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Testimony Before The New York City Council
Committee on Fire and Criminal Justice Services

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I am Ann Lesk, President of the New York County Lawyers' Association (NYCLA).

I am here to address New York City's unilateral attempt to radically change its plan for indigent criminal defense. The pending request for proposals would eliminate the oversight role of bar associations in indigent defense and would dramatically reduce the role of the private bar in providing services to the indigent accused.

NYCLA was an original sponsor of New York City's Assigned Counsel Plan, established under Article 18-B of the County Law. The plan had two components—institutional providers and a panel of experienced private attorneys designated by the bar associations.

For 45 years, NYCLA provided institutional support for the Central Screening Committee in the First Department, which screens and trains assigned counsel. We helped organize the Indigent Defense Organization Oversight Committee, which sets standards for and

reviews the performance of the institutional providers of indigent defense.

NYCLA believes that bar associations have been disinterested advocates for effective assistance of counsel for the indigent, and that this role should be preserved. Unlike other participants, NYCLA is independent of the government, and can speak freely on behalf of the need for an effective, well-funded indigent defense system.

Nowhere in the Request for Proposals issued by the Criminal Justice Coordinator or the Executive Orders on which it relies does the City of New York provide a rationale for why the new Plan is necessary or how this new Plan will enhance – or even preserve – the quality of defense for poor people. Nowhere does the Criminal Justice Coordinator, who assumes near complete control of the Plan, describe a system that provides adequate resources for the institutional providers, which have been chronically underfunded and now face increased caseloads.

Most notably, the Request for Proposals does not address homicide cases. In 2009 in the First Department, the vast majority of homicide cases involving indigent defendants were referred to the assigned counsel plan, not to institutional providers. *Virtually all* of the homicide cases that were disposed of at trial, rather than by plea agreement, were handled by assigned counsel. How will the City satisfy its obligation under the Sixth Amendment to provide counsel for these defendants?

The Request for Proposals appears to assume that homicide cases will continue to be handled by assigned counsel. However, if most non-homicide cases are diverted from assigned counsel to institutional providers, the supply of assigned counsel capable of handling homicides could be severely diminished.

We urge the members of the Committee on Fire and Criminal Justice Services to look closely into the rationale for and the effect of the City's attempt to change its Indigent Defense Plan, and to ask:

Does the new Plan provide sufficient oversight of both institutional providers and assigned counsel?

Does the new Plan meet constitutional and statutory mandates in theory and in practice, particularly given the requested level of funding?

We urge that before such drastic changes are made to the 45-year-old plan, this Committee should conduct appropriate consultation, study and hearings to examine the impact that such a measure will have, not only on the City's budget, but on the quality of defense services available to all citizens of the City of New York and, most importantly, the impact on the constitutional obligation to provide effective representation of counsel to the indigent. We appreciate that the City is faced with serious fiscal challenges, but that does not excuse the City from its constitutional obligation to provide effective assistance of counsel to indigent defendants.