

August 8, 2005

Dear Panelist:

This letter addresses the following topics:

Delays in Part 9

New Permanency Legislation

Proper Procedure for Billing of Hourly Fractions

Arraignment B – Start Time

Collect Calls from the Jail

Use of Experts not on the Panel

Additions to Experts Panel

Crimetime 2005

Free Statutory Texts

Use of Investigators

Short Form Order and Affirmation for Investigators

### **DELAYS IN PART 9**

I have received a number of complaints from Panelists about excessive delays in Part 9. In response, I met with Judges Donnino and Quinn about this matter. They indicated that there are proposals in the works to improve the procedures in Part 9. If successful, these should be implemented this Fall.

In my last mailing, I enclosed a Part 9 survey seeking input from you as to whether we should try to adopt a procedure of taking all SCI pleas at 2:00 PM. The results were mixed. The yes votes outnumbered the no votes, but the nos were vehement in their opposition. At present, therefore, I will wait until the Fall to see whether the new procedures noted above alleviate the problems of delay. Until then, I ask for your patience.

### **NEW PERMANENCY LEGISLATION**

New permanency legislation affecting the practice of Law Guardians and Family Court Panelists has been enacted. A CLE program addressing this legislation will be held on September 27, 2005 from 6:00 PM to 9:00 PM in the Nassau County Supreme Court. Attendance is mandatory for continuation on the Law Guardian Panel and, needless to say, highly recommended for all Family Court Panelists. A program flyer is enclosed.

### **PROPER PROCEDURE FOR BILLING OF HOURLY FRACTIONS**

I often receive vouchers where the lowest fraction of an hour submitted is "1/4" (i.e. .25) This may be due to previous practice under the lower rate structure. Regardless of the reason, you should bill for actual time spent on a case, as follows:

- .05 (for 3 minutes)
- .10 (for 6 minutes)
- .15 (for 9 minutes)
- .20 (for 12 minutes)
- .25 (for 15 minutes)

If in doubt, use the closest fraction. If, for example, you are on a telephone call for 5 minutes, bill me for .10 hours and not 1/4 of an hour. Be sure to bill in fractions (.05, .10, .15 etc.) and not minutes.

## **ARRAIGNMENT B – START TIME**

If you are assigned to Arraignment B you should be in the courtroom and speaking to the assemblage by 9:15 to 9:20 AM. I recently had a call from the Arraignment B judge at 10:20 AM. He was still waiting for the Attorney of the Day. This is unacceptable. Our Rules clearly state that if you are assigned to Arraignment B you are not permitted to handle any private matters on that day. If you have a private matter, delegate it to another attorney or let me know in advance that you can't handle the Arraignment B Assignment.

## **COLLECT CALLS FROM THE JAIL**

You are encouraged to accept collect calls from the jail. You can bill each call as a disbursement.

## **USE OF EXPERTS NOT ON THE PANEL**

You are not permitted to use experts unless they have been approved and accepted as members of the Experts Panel. If you need an expert in a given area and there is none on the panel, call me. I will work with you to find a solution. Do not retain a non-panel expert and let him/her bill you (me) at an exorbitant rate. Call me.

## **ADDITIONS TO THE EXPERT'S PANEL**

The following are now members of the Expert's Panel:

### **Crime Scene Reconstruction**

Dennis G. Downes  
11 Willowbend Lane  
Holtsville, NY 11742  
631.207.3696

### **Fingerprints**

John Zygmunt  
390 Chestnut Court  
Yorktown Heights, NY 10598  
914.245.6722

### **Forensic Sciences**

Zvi Herschman, M.D.  
346 Wilson Street  
W. Hempstead, NY 11552  
516.486.7384

### **Medicine**

Zvi Herschman, M.D.  
346 Wilson Street  
W. Hempstead, NY 11552  
516.486.7384

### **Psychology/Social Work**

David J. Gavurin, LCSW  
1527 Franklin Avenue  
Mineola, NY 11501  
516.248.9104

### **CRIMETIME 2005**

Crimetime 2005, the free software program that analyzes sentencing for all New York State offenses, is now available for downloading. If you are familiar with this program, you know it is invaluable. If you are not familiar with this program, you should be. You can access the free download from our website ([nassau18b.org](http://nassau18b.org)). Click on Additional Pages, Hotlinks and Crimetime. This will take you to the homepage of the Tompkins County District Attorney. Look for "Crimetime Software" on the left hand side, and download it.

## **FREE STATUTORY TEXTS**

Just beneath the “CrimeType Software” (see above) is “Statutory Text”. If you click on that, you can download the complete text of the Penal Law and Criminal Procedure Law.

## **USE OF INVESTIGATORS**

As I have said on more than one past occasion, I believe you should be granted investigators on virtually all of your cases. If you are having difficulty in this regard with a particular judge, I would welcome your phone calls. I will do everything I can to make sure you get an investigator to defend the case properly.

## **SHORT FORM ORDER AND AFFIRMATION FOR INVESTIGATORS**

It was suggested to me that we implement a short form Order for investigators in Part 9, similar to the one currently in use there for interpreters. I modified the interpreter order and Judge Quinn said he will sign it upon receipt of an appropriate affirmation. In an effort to save you time (and me money) I am enclosing a copy of the Order and a proposed short form affirmation. I hope these help you in your effort to obtain investigators in the most expeditious way possible. These short form Orders can of course be used in any Part, (if you delete the reference to Part 9 in the heading) but some of the other judges may require more case specific affirmations. I suggest you at least try the enclosed short form affirmation first. If it is found to be insufficient, modify it with more specificity. If you still meet resistance, please let me know.

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Thank you for your continuing service to the 18B program.

Very truly yours,

Patrick L. McCloskey

COUNTY OF NASSAU  
DISTRICT COURT PART 9

**No.** \_\_\_\_\_

***Ind.***

**Fel. No.** \_\_\_\_\_

**SCI** \_\_\_\_\_

-----X

**People of the State of New York**

**- AGAINST -**

**Defendant**

-----X

Pursuant to the provisions of County Law Section 722-c. It is

**ORDERED**, that \_\_\_\_\_ Esq., Counsel for the defendant is hereby authorized to employ the services of an investigator to assist counsel with his defense with regard to said defendant at County expense in an amount not to exceed One Thousand (\$1000) Dollars. Any expenditure in excess of One Thousand (\$1000) Dollars must have prior approval of this Court.

**ENTER**

\_\_\_\_\_  
**District Court Judge**

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

COUNTY COURT : COUNTY OF NASSAU  
-----X  
THE PEOPLE OF THE STATE OF NEW YORK

-against-

AFFIRMATION IN  
SUPPORT EX PARTE  
MOTION

DEFENDANT

IND#  
FEL#  
SCI#

Defendant

-----X

\_\_\_\_\_ an attorney duly licensed to practice law in the State of New York, affirms under the penalty of perjury as follows:

I am the attorney for the above defendant, having been assigned to represent him pursuant to Section 18-B of the County Law on \_\_\_\_\_. I submit this Affirmation in support of defendant's ex parte motion for the appointment of an investigator.

Upon information and belief, the source of said information being the file maintained by this office and the investigation conducted by the undersigned, defendant is charged with \_\_\_\_\_. I believe that the effective representation of this defendant requires the services of an investigator. It is my intention to utilize said investigator to serve subpoenas, interview witnesses, take photographs and perform whatever other actions may become necessary in the defense of this case.

WHEREFORE, defendant respectfully requests that this court authorize the appointment of an investigator to assist in the defense of this matter.

Dated: Mineola, New York

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