

November 2, 2005

Dear Panelist:

This letter covers the following topics:

- Sealing Orders for 160.55 cases
- Vouchers in Family Court Submitted in Connection With New Permanency Legislation
- Free Lexis
- Co counsel Panel
- Additions to Experts' Panel
- Upcoming CLE Sessions

SEALING ORDERS FOR CPL 160.55 CASES

There is a difference between a C.P.L. 160.50 sealing and a 160.55 sealing. A 160.50 sealing occurs when there has been a termination of the case “in favor of the accused” (e.g. a 170.30 dismissal, ACOD, not guilty verdict). In such case, the police and court files are generally sealed.

A 160.55 sealing, by contrast, occurs upon the termination of a case “by conviction for noncriminal offense” (i.e. a violation such as Disorderly Conduct). In a

160.55 situation, only the police file is sealed. The court file is not sealed. The judgment of conviction is thus still available and, as noted in my May 31st letter, the public's ability to gain access to such conviction is now quite simple.

In an effort to protect your clients who plead guilty to violations, you may petition the Court to order that the clerk seal the 160.55 case in the same way it seals a 160.50 case. This is possible because the sealing of court records is within the inherent power of the Court.*

The District Court Law Department agrees that this is so, but takes the position that sealing 160.55 cases in a 160.50 manner is something that should only be done in limited circumstances and only after due deliberation and consideration. The inherent power to seal is not an obligation of the Court but a matter of discretion.

If you seek to petition the Court for this relief, I am enclosing a proposed Order with this letter. As noted, however, your ability to have this order signed will depend greatly upon the content of your accompanying Affirmation in support of such relief. My thanks go out to Brian Griffin for pressing this issue with the county, to Dick Barbuto for the proposed Order, and to Steve Barnwell who first brought this matter to my attention.

VOUCHERS SUBMITTED IN CONNECTION WITH NEW PERMANENCY LEGISLATION

Under the new permanency legislation in Family Court, Article 10 cases involving children placed outside the home, which used to involve Orders of Placement with one year expiration dates, are now being calendared every six months, with automatic permanency hearings scheduled every six months unless and until the child is returned to the home. **We are treating each permanency hearing, together with the permanency conference held 30 days before such hearing, as a new case.** This means that the Family Court Panelist originally assigned may submit a voucher after the initial removal, and a **new** independent voucher, for every permanency conference and hearing thereafter. These vouchers will not be treated as interim vouchers as in the case of Family Treatment Court, Drug Treatment Court or DTAP, but as new vouchers on new cases. The \$4400 cap on any single case will thus begin again with each new permanency conference and hearing. The attorney originally assigned to a party will remain as the assigned attorney for the duration of all such hearings even though they are considered to be new cases for purposes of voucher submission. **It is expected that every such attorney will see his/her client before each permanency hearing and to attend each permanency conference held in advance of each such hearing.**

FREE LEXIS

Steve Kline advises that the Supreme Court Law Library offers free Lexis to all attorneys. Enjoy.

* See e.g. Matter of Crain Communications Inc. v. Hughes 74 N.Y. 2d 212, Vanderbilt v. Schreyer 81 N.Y. 646, Matter of Henry Looney 65 Misc 2d 759

CO – COUNSEL PANEL

The following attorney is seeking criminal defense experience and, time permitting, is willing to second seat you at no cost at trial or hearings. Please call him if you are interested.

Mark Kosofsky
Cell # 914.882.4040

ADDITION TO EXPERTS' PANEL

Please note the following additions to our Experts' Panel

Investigators

Marcos Martinez
Eagle Eye Investigation
115-03 14th Avenue
College Point, NY 11356
718.445.6133
Beeper 917.804.3055
Bushwick083@AOL.com
Fluent in Spanish

Richard Pincus
Masters and Kidd Inc.
P.O. Box 7
Oceanside, NY 11572
516.608.0659
Cell 516.652.8380

Psychology / Social Work

Joe Scropo, PHD, JD.
609 Peninsula Blvd.
Woodmere, NY 11598
516.791.1438
Pager 917.827.8190
Fax 1.800.441.9772
Mental state at time of offense
Competency, Forensic Psychology

UPCOMING CLE SESSIONS

A program free to all 18B Panelists will be held on Monday, November 14, 2005, from 6:00 PM to 9:00 PM, entitled "New Litigation Strategies for Permanency Cases". This important topic is of interest to all Family Court Panelists but all 18B Panelists are invited. A brochure is enclosed for your convenience.

Two other upcoming programs may be of interest. The first is the Annual Federal Criminal Practice Update. This will be held at the Bar Association from 5:30 to 8:30 PM on November 29th. The cost is \$90. This program will count toward our 18B requirement. A brochure for this program is also enclosed. The second program is "DWI and Civil Forfeiture". It will be held as a Dean's Hour on Thursday December 1st. This program is \$35, including lunch, and will also count toward our 18B CLE requirement. No brochure is yet available for this program.

Thank you for your continued contribution to the Assigned Counsel Panel.

Very truly yours,

Patrick L. McCloskey

At Part of the District Court of the County of Nassau,
at the Courthouse, at 99 Main Street,
Hempstead, New York this _____ day of _____, 2005.

PRESENT:

Hon.
Judge, Nassau County District Court

-----X

THE PEOPLE OF THE STATE OF NEW YORK,

Docket

-against-

SEALING ORDER

Defendant

-----X

Defendant _____ having pled guilty to the Penal Law violations of
Disorderly Conduct, under P.L. §§ 240.20, and the Court, for good cause shown, and
under its inherent authority, hereby directs the full sealing of the record, and,

IT IS HEREBY ORDERED that all official records and papers, including judgments and
orders of this court relating to the arrest or prosecution including all duplicates and copies
thereof, on file with the division of criminal justice services, any court, police agency or
prosecutor's office shall be sealed and not made available to any person or public or
private agency, with the same force and effect as if sealed under Criminal Procedure Law
§§ 160.50.

ENTER

J.C.C.