

April 11, 2001

Dear Counselor,

This letter addresses the following topics:

- 18b Rate Increase – Update and request
- Co counsel Panel
- Billing Information
- Arraignment B Solicitations
- Problems and Solutions
- Late Cancellations
- Law Day Rally
- CLE Program

18B RATE INCREASE UPDATE & REQUEST

UPDATE

In order for your rates to be increased, **2** things must happen: County Law Section 722-b must be amended, and, since the State is going to have to finance the increase*, **money must be put into the State budget during the current legislative session.** We are at that point where most legislators agree that the law should be amended. The problem is that **no money has yet been put into the now overdue State budget.**

The Assembly, generally thought to be in favor of the increase, stated the following in its Budget Resolution #421, adopted on March 12, 2001.

The Assembly supports an increase in the rates paid to assigned counsel pursuant to Article 18-b of the County Law, an increase in the rates paid to law guardians in the Family Court and related changes to improve the public defense and family court representation systems. The rates paid to assigned counsel and law guardians have not been raised since 1986, are now among the lowest in the nation and have resulted in a severe shortage of qualified attorneys available to handle such cases. Among other harmful impacts, this severe shortage is effectively denying victims of domestic

* Most localities have indicated that they cannot afford to pay for the increase.

violence and children who are the subject of family court proceedings the full range of protection they are entitled to under our justice system.

To meet this need, the Assembly has joined with the Senate and the Governor in a bi-partisan task force to develop a plan to increase assigned counsel and Law guardian rates and make related improvements in these systems. **The Assembly believes such changes should be enacted during the current legislative session**, should include provisions for state assistance to support Rate increases and **should be the product of a budget agreement** which provides support from the Governor, the Senate and the Assembly. The Assembly recognizes that any task force agreement which meets these goals **will require additional budget action by the Governor and the Legislature during the current legislative session to be fully implemented. The Assembly stands ready to join with the Governor and the Senate in taking such additional budget action.** (emphasis supplied)

In his January, 2000 Report on this issue, Chief Administrative Judge Jonathan Lippman estimated that the cost of an 18B increase would be \$71,800,000 per year. He noted that **this entire cost** could be financed by the State **by using criminal conviction mandatory surcharge revenue.** His report reads in pertinent part as follows:

Under State law, every individual in New York who is convicted of an offense is required to pay a mandatory surcharge, ranging from as much as \$150 for a felony offense to as little as \$5 for a parking offense. **Prior to 1996, all mandatory surcharge revenue was remitted to the State's "Criminal Justice Improvement Account"** established pursuant to section 97-cc of the State Finance Law. **Since then, however, most of this revenue has simply gone to the State General Fund.** For example, in the current fiscal year, only an estimated \$1,354,000 of mandatory surcharge revenue will be remitted to the Criminal Justice Improvement Account and applied to the criminal justice programs that the Account funds. The balance of the surcharge revenue-an estimated \$70,400,000-will simply go the General Fund. **If this \$70,400,000 were dedicated to funding assigned counsel fees, it would pay for essentially the entire cost of increasing the fees.** (emphasis supplied.)

REQUEST

Please write to your State Senator, Assemblyperson and to all on the enclosed list and urge them to increase the rates **and finance the increase in this year's budget.** It is suggested that you stress that the 18B rate problem is **not a defense issue but a criminal justice issue** and that by financing such an increase and thereby attracting more experienced defense attorneys to the 18B panel, proper plea bargains will occur more quickly, adjournments will decrease and **the entire criminal justice system will be rendered more efficient.** This, in turn, **will benefit all** who are associated with the criminal justice system, **including the victims of crime.**

CO COUNSEL PANEL

I am establishing a list of attorneys who are in need of litigation experience in order to qualify for the 18B Panel. They have indicated that they will serve as co-counsel, **for no fee**, during criminal trials and/or hearings.

Please consider calling one of them if you have a trial or hearing on the horizon. It is my hope that by doing so, you will be helping them as well as yourself.

Leo K. Barnes - Floral Park - 516-437-8000
Paul Lombardi - Oyster Bay - 516-922-3474
Harold R. Newman-Massapequa 516-244-2555

BILLING INFORMATION

- Time spent in the Grand Jury may be billed as in-court time.
- Time spent in the District Attorney's office watching a videotape should be billed as out-of-court time.
- Not all telephone calls take 15 minutes (i.e. .25 hrs), yet an examination of certain panelists' vouchers would indicate otherwise. Please bill for the correct time for all calls. If you incur additional expenses by, e.g., accepting a collect call from your client, you may bill the additional cost as a disbursement.

ARRAIGNMENT B SOLICITATIONS

It has come to my attention that some panel members are using their status as 18B attorney-of-the-day in Arraignment B in order to solicit private business. **This is impermissible and is cause for dismissal from the panel.**

Before court begins, you should announce to all defendants who are not represented by counsel that you have been assigned to represent each of them for arraignment purposes only and that your fee is being paid by the County. You should communicate with each such defendant privately in order to represent them properly. You should advise them that after their case has been called and they have been arraigned, that they will either be screened for indigency and will have another lawyer assigned to them or, if they are not indigent, that they should get a lawyer who will answer all of their questions.

If they request you to represent them, you may do so. **If** they request your business card, you may give it to them. Unless asked you should not under any circumstances distribute your business cards to such defendants or distribute solicitations, advertisements, your letterhead or any other literature or thing of any kind that does not directly relate to your limited representation of them at the arraignment.

The few who are departing from these rules are detracting from the professionalism of the entire 18B panel. It is not fair to the other panel members and therefore must cease. Now.

PROBLEMS AND SOLUTIONS

I have been visiting the various parts in District Court in Hempstead and will be going to Part 9 and to the Family Court in the near future. My goal is to learn firsthand about the procedures you have to follow and the problems you may encounter. Each of you can help me if you will call me and let me know about any problems you have in any of these parts, together with any proposed solutions you may envision.

LATE CANCELLATIONS

We have had a number of panelists tell us, on the day before they are assigned to be in court as an 18B attorney, that they cannot make it because they are on trial or otherwise occupied. This causes us to have to scramble to get replacements.

If you know or reasonably believe that you will not be able to fulfill an upcoming 18B commitment, please let us know as far in advance as possible. Your cooperation is appreciated.

LAW DAY RALLY

Jane Bigelsen, The Director of Legislative Affairs of the New York City Bar Association, has asked me to notify you that a lobbying effort for higher 18B rates is planned for May 1st in Albany. (see attached sheet) Anyone interested in attending should call Jane at 1-212-382-6655 or log onto ABCNY.ORG.

CLE PROGRAM

On Monday, May 7th, Marc Gann will be moderating and I will be speaking on cross examination. All 18B panelists may attend free of charge by returning the enclosed flier. I hope to see you there.

Please accept my continuing thanks for your work as an 18B panelist. I hope that before long you will be compensated fairly for your skill and professionalism.

Very truly yours,

Patrick L. McCloskey

WRITE TO YOUR STATE SENATOR, ASSEMBLYPERSON AND TO THE FOLLOWING:

GOVERNOR

The Honorable George E. Pataki
Governor, State of New York
Executive Chambers
Albany, New York 12224

LEGISLATIVE LEADERS

The Honorable Joseph L. Bruno
N.Y.S. Senate Majority Leader
Room 909 Legislative Office Building
Albany, New York 12247

The Honorable Sheldon Silver
Speaker of the Assembly
Room 932 Legislative Office Building
Albany, New York 12248

MONETARY (BUDGET) LEADERS

The Honorable Ronald B. Stafford
Chair, Senate Finance Committee
Room 502 Capitol Building
Albany, New York 12247

The Honorable Herman D. Farrell, Jr.
Chair, Assembly Ways & Means Committee
Room 923 Legislative Office Building
Albany, New York 12248

MEMBERS - JOINT TASK FORCE ON ASSIGNED COUNSEL RATES

EXECUTIVE

The Honorable Katherine N. Lapp
Director of Criminal Justice Service
Commissioner D.C.J.S.
4 Tower Place
Albany, New York 12203-3702

SENATE

The Honorable James L. Lack
Room 413 Capitol Building
Albany, New York 12247

ASSEMBLY

The Honorable Helene E. Weinstein
Room 831 Legislative Office Building
Albany, New York 12248

