

June 29, 2004

Dear 18B Panelist,

I am pleased to advise you that Presiding Justice Prudenti amended Section 691.16 of Title 22 of the Appellate Division Rules in accordance with my request that the new section barring acceptance of private retainers by 18B Attorneys apply only to “indigent” defendants. (The original proposal referred to all defendants, including non – indigent).

The new language reads as follows:

- (b) No attorney assigned by a court as counsel for an indigent defendant in any criminal case shall, during the pendency thereof, accept a private retainer to represent the defendant in that or any other case.
- (c) Violation of this section shall result in the removal of the attorney’s name from the panel of attorneys eligible to receive assignment pursuant to article 18-B of the County Law and shall constitute a violation of § 1200.3(5) of this Title.

Insofar as indigent defendants are concerned, the foregoing language speaks for itself. You are not permitted to accept a private retainer from any indigent defendant under any circumstance for that or any other case, during the pendency of the case on

which you are assigned.

Regarding non indigent defendants, 18B attorneys assigned to Arraignment B can continue to accept retainers for private representation, as long as such representation is **the defendant's** idea. As before, it is strictly forbidden for any 18B attorney to use his or her 18B position in an attempt to solicit private business from any defendant.

I want to thank all of you who wrote to the Appellate Division concerning this matter. In a Press Release accompanying the rule change Justice Prudenti said:

The character and competence of the overwhelming number of attorneys on the 18-B panels throughout the Second Judicial Department are beyond reproach. Unfortunately, there have been isolated incidents where assigned counsel have intimated to indigent defendants that they could be better represented if they were retained privately at rates greater than the statutory 18-B reimbursements. In order to prevent such incidents and to avoid even the appearance of impropriety, this department-wide rule is being implemented.

The “isolated incidents” referred to by Justice Prudenti did not come from Nassau County. We continue to enjoy a fine reputation and I thank you all for that.

Very truly yours,

Patrick L. McCloskey