

December 11, 2003

Dear Panelist,

This letter covers the following topics:

- New Pay Rates
- Proposed Second Department Rule Change Affecting Arraignment B
- Legal Aid Society's Possible Staffing of Arraignment B
- Temporary Termination of Split Fee Agreements
- Changes in Experts Panel
- Changes in Co – Counsel Panel
- Removal for Lack of CLE Compliance
- OCA Interpreters
- Video Replay – Annual Criminal Law & Procedure Update

NEW PAY RATES

The new pay rates (\$60 for misdemeanors, \$75 for all other cases) apply to “representation provided” on or after January 1, 2004. Thus, if you have cases that were assigned to you in 2003, you will be paid at the old rate for work done in 2003 and at the new rate for work done in 2004. When you submit vouchers on such cases, in the areas marked “Total hours in court” and “Total hours out of court”, instead of just listing one number (e.g. 14 hours) for each, please break down the numbers into 2003 hours and 2004 hours (e.g., 10 hours in 2003, 4 hours in 2004). You do not have to include any dollar amounts. We will do the math on both the long form and the short form vouchers.

**PROPOSED SECOND DEPARTMENT RULE CHANGE
AFFECTING ARRAIGNMENT "B"**

A proposed rule change in the Second Department would prohibit an 18B attorney from accepting any fee from a defendant on a case where the attorney had been assigned as 18B counsel. (See enclosed Law Journal article) The purpose of the rule change is to bar 18B attorneys from trying to extract money from indigent defendants on the ground that the 18B attorney would then be able to do a superior job.

As a practical matter, this rule change would bar any Arraignment B or 511 attorney of the day from taking a fee from any defendant represented that day, regardless of the defendant's ability to pay, and regardless of the fact that the defendant seeks to retain you.

I am aware of the adverse impact of such a rule change and have met with Presiding Justice Gail Prudenti to express my concerns to her. More recently, I met with the Executive Committee of the Bar Association and at their request wrote to Justice Prudenti, outlining the unfairness of the rule change. I urged Justice Prudenti to word any change so that the rule would apply only to those defendants found by the court to be indigent. In this way, any improper practices against indigent defendants would be outlawed, but 18B attorneys would still be free to represent moneyed defendants, as long as the defendants sought such representation.

The Bar Association Executive Committee and I also discussed the possibility of having a panel of attorneys staff Arraignment B and the 511 vacate part on a pro bono basis. This proposal was found to be unworkable because the new rule change would still bar private representation. If it were argued that such pro bono activity did not constitute "18B representation", it would then be in violation of Article 18B. It was also thought that such a pro bono arrangement might give the appearance of impropriety in that people might think that some attorneys would then be prone to solicit cases in order to make up for the pro bono time spent in court.

This entire topic is clearly a work in progress. All I can tell you is that I am aware of all ramifications and am attempting to find a solution that will help the court without hurting you. I will keep you advised.

**LEGAL AID SOCIETY'S POSSIBLE STAFFING
OF ARRAIGNMENT B**

In addition to the proposed Second Department rule change referred to above, there exists the possibility that the Legal Aid Society will take over Arraignment B and the 511 Vacate Part in 2004. This is due to Nassau County's desire to save money. At a recent meeting among the Nassau County Attorney, Judge Wexner, Legal Aid Society Attorney in Chief Kent Mosten and me, I was asked to estimate the cost of staffing

Arraignment B and the 511 Vacate Calendar for 2004. Given the new rates, I put the cost at between \$59,000 and \$70,000. The Legal Aid Society can do the same thing for a cost of approximately \$40,000. The County is thus considering increasing the Legal Aid Society's budget so that they can staff these parts. No change has yet been implemented and unless and until it is, we will continue to staff both courtrooms on a daily basis.

TEMPORARY TERMINATION OF SPLIT FEE AGREEMENTS

Also discussed at the meeting with the County Attorney was the topic of split fee agreements. Currently, the Legal Aid Society takes no cases where there is a split fee agreement. The County has thus been paying 18B attorneys on all such cases, even though the Legal Aid Society has no conflict on the case and even though the fee paid on many of such cases is minimal or non-existent. As a result, Judge McCabe has ordered a temporary stop to all split fee agreements so that only cases where Legal Aid has an actual conflict will be assigned to 18B attorneys.

CHANGES TO EXPERTS PANEL

Eric Bauman, previously listed as an expert in the field of Psychology and Substance Abuse, has asked to be removed from the Experts Panel until further notice.

The following person is now a member of our Expert's Panel in the field of Sign Language -

Theresa (Terri) Baker
216 E. Pennywood Ave.
Roosevelt, N.Y. 11575
516.771.5975
Beeper 516.652.9173

CO-COUNSEL PANEL

The following attorneys are now members of our Co - Counsel Panel

Robert Broglia
111 Hempstead Turnpike
Hempstead, N.Y. 11552
516.489.3300
Cell 201.394.7600

Andrew Mac Askill
734 Franklin Ave. #679
Garden City, N.Y. 11530
516.214.4561

REMOVAL FOR LACK OF CLE COMPLIANCE

We lose 5 to 10 18B attorneys annually because of their failure to comply with our in-house requirement of having 6 credits per year related to criminal law, family law or trial practice. Thereafter, some of these panelists ask to be placed back on the panel.

Please note that if persons are removed from the panel because of failure to comply with the CLE requirement, they are not eligible to be returned to the panel for 6 months and will only then be reinstated if they have completed the missing CLE requirements that caused the problem in the first instance.

UNIFIED COURT SYSTEM INTERPRETERS

Earlier this year, there was a directive that appeared to prohibit Unified Court System interpreters from providing outside interpreting services to 18B attorneys. I wrote to the Counsel for the Office of Court Administration about this and with the help of Ken Lambert, who supervises the interpreters, we were able to obtain a clarification of the directive that permits the use of such interpreters.

Under the current interpretation, you may use such interpreters for 18B cases, provided that they receive the advance approval of their supervisor, they perform the service outside of their normal work schedule and they advise the court if they have previously provided outside services to a party involved in any proceeding in which they are now assigned to interpret. In no event are they permitted to perform outside services for a defendant once they are assigned to interpret at such defendant's hearing or trial. I hope this is of help to you.

VIDEO REPLAY – ANNUAL CRIMINAL LAW AND PROCEDURE UPDATE

If you missed the Annual Criminal Law and Procedure Update held last September 17th and would be willing to pay \$25 to watch a video replay and obtain a copy of the handout, please fax me back the enclosed page. If we have enough interested parties, we will schedule such a replay for some time in January, 2004.

I realize that some of the changes discussed in this letter may be disturbing to some of you. If they are and if you wish to call, fax or write me with your input, please do so.

To all of our panelists, I thank you for your past and future service as members of the 18B panel. Your contribution to the criminal justice system is appreciated. Joanne, Dina, Marie and I all wish you and your families a happy and healthy holiday season, and best wishes for the new year.

Very truly yours,

Patrick L. McCloskey

FAX TO: 873.8032

Assuming that I am available, I would be interested in attending a video replay of the 2003 Criminal Law & Procedure Update sometime in January, 2004, at a cost of \$25.

NAME

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