February 24, 2017

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Dear Governor Cuomo:

On behalf of the American Bar Association (ABA), with over 400,000 members, including 42,000 members in New York, I am following up on the ABA President’s letter of August 6, 2016, regarding the right to counsel and state funding for New York public defense; on the ABA President’s statement of August 26, 2015, before the New York State Office of Indigent Legal Services regarding the Hurrell-Harring case settlement; and on the ABA President-Elect’s statement of January 26, 2015, before the New York City Council regarding the effectiveness of indigent defense. (The letter and statements are attached for your convenience.) The American Bar Association is pleased to be engaged in these important New York developments.

In your Veto Message of S.8114 DeFrancisco and A.10706 Fahy, you included a demand that your budget office be given greater executive control over the improvement of the quality of public defense.

Regarding oversight of the public defense function of government, the ABA House of Delegates adopted our *Ten Principles of a Public Defense Delivery System* in February of 2002. A product of numerous years of work, this document defines the national standards in America, and Principle Number One states: “The public defense function, including the selection, funding, and payment of defense counsel, is independent.”

The ABA’s *Ten Principles*’ Commentary fleshes out Principle One:

> The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel. To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems.

The *New York Times editorial* of January 5, 2017, embraced the ABA’s *Ten Principles* and observed that “a robust public defense system requires independence from political pressure above all.” The ABA strongly urges that, in making vital changes to the public defense system in
New York, you ensure that any new system be up to nationally accepted standards for independence of the public defense function, as set forth in the ABA’s Ten Principles.

Over the long term, proper governance would protect New York’s public defense system from political pressures and political intervention. Having been created for the purpose of ensuring independence from political pressure, the New York State Office of Indigent Legal Services lends itself to proper oversight of state funding and quality improvement of local public defense programs.

I look forward to the development of a bill in which the state both guarantees independent oversight and funds basic expenses and quality improvements.

Thank you for considering the views of the American Bar Association.

Sincerely,

Linda Klein

cc: The Honorable Janet DiFiore, Chief Judge, Court of Appeals, State of New York
    Senator John J. Flanagan, Temporary President, New York State Senate
    Assembly Member Carl Heastie, Speaker of the New York State Assembly

3 Attachments