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Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County of Ontario

~~City~~

~~Town~~

~~Village~~

Local Law No. **3** of the year **2013**

A Local Law ESTABLISHING THE OFFICE OF THE ONTARIO COUNTY
CONFLICT DEFENDER, AS AMENDED

(Insert Title)

Be it enacted by the **Board of Supervisors** (Name of Legislative Body)

County of Ontario

~~City~~

~~Town~~

~~Village~~

as follows:

SECTION 1: LEGISLATIVE INTENT

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

SECTION 2: CONFLICT DEFENDER: QUALIFICATIONS; APPOINTMENT; TERM

Effective July 1, 2014, there shall be a Conflict Defender who shall be appointed by the Board of Supervisors, which shall invite participation of the Ontario County Bar Association in the selection process, for a two year term. The Conflict Defender shall be directly responsible to and serve at the pleasure of the Board of Supervisors, and shall have graduated from a regionally accredited or New York State registered college or university with a law degree. S/he shall be admitted to the practice of law in the State of New York, and shall be continuously admitted thereto during the term of office. S/he shall have five years' experience as a practicing attorney, three of which shall have been in criminal defense and/or Family Court. The Conflict Defender shall hold no other public or political office and shall devote full working time to the County, and shall be a resident of the County of Ontario during the term of office.

SECTION 3: GENERAL POWERS

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

B. **Legal Representation Duties:**

1. **Criminal:** In the event primary mandated representation cannot be provided when a conflict of interest exists in the Public Defender's Office, then the conflict defender shall represent, without charge, at the request of the defendant, or by order of the court with the consent of the defendant, each indigent defendant who is charged with a crime as defined in Section 722-a of the County Law in the county or counties in which such conflict defender serves. When representing an indigent defendant, the conflict defender shall counsel and represent him at every stage of the proceedings following arrest, shall initiate such proceedings as in his/her judgment are necessary to protect the rights of the accused, and may, in his/her discretion, prosecute any appeal, if in his/her judgment the facts and circumstances warrant such appeal.
2. **Civil:** The conflict defender shall also represent, without charge, in a proceeding in family court or surrogate's court in the county or counties where such conflict defender serves, any person entitled to counsel pursuant to §262 and §1120 of the Family Court Act, and §407 of the Surrogate's Court Procedure Act, or any person entitled to counsel pursuant to Article 6-C of the Correction Law, who is financially unable to obtain counsel, and who, for whatever reason, is not represented by the public defender. When representing such person, the conflict defender shall counsel and represent him at every stage of the proceedings, shall initiate such proceedings as in the judgment of the conflict defender are necessary to protect the rights of such person, and may prosecute any appeal when, in his/her judgment the facts and circumstances warrant such appeal.
3. **Resources:** Within the appropriations therefor, the Conflict Defender may assign professional, technical and clerical personnel in the investigation, preparation, conduct and appeal in any court proceedings involving indigent defendants or respondents.

C. **Administrative and Supervisory Duties:**

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

2. **Assigned Counsel Plan:** The Conflict Defender shall administer the Assigned Counsel Plan to insure quality representation of indigent defendants/respondents; fair and reasonable compensation of assigned counsel; and adequate resources for defense and representation of the indigent. The Conflict Defender shall consult with, and solicit input from, the Ontario County Bar Association, and shall endeavor to develop plans, standards, policies and procedures in cooperation with the Bar, to jointly enhance the quality of mandated representation. In no case shall the Conflict Defender participate as counsel to a defendant/respondent when an attorney or attorneys of the Assigned Counsel Plan are representing indigent defendants/respondents. The Conflict Defender's duties with regard to the plan shall include but not be limited to:
 - a. Develop professional standards for panel attorneys, in conjunction with the Ontario County Bar Association, and compile and maintain a list of qualified panel attorneys willing to accept conflict assignments;
 - b. Recruit attorneys, in conjunction with the Ontario County Bar Association, develop an application process, and review and select qualified attorneys for conflict assignments on a rotating basis by the courts;
 - c. Maintain a record of all attorneys assigned by the courts;
 - d. Formulate guidelines for the maximum number of cases to be assigned to panel attorneys to insure that workload does not negatively affect quality of representation;
 - e. Develop and implement a complaint procedure regarding attorney performance;
 - f. Develop and administer a fair and equitable payment process, review attorney vouchers and make recommendations to the assigning court;
 - g. Establish and maintain relevant continuing legal education programs for panel attorneys;
 - h. Advise the Board of Supervisors as to such other matters as to the Conflict Defender, in his/her professional judgment, would contribute to enhancing and improving the quality of conflict defense provided by Ontario County.

SECTION 4: POWERS OF APPOINTMENT AND REMOVAL

The Conflict Defender is vested with the power and authority to appoint, supervise, discipline and remove assistant conflict defenders and employees, and assign and re-assign powers and duties to such employees, consistent with the laws of the State of New York. Pursuant to §716 of Article 18-A of the County Law, the Conflict Defender may appoint as many assistant attorneys, clerks, investigators, stenographers and other employees as s/he may deem necessary, subject to the authorization of the Board of Supervisors.

SECTION 5: REMOVAL OF THE CONFLICT DEFENDER

- A. **Grounds for Removal:** The Conflict Defender shall be removable by the Board of Supervisors:

1. Because the Conflict Defender was at the time of his/her or her appointment or has since become ineligible to hold such office;
2. For malfeasance, misfeasance, or nonfeasance in office;
3. Upon conviction of a crime or of any offense involving moral turpitude, or violation of the oath of office.
4. For failure to perform his/her duties as provided by this Local Law in an honorable, competent and reasonably efficient manner; or
5. In the event the Conflict Defender becomes morally, physically or mentally unfit to act on behalf of the County.

B. Procedures for Removal:

If the Conflict Defender is to be removed pursuant to this section, the Conflict Defender shall be given, on demand, a written statement of the reasons alleged for the proposed removal and shall have the right to a hearing thereon at a public meeting of the County Board of Supervisors prior to the date on which the proposed removal is to take effect. Pending such hearing, the Board of Supervisors may suspend the Conflict Defender from office provided that the period of suspension shall not exceed thirty days. For purposes of this local law, the failure of the Board of Supervisors to reappoint an incumbent Conflict Defender to a new term of office shall not be deemed a removal or suspension of said Conflict Defender.

SECTION 6: CLASSIFICATION

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

SECTION 7: LOCAL LAW AMENDED

Local Law No. 8 of 1999, requiring the Ontario County residency of certain County officers pursuant to Public Officers Law §3(1), is hereby amended in §2: Residency Required, to include the title of Conflict Defender in the list of positions requiring an Ontario County residency.

SECTION 8: SEPARABILITY

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

SECTION 9: EFFECTIVE DATE

This Local Law shall take effect upon its being duly filed as provided by the Municipal Home Rule Law.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.),

I hereby certify that the local law annexed hereto, designated as Local Law No. 3 of 2013 of the County of Ontario was duly passed by the Board of Supervisors on December 5, 2013, in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer¹.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____, 20__, and was (approved)(not approved)(repassed after disapproval) by the _____ and was deemed duly adopted on _____, 20__ in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on 20__, and was (approved)(not approved)(repassed after disapproval) by the _____ on _____, 20__. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____, 20__, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law _____ of _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____, _____ and was (approved)(not approved)(re-passed after disapproval) by the _____ on _____, 20__. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____, in accordance with the applicable provisions of law.

5. (City local law concerning Charter revision proposed by petition.)

Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county- wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or Village, or the supervisor of a Town where such officer is vested with the power to approve or veto local laws or ordinances.

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the _____ of _____ of having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____, 20__, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the County of _____, State of New York, having been submitted to the electors at the General Election of November __, 20__, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the Towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph **One (1)**, above.

(Seal)

Karen R. DeMay
Clerk of the County Legislative Body
Date: _____
December 6, 2013

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF ONTARIO

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Signature
County Attorney

Date: _____
12/9/13