

Local Law Filing

(Use this form to file a local law with the Secretary of State.)

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

County

~~City~~ of Yates

~~Town~~

~~Village~~

**LOCAL LAW 2-14 ENTITLED: A Local Law Establishing the Office of Conflict Defender
for the County of Yates**

Be it enacted by the Legislature of the

County

~~City~~ of Yates as follows:

~~Town~~

~~Village~~

A Local Law Establishing the Office of Conflict Defender for the County of Yates

Be it enacted by the County Legislature of the County of Yates, New York as follows:

SECTION 1. LEGISLATIVE INTENT

The County of Yates, through the County Legislature, recognizes its responsibilities in providing legal representation to indigent persons in those matters for which the County is required by law to provide legal counsel. It is the intent of this Local Law to create the Yates County Office of Conflict Defender to provide said mandated legal representation when a conflict of interest disqualifies the Public Defender; and provide the procedural and substantive framework for the position of Conflict Defender, including but not limited to, the duties, qualifications and term of office thereof.

SECTION 2. DEFINITIONS

- A. Conflict Assignment: As used in this Local Law, the term "conflict assignment" shall mean a court proceeding wherein the defendant or other litigant is eligible for Public Defender Services, but where a conflict of interest would occur if the Public Defender represented the defendant.
- B. Eligible: As used in this Local Law, the term "eligible" shall mean only those defendants or other litigants who meet the Yates County Public Defender's income eligibility standards and who are defendants or other litigants in those classes of cases for which the Public Defender's Office is required by law, to provide legal representation. The eligibility of a particular person shall be determined by the Public Defender's Office.

- C. Yates County Plan: As used in this Local Law, the term “Yates County Plan” shall mean the Yates County Plan for the Office of Conflict Defender executed by Yates County and the Yates County Bar Association that is in full force and effect at the time.

SECTION 3. CONFLICT DEFENDER; APPOINTMENT; TERM; QUALIFICATIONS

APPOINTMENT

- A. Upon the passage of this Local Law there shall be a Conflict Defender who shall be appointed by the County Legislature for an initial term commencing on a date determined by the County Legislature and ending on December 31, 2015.
- B. The appointment by the County Legislature of the Conflict Defender shall be subsequent to a selection process created and implemented by the County Legislature, and that is in accordance with the Yates County Plan.
- C. The Conflict Defender shall be responsible to and serve at the pleasure of the County Legislature.
- D. The Conflict Defender position is a part-time position.
- E. The total compensation of the Conflict Defender shall be fixed by the County Legislature.

TERM

- A. On or after January 1, 2016 there shall be a Conflict Defender who shall be appointed by the County Legislature on or after January 1, 2016 for a two year term from and including January 1, 2016 and ending December 31, 2017. And similarly thereafter, there shall be a Conflict Defender who shall be appointed by the County Legislature on or after January 1 of an even numbered calendar year for a two year term from and including January 1 of said even numbered calendar year and ending on December 31 of the following odd numbered calendar year.
- B. Any vacancies occurring otherwise than by expiration of the term, shall be filled by appointment by the County Legislature for the unexpired portion of the term.

MINIMUM QUALIFICATIONS

- A. The Conflict Defender shall have the qualifications set forth in Section 3 of the New York State Public Officer’s Law, except that the provisions of Section 3(1) of the New York State Public Officers Law requiring a person to be a resident of the political subdivision or municipal corporation of the state for which he or she shall be chosen or within which his or her official functions are required to be exercised, shall not prevent a person from holding the office of Conflict Defender provided that such person resides in Yates County or an adjoining county within the State of New York, it being the intent of this section to supersede the provisions of New York State Public Officers Law Section 3(1) with respect to said public officer holding the office of Conflict Defender.
- B. Conflict Defender shall be an attorney duly licensed to practice law in the State of New York and admitted to practice in all courts within the scope of his/her duties.

- C. The Conflict Defender shall possess any and all of the qualifications set forth in the Yates County Plan that may be proscribed in the section of said Plan entitled “Qualifications of Conflict Defender”.

SECTION 4. POWERS AND DUTIES

GENERAL POWERS AND DUTIES

- A. The Conflict Defender shall, as herein provided, act as representative of the County Legislature in providing certain mandated legal representation. The objectives are to provide quality representation to eligible indigent defendants or other litigants in those cases where the Public Defender has a conflict of interest in matters arising in the Town, Village, County, Family, Surrogate and Supreme Courts in Yates County; as well as any appeal matters in said Courts.
- B. The Conflict Defender shall perform all of the duties now and hereafter conferred or imposed upon him/her by law and as directed by the County Legislature and shall have all the powers and perform all the duties necessarily implied or incidental thereto.
- C. The Office of Conflict Defender is subject and pursuant to the terms of the Yates County Plan.
- D. The Conflict Defender shall perform any and all duties set forth in the Yates County Plan that may be proscribed in the section of said Plan entitled “Powers and Duties of Conflict Defender”.

SPECIFIC POWERS AND DUTIES

- A. The Conflict Defender shall provide legal representation to eligible indigent defendants or other litigants in the following cases where the Public Defender has a conflict of interest: all eligible Public Defender conflict assignments arising in the Town, Village, County, Family, Surrogate and Supreme Courts in Yates County; as well as any appeal matters in said Courts. The Conflict Defender does not provide representation for any conflict assignments regarding appeal matters before any other Court not listed above.
- B. Subject to appropriate County Legislature approval, the Conflict Defender shall be responsible for the administration, management and operation of the Office of Conflict Defender.
- C. The Conflict Defender shall be governed and subject to any and all provisions and criteria fixed by the County Legislature by local law, resolution or otherwise; as well as all other applicable laws, rules and regulations.
- D. Should any Conflict Defender’s office staff attorney, clerical staff and/or other employee position(s) be duly created and authorized by the County Legislature, all such personnel shall be governed and subject to any and all provisions and criteria fixed by the County Legislature by local law, resolution or otherwise; as well as all other applicable laws, rules and regulations.

SECTION 5. REMOVAL OF THE CONFLICT DEFENDER

GROUND FOR REMOVAL

The Conflict Defender shall be removable by the County Legislature:

1. Because the Conflict Defender was at the time of his/her appointment or has since become ineligible to hold such office as herein provided;
2. For malfeasance, misfeasance, or non-feasance in office;
3. Upon conviction of a crime or of a misdemeanor 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. If the Conflict Defender becomes morally, physically, or mentally unfit to act on behalf of the County.

PROCEDURE FOR REMOVAL

If the Conflict Defender is to be removed pursuant to this section, the Conflict Defender shall be given, upon 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 Legislature prior to the date on which the proposed removal is to take effect. Pending such hearing, the County Legislature may suspend the Conflict Defender from office provided that the period of suspension shall not exceed thirty (30) days. For purposes of this Local Law, the failure of the County Legislature 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. SEPARABILITY

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

SECTION 7. EFFECTIVE DATE

This local law shall take effect immediately upon filing with the Secretary of State.

(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 of 2 of the (County)(City)(Village) of Yates was duly passed by the Legislature on August 11, 2014, in accordance with the applicable provisions of law.
(Name of Legislative Body)

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

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
(Name of Legislative Body)
disapproval) by the _____ and was deemed duly adopted on _____
(Elective Chief Executive Officer*)
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
(Name of Legislative Body)
disapproval) by the _____ and was deemed duly adopted on _____
(Elective Chief Executive Officer*)
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 No. _____ of 20__ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20__, and was (approved)(not approved)(repassed after
(Name of Legislative Body)
disapproval) by the _____ and was deemed duly adopted on _____
(Elective Chief Executive Officer*)
20__. Such local law was submitted to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20__, in accordance with the applicable provisions of law.

***Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a countywide basis or, if there are 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.**

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

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the City 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 there from and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph __1__, above.

Clerk of the County legislative body, city, Town or Village Clerk
Or officer designated by local legislative body

(Seal)

Date: _____

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

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 _____
Title

County
~~City~~ of Yates
~~Town~~
~~Village~~

Date: