

December 12, 2006

Dear Panelist,

This letter covers the following topics:

- New Legislation for 2006
- Recent Supreme Court Decision: Lopez v. Gonzalez
- Free Forms and Practice Aids
- New procedure in Arraignment B and Part 9
- Arraignment B “Crib sheet”
- Conditional Licenses in DWI cases
- Juvenile Justice – Annual Meeting Program
- New Additions to Experts’ Panel

New Legislation For 2006

With the consent of and with my thanks to Kent Mosten and Mark Cohen, I have reproduced that part of the handout distributed at their recent Criminal Law and Procedure Update that sets forth new legislation in the criminal justice area for 2006. It is enclosed at the end of this letter.

Recent Supreme Court Decision Lopez v. Gonzalez

On December 5th, the Supreme Court decided Lopez v. Gonzalez in which it held that conduct that was a felony under state law but a misdemeanor under the Controlled Substances Act is not a “felony punishable under the Controlled substances Act” for immigration purposes. The full decision can be accessed at FINDLAW.COM.

According to the Chief Defender’s office of New York State:

The Court’s decision means that a noncitizen convicted for the first time of a state felony simple drug possession offense (with the exception for persons convicted of possession of more than five grams of crack cocaine or any amount of flunitrazepam) has NOT been convicted of an “aggravated felony” for immigration purposes. That person may therefore no longer be found ineligible to apply for INA 240A(a) cancellation of removal, asylum, and/or naturalization based on aggravated felony eligibility bars. This is true even in cases arising in federal circuits such as the first, Second, Fourth, Fifth, Eighth, Tenth, and Eleventh Circuits, where courts had previously found that such state felony possession offenses may be deemed aggravated felonies.

Left unresolved by today’s Supreme Court opinion is the question of whether a state simple possession drug offense preceded by a prior drug conviction may be deemed an aggravated felony based on federal law providing that a possession offense preceded by a prior final drug conviction may be prosecuted as a felony under federal law.

Free Forms and Practice Aids

Panelist Ellen Pober Rittberg points out that there is a treasure trove of free forms and practice aids on the website of the Appellate Division, Second Department. Ellen wrote to me in connection with a form that can be used in lieu of a poor person’s motion for assignment of appellate counsel in Family Court. A copy of that form is enclosed. Examination of the court’s website reveals a myriad of other such forms that may also be of help to our panelists.

You can access these forms by going to the 18B website (nassau18B.org) clicking on the “Additional Pages” list in the lower left part of the home page, then clicking on

“Hotlinks”, “Unified Court System”, “Appellate Court”, “Second Department”, and finally “Forms and Practice Aids”. My thanks to Ellen for this helpful information.

New Procedure in Arraignment B and Part 9

As of November 6, 2006, a new “Financial Affidavit” is being used to screen all defendants in Arraignment B and Part 9. A copy of the form, which is also being provided in court in Spanish, is enclosed. Your cooperation with the Clerk in both Arraignment B and Part 9 is requested as we work out the logistics associated with this new procedure.

Arraignment B “Crib Sheet”

Panelist Adrienne Flipse Hausch has enumerated a list of items to be covered in Arraignment B that she has affectionately labeled a “Crib Sheet”. If this list, enclosed at the end of this letter, is of help to you, please make use of it. My thanks to Adrienne for her contribution.

Conditional Licenses in DWI Cases

Panelist Kim Lerner received a valuable letter from the New York State Department of Motor Vehicles concerning the topic of obtaining a conditional drivers license for a convicted DWI defendant upon whom the Court has imposed the installation of an interlock device as a condition of probation. Before this letter came from DMV, the Probation Department was of the opinion that once a judge imposed an interlock device on a defendant, that defendant could not get a conditional license for six months. Now, Kim advises, if the judge strikes out as a condition of probation, the condition that the Judge’s permission be obtained before the defendant seeks to get a license, then the defendant can go to the Drivers’ Improvement window of DMV, together with a list of his conditions of probation and a copy of the letter from State DMV, and if he is otherwise eligible for a conditional license, he will get it.

A copy of Kim’s letter from State DMV is enclosed. My thanks go out to her for sharing this important information.

Juvenile Justice - Annual Meeting Program

Panelist John Zenir advises that the Annual Meeting Program of the New York State Bar Association’s Committee on Children and the Law will be held on Friday morning January 26, 2007 at the New York Marriott Marquis from 9:00 AM to 12:10 PM.

A full complement of speakers has been assembled to present a program on the juvenile justice system; 3.5 CLE credits will be offered. If this program is of interest to you, please keep the date open.

New Additions to the Experts' Panel

The following Experts have been added to our Experts Panel:

Interpreters – Spanish

Juan C. Frias
83 Mill River Avenue
Lynbrook, N.Y. 11563
516.860.7904 (cell)

Jose M. Salas
262 Feller Drive
Central Islip, N.Y. 11722
516.572.2358

Interpreter – French and Creole

Emmanuel Blanchard
18 Newburgh Street
Elmont, N.Y. 11003
516.872.1206

Forensic Medicine & Pathology

Mark L. Taff, M.D.
511 Hempstead Avenue
West Hempstead, N.Y. 11552
516.292.2300 - 516.887.4691
Clinical Forensic Medicine
Forensic Sciences

Forensic Psychology / Forensic Social Work

Anthony V. Santoro, Psy.D.
111 Smithtown Bypass
Suite 121
Hauppauge, N.Y. 11788
631.979.0438 – 516.978.8294
Psychology/Social Work, Substance Abuse

Medicine

Robin Hilsenrath, MD
451 Summit Avenue
Cedarhurst, NY 11516
516.791.4880

Obstetrics & Gynecology, Reproductive Endocrinology
And Infertility

Mark L. Taff, M.D.
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Clinical Forensic Medicine
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Please accept my continued thanks for your participation and good work on behalf of the Nassau County Assigned Counsel Defender Plan. I wish you a healthy, happy and prosperous 2007.

Very truly yours,

Patrick L. McCloskey