of criminal defendants at virtual arraignments.** We understand that, in some counties, providers may need a reasonable period to transition from virtual to in-person representation at arraignments. Providers requesting such an interim period should contact ILS immediately. We applaud the efforts providers have made to adapt to the exigencies of the Covid-19 crisis and continue to ensure quality representation, and we will work with each provider to facilitate the prompt return to in-person representation at arraignment.

¹In-person arraignments are mandated by the *Hurrell-Harring* Settlement Agreement, ¶ III (A) (1), which requires New York State to “ensure...that each criminal defendant within the Five Counties who is eligible...is represented by counsel in person at his or her Arraignment [emphasis added].” Similarly, Executive Law § 832 (4) (a), enacted in 2017 to extend the *Hurrell-Harring* settlement reforms to the entire state, requires that each person who is eligible “is represented by counsel in person at his or her arraignment [emphasis added].”