

April 11, 2008

Dear Panelist;

This letter covers the following topics:

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- Upcoming Free CLE Programs
- Supervisor Conferences in District Court
- New Forms For State Compliance
- Reminder – Judiciary Law § 35 – 8
- Notice of Appeal and Related Papers
- Eyewitness ID Experts
- Collect Calls From Jail
- Speedy Trial Saga
- Additions to Experts' Panel

PANELIST IN NEED OF HELP

Family Court Panelist Linda Kushner (Office: 631.549.0775 Cell: 631.707.6550) who has had more than her share of problems due to the medical condition of her husband, an Iraqi War Veteran, has now been sued civilly by one of her former Family Court clients. She could use a hand. If any of you are familiar with civil practice and could assist Linda with pleadings, motions, strategy, etc. it would be greatly appreciated by her. Thank you.

DNA WEBSITE

In our most recent CLE program on DNA evidence, Bob Biancavilla noted that you can stay abreast of developments in the DNA area and even take free online courses to learn about DNA, by logging on to DNA.GOV.

UPCOMING FREE CLE PROGRAMS

On Thursday, April 17th, a Criminal Appeals Lecture will be presented from 5:30 to 8:30 P.M. This practical guide to handling and perfecting criminal appeals is free to all 18B Panelists. A flier is enclosed. If you want to attend and have not yet filled this out, please do so and fax it back to the Nassau Academy of Law at 747.4147.

On Thursday May 8th, “Everything You Want To Know About Family Court Appeals” will be presented from 5:00 to 8:00 P.M. This program is also free to all 18B Panelists. A flier is enclosed. If you want to attend and have not yet filled this out, please do so and fax it back to the Nassau Academy of Law at 747.4147.

SUPERVISOR CONFERENCES IN DISTRICT COURT

Assistant District Attorney Steve Schwartz, the District Attorney’s District Court Bureau Chief, advises me that there is no longer any formal procedure for the defense bar to obtain a Supervisor Conference in District Court. He says that all of the Supervisors are trying to make themselves more accessible. You can call ahead to schedule a conference, try to catch one of the Supervisors in the hallway, or present yourself at the front desk in Hempstead and ask who might be available. The Supervisors are Steve (572.2063), Laura Carrol (572.2046), Roxanne Paquette (filling in for Stacy Blanshaft) (572.2074) and Bernadette Ford (572.2059)

NEW FORMS FOR STATE COMPLIANCE

New York State County Law § 722f requires my office to file a report each year with the judicial conference “in such detail and form as the judicial conference may direct”.

Recently, I forwarded Notices to all Family Court panelists, appellate panelists and trial panelists as to certain new procedures that must be followed when vouchers are submitted. Copies of these Notices are included again with this mailing. **Please do not ignore these forms.** Find the one applicable to you, keep it in a safe place, and comply

with it from now on. This is not discretionary. It is necessary in order for us to comply with § 722f. I appreciate your cooperation.

REMINDER – JUDICIARY LAW § 35-8

As many of our Family Court Panelists may remember, the Legislature passed Judiciary Law § 35-8 in 2006. This provided for the appointment of Family Court 18B Panelists in Supreme Court in certain matrimonial cases. Section 35-5 clearly states that all expenses in connection with such appointments shall be paid by the state (not by this office). Recently, I received clarification from Office of Court Administration that expert witness fees are also paid by the state in such cases. A reading of 35-5 indicates that minutes ordered from a court reporter in such cases are also paid by the state.

Bottom line: if you are assigned on any such matrimonial case, please be sure to submit your vouchers to the state and instruct any expert witnesses or court reporters to do the same. Do not use 18B vouchers. The proper paperwork can be obtained from Lynn Pinto at the matrimonial center (571.2400).

NOTICE OF APPEAL AND RELATED PAPERS

I have recently received some inquiries about what must be done by trial counsel concerning a defendant's right to appeal after sentence. The answer is in Part 671 of the Appellate Division Rules, which can be found on our website (nassau18B.org) by clicking on the "Additional Pages" menu on the home page (left hand side) and then clicking on "Appellate Duties". Part 671 covers both criminal and Family Court matters. If you are not fully familiar with Part 671, please make it your business to read it forthwith.

To make matters as simple as possible, I reached out to Panelist Joe LoPiccolo from the Major Felony Panel, and asked him what he sends to a defendant after he files the Notice of Appeal. He forwarded me his information and I enclose it herewith for your convenience. My thanks to Joe for his help on this most important matter.

EYEWITNESS IDENTIFICATION EXPERTS

I am working on getting two eyewitness identification experts onto our Panel. These witnesses, who can testify to loss, distortion, and failure of memory, eyewitness suggestibility, weapon focus, transfer effects, and a myriad of other problems attendant upon eyewitness identification, can be critical to the defense in a one witness identification case. If you have such a case and feel that you could use such a witness now, please call me and I will try to arrange for it.

SPEEDY TRIAL SAGA

Panelist Jack Palmeri recently had a case dismissed that involved speedy trial issues, but the history of the case sheds light on what you may be faced with if you practice criminal defense in Nassau County these days.

Jack's client was charged with a number of vehicular offenses including DWI. He had an extensive rap sheet, including four previous DWIs. As the case proceeded, Jack determined that there was a viable 30.30 issue. The Assistant District Attorney offered a plea to a misdemeanor and no jail time. Jack brought up the 30.30 issue and was told, in essence, that if he pressed it, his client would be indicted immediately. The Assistant District Attorney urged Jack to sell the misdemeanor deal to his client. Jack responded that he was being asked to commit malpractice. He did lay out the facts for his client and the client urged him to fight it.

Jack then suggested to the Assistant District Attorney that they order the minutes from the various court appearances to determine together whether 30.30 time had run. The Assistant District Attorney rejected this idea, and again said she would indict. Jack then ordered the minutes on his own and determined that both misdemeanor and felony time had run. He announced this at the next court appearance and consented to an adjournment so that the Assistant District Attorney could do the math. Instead, Jack received notice that the case was now scheduled for the Grand jury. Jack presented his findings to the Grand Jury Assistant District Attorneys and, after they reviewed his materials, said they were not going to present the case to the Grand Jury but instead were sending it back to District Court. Jack thereafter filed a 30.30 motion and consented to an adjournment so the People could answer it. They never did. Instead, Jack received word that the case was being dismissed without the District Attorney's office conceding that there ever was a 30.30 violation.

The moral of this story is that it's not enough to be right on the law. You have to have the fortitude to stand up to bullying tactics and not sell your client up the river because of those bullying tactics. Apparently the District Attorney's office is sensitive to 30.30 defenses. I wonder why? My thanks to Jack Palmeri for standing strong and doing the right thing.

COLLECT CALLS FROM JAIL

As one of our panelists recently learned, Optimum voice does not support collect phone calls. This means that the Panelist cannot get any calls from clients at the Nassau County jail. I am working to try to find a solution to this problem. In the interim, if any of you have any suggested solutions to this problem (other than changing phone companies), please call me with them at 747.8448. Thank you.

ADDITIONS TO EXPERTS' PANEL

The following have been added to our Experts' Panel

Accident Reconstruction

Steven Schneider, P.E.
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Investigations

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516.280.4715
Cell 516.761.7900
Fax 516.997.3278
Email tvalery@resolutionsirmi.com

My thanks to all of you for your continued good work on the Panel.

Very truly yours,

Patrick L. McCloskey