

April 18, 2006

Dear Panelist,

This letter covers the following topics:

Upcoming Free CLE Programs

Possible Lexis / Nexis Discount

Arraignment B & Accusatory Instruments

Arraignment B & Solicitation

District Attorney's Proposed DWI Guidelines

District Attorney's New Cooperation Agreement

Co Counsel Panel

Practical Advice on Sealing Orders

Probation Department's Investigation & Supervision Fees

### **UPCOMING FREE C.L.E. PROGRAMS**

There will be two programs given in May that will be free to all 18B Panelists in good standing. The first will be held on Monday May 8<sup>th</sup> from 5:30 to 8:30 P.M. It is entitled

Behind Bars: Jailed Defendants and Sentences of Imprisonment

Practical Knowledge You Need To Know About the Nassau County Jail and the New York State Prison System.

The second program will be held on Tuesday, May 16<sup>th</sup> from 5:30 to 8:30 P.M. It is being run by the Nassau County Bar Association Family Court Law & Procedure Committee and is entitled

The Law and Science of Drug Testing

Informational brochures are enclosed in these materials for both programs. If you wish to attend either or both, mail or fax the brochure(s) back to the Nassau Academy of Law at the Bar Association, as indicated.

### **POSSIBLE LEXIS / NEXIS DISCOUNT**

I have been in touch with personnel from Lexis / Nexis and am reasonably certain that in the near future I will be able to secure a discount for all members of the Nassau County 18B Panel. I do not yet have the particulars and do not know if the ultimate offer will be worthwhile, but I will keep you advised when I know more.

### **ARRAIGNMENT B AND ACCUSATORY INSTRUMENTS**

In my February 2, 2006\* letter to you, I noted that when you are assigned as the 18B attorney of the day in Arraignment B, you should spend some time examining the accusatory instruments and should, if the facts warrant it, move to dismiss the accusatory instrument pursuant to C.P.L. § 140.45

Panelist Joe Fredericks was recently assigned to Arraignment B and advised me that on several cases involving 511 violations, the tickets were marked “infraction” instead of “misdemeanor”. Joe tells me that, rather than considering dismissing them, the Judge, *sua sponte*, was asking the ADA if he wished to move to amend them. Joe objected and incurred the wrath of the Judge for his trouble. Nevertheless the consensus of opinion is that he did exactly the right thing.

We are not in court to lie down, but to advocate. As one defense attorney who heard about this situation pointed out, maybe the police officer meant to charge 511a, which **is** an infraction, rather than 511, which is a misdemeanor. Without the police officer present in court, it was presumptuous of the Judge to assume that one particular part of the ticket was right and another particular part was wrong. My thanks go out to Joe Fredericks and to all like him for advocating on behalf of his 18B clients.

### **ARRAIGNMENT B & SOLICITATION**

As I hope all of you know, it is impermissible to solicit business when you are assigned as Attorney of the Day in Arraignment B. In my August 13, 2004\* letter to you, I tried to cover every conceivable thing that an attorney could or could not do in this regard. I thought I had done so. I was wrong.

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\* This and all letters written by me to the 18B Panelists can be viewed on our website: “[nassau18B.org](http://nassau18B.org)”. Click on “Admin Letters” on the home page.

It recently came to my attention that, earlier this year, an 18B Panelist assigned to Arraignment B, addressed the multitude and said, as part of his speech: "If you can afford a lawyer, you can hire me, or anyone in the first three rows, or anyone of your choosing."

**This remark was totally inappropriate and is cause for dismissal from the Panel.** If you already know this (and I'm sure most of you do) forgive me for taking your time. If you did not already know this, please go back and re-read my August 13, 2004 letter.

### **DISTRICT ATTORNEY'S PROPOSED DWI GUIDELINES**

At a recent meeting involving several top members of the new District Attorney's office, Assistant District Attorney Maureen McCormick provided me with a copy of her office's proposed DWI guidelines. It is my understanding that these proposals have all been implemented. A copy is enclosed.

### **DISTRICT ATTORNEY'S NEW COOPERATION AGREEMENT**

I recently spoke with Terry Corrigan, the Bureau Chief of the District Attorney's Street Narcotics and Gangs (SNAG) Bureau. She provided me with a copy of the District Attorney's new Cooperation Agreement. A copy is enclosed.

Terry noted that the major difference between this agreement and the one used by the former District Attorney's office is in paragraphs 8 and 9. In the past, the agreement included a specific goal that the defendant was seeking to achieve through successful cooperation. The new agreement does not list a specific goal. Instead, it states that if cooperation is successful it will lead to a recommendation by the District Attorney that the top count be dismissed. Any further relief, however, is dependent upon the defendant's level of cooperation as judged by the District Attorney's office. Terry said that this may cause problems in Nassau because the defense bar is not familiar with her and may not trust her to do the right thing. She pointed out, however that she has a track record of 16 ½ years in the Brooklyn District Attorney's Office and that if anyone questions her good faith, they can check with their defense counterparts in Brooklyn.

### **CO COUNSEL PANEL**

The following attorney has asked to become a member of our Co Counsel Panel

Scott A. Koltun  
2061 Deer Park Ave.  
Deer Park, N.Y. 11729  
631.242.7815  
Fax 631.586.6029

Mr. Koltun has tried about 10 civil cases to verdict but is interested in gaining criminal trial experience.

## PRACTICAL ADVICE ON SEALING ORDERS

In my November 2, 2005\* letter to you, I discussed the possibility of getting a case sealed under C.P.L. 160.50 instead of 160.55. The advantages of a 160.50 sealing are considerable.

Panelist Angela Hernandez says that if you submit paperwork to the District Court Law Department, seeking a 160.50 sealing, they may reject it. On the other hand, if you submit your paperwork to the Judge on the date of sentence you may have a better chance of success.

### PROBATION DEPARTMENT'S INVESTIGATION & SUPERVISOR FEES

Defendants in 18B cases **do not have to pay the Probation Department's investigative and supervisory fees.** You should advise your clients of this at sentencing in all appropriate cases, because in most instances it is not until long after you say goodbye to them that they start getting dunned by Probation. In this regard, I am once again enclosing a copy of a form letter that you can use on their behalf, as well as one you can give to them on the date of sentence so that they can use, it should the need arise.

On a broader level, panelist John J. Marshall, Jr. is formulating legal arguments against the charging of such fees to any defendant in any case other than a D.W.I. If you have paying clients in non D.W.I. cases who are being charged such fees, you may want to check with John.

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Thank you for your continued service to the 18B Panel.

Very truly yours,

Patrick L. McCloskey

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