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## Senate Moves to Formalize Office of Conflict Counsel to Ensure Fair Representation

**Bill 35-0336 seeks to codify the Office of Conflict Counsel to address conflicts of interest and secure funding for indigent defendants' legal representation**

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A year after it was established by an order of the court, the Senate Committee on Rules and Judiciary voted on Thursday to codify the Office of Conflict Counsel. The Office ensures that financially disadvantaged defendants in criminal proceedings are always fairly represented in a court of law.

Sometimes, according to General Counsel Paul Jiminez, the Office of the Territorial Public Defender is unable to provide said representation due to conflicts of interest, “which most commonly occurs when two or more defendants are charged together,” or when “co-defendants or

witnesses were former clients of the Office.” Previously, in those situations the court would appoint members from the private bar, however “the system of involuntary appointment neither considers the criminal law experience of the attorney subject to the appointment nor their desire to be appointed to the criminal cases,” Mr. Jimenez continued. The sheer number of cases involving criminal defendants who are unable to be represented by public defenders vastly exceeds the capacity of available volunteer private attorneys, who Mr. Jimenez reminded lawmakers are also “engaged in the full time private practice of law...at much higher billable rates.”

Bill 35-0336, introduced by Senator Novelle Francis, addresses the issue by formalizing the Office of Conflict Counsel. This would “preserve a due process and representation for indigent clients in the event there's a conflict of interest,” he asserted. A major component of the bill includes making an appropriation to establish the OCC, as the grant funding fueling its ongoing work will soon come to an end.

Between June 3rd and November 30th, 2024, the OCC has been appointed to 50 cases. OCC, Mr. Jimenez said, represents a “critical but missing spoke in the wheel of justice.” Therefore, he explained, the need for funding is urgent. With a full staff complement, the judiciary anticipates that personnel costs will be at least of \$1.8 million annually.

Despite the need, the judiciary’s request for OCC funding during the FY2025 budget cycle was denied. However, “the Office of Conflict Counsel is a necessary reform that must be funded by the Legislature,” Mr. Jimenez argued. “The judiciary cannot absorb this responsibility within its current operational ceiling,” he advised.

Similar sentiments were shared by Alisha Udhwani, chair of the Standing Committee on Indigent Appointments. She explained that “the consequences of appointing attorneys without criminal law expertise can be dire,” and therefore the OCC “would serve as a dedicated, experienced alternative to the Public Defender's Office when conflicts arise.” Additionally, “a structured office with experienced attorneys would reduce delays in case preparation and court proceedings, allowing for more timely resolutions by eliminating the reliance on private attorneys.”

Like Mr. Jimenez, Ms. Udhwani warned that the existing grant funding ends in December. “It is crucial that you vote to secure the continued funding of the Office of Conflict Counsel,” she said, appealing to lawmakers. “This Legislature has the opportunity to address a long-standing gap in our justice system.”

Bill 35-0336 ultimately received the support of the Committee on Rules and Judiciary. Sen. Francis promised to amend the section of the bill which speaks to “granting personal immunity to individuals providing legal representation or services to indigent defendants.” This clause raised questions from lawmakers, particularly after Patricia Pryor, acting deputy attorney general in the Department of Justice, argued that the bill “does not provide any exceptions for unethical or even criminal behavior.”

But as Mr. Jimenez explained, the section simply tries to “protect individuals who are appointed by the court or operating as a branch of the court from frivolous lawsuits,” particularly in their personal capacity. Indeed, he clarified, attorneys will be held to task for any unethical behavior. It is something that Deputy AG Pryor suggested should be implemented for all attorneys across the board.

Sen. Francis says he intends to take any related recommendations under advisement, and “have a discussion with the necessary stakeholders in regards to the personal immunity that has been suggested by the Attorney General's office.” The measure will be further considered in an

upcoming legislative session.

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