

May 10, 2007

Dear Panelist,

This letter covers the following topics:

- Speedy Trial Dismissal
- Use of Speedy Trial Statute to Have Clients Released From Jail
- Appeals And 440 Motions
- SOMTA
- Food For Thought
- Vouchers
- Additions to Experts' Panel

SPEEDY TRIAL DISMISSAL

Once again, Judge Norman St. George has dismissed a case in District Court on speedy trial grounds, finding that the Nassau County District Attorney's Certificates of Readiness were illusory. Although not an 18B case, the defendant was represented by 18B Panelist Joe Lo Piccolo. A copy of this decision, *People v. Mahon*, is enclosed.

USE OF SPEEDY TRIAL STATUTE TO HAVE CLIENTS RELEASED FROM JAIL

The Speedy Trial statute [CPL 30.30(1)] provides for dismissal of a case if the People are not ready for trial within the prescribed time periods (violation – 30 days; B misdemeanor – 60 days; A misdemeanor – 90 days; felony – 6 months).

Panelist Gail Ennis reminds us of another 30.30 weapon in the defense attorney's arsenal, i.e., CPL 30.30 **subdivision 2**. This section provides for release of the defendant from custody "on bail or on his own recognizance, upon such conditions as may be just and reasonable" if the prosecution is not ready for trial within the following time periods:¹

¹ Note that such release is subject to the provisions of 30.30 (3)

| | | |
|---------------|---|---------|
| Violation | - | 5 days |
| B Misdemeanor | - | 15 days |
| A Misdemeanor | - | 30 days |
| Felony | - | 90 days |

It is no small matter for an incarcerated defendant to be released from jail. I thus hope that all of our criminal defense panelists will make use of this section and I thank Gail for reminding us of its importance.

APPEALS AND 440 MOTIONS

If you are assigned to handle the appeal of a criminal case and think a 440 motion is warranted, you should go to the trial judge, explain that you've been assigned to handle the appeal, advise why you believe a 440 motion is warranted, and ask to be assigned to prepare the 440 motion as well. If the judge assigns you, submit a standard voucher to me for the time spent on the 440 motion. Submit an appellate voucher to the Appellate Division for the time spent on the appeal.

If the judge refuses to appoint you for purposes of the 440 motion, and you still believe it should be made, prepare it anyway and include the time on your appellate voucher. If there is any problem getting paid by the Appellate Division for both the 440 motion and appeal, call me and I will intervene. Note that preparation of the 440 motion does not relieve you of the responsibility to prepare the appeal.

S O M T A

The Sex Offender Management and Treatment Act (SOMTA) became effective on April 13, 2007. As a result, behind every sex related felony prosecution is the potential for lifetime civil confinement of defendants. I am in receipt of an extensive analytical guide called "Actuarial Justice", prepared by a staff attorney from the New York State Defenders Association regarding this. If you would like a copy, please fax the enclosed request form back to me. Other related materials can be found at www.nysda.org.

FOOD FOR THOUGHT

I'm currently reading a book called **Indefensible – One Lawyer's Journey Into The Inferno of American Justice**. It's written by David Feige, a career Public Defender from the Bronx. (Publisher: Little Brown 2006). I recommend it for anyone practicing criminal defense. On page 93, Feige offers the following food for thought:

I've always believed that one of the best ways to foster a Client's trust is to provide them with every bit of paper associated with his or her case. There are many lawyers who either don't

bother or prefer not to send the case file, the motions, and the police reports to their clients. But supplying clients copies of all the paperwork gives incarcerated inmates something to do while they spend a year or two waiting for their trial, and it gives clients a sense of the case against them—something tangible to pore over, to think about.

VOUCHERS

When completing your vouchers, please remember to use hours, and fractions of hours. **Do not use minutes.**²

Why is it important for you to use fractions of hours and not minutes? Because we process over 7,000 vouchers each year and have to check the math on each one before we submit it to the County, where County personnel systematically review our calculations for errors, which we strive to avoid. Your use of fractions will permit us to do our job in a more streamlined way and will help us to minimize or eliminate errors.

ADDITIONS TO EXPERTS' PANEL

Investigators

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Thank you all for your continued contribution to the 18B Panel.

Very truly yours,

Patrick L. McCloskey

² Every 3 minutes = .05 of an hour. Thus 6 minutes is .10; 9 is .15; 12 is .20; 15 is .25; 18 is .30; 21 is .35; 24 is .40; 27 is .45; 30 is .50 etc. etc. etc. If in doubt, use the closest fraction.

REQUEST FORM
FOR “ACTUARIAL JUSTICE”
FAX TO 873.8032

Please provide me with the analytical guide “Actuarial Justice”.

PRINT NAME

ADDRESS