

**ASSIGNED COUNSEL DEFENDER PLAN
NASSAU COUNTY BAR ASSOCIATION**

ANNUAL REPORT – 2002

Annual Report 2002

INTRODUCTION

The Assigned Counsel Defender Plan, established on January 24, 1966 by Resolution of the Nassau County board of Supervisors, is now in its 37th year of providing legal representation to indigent defendants charged with crime in Nassau County. The Office, consisting of the Administrator, 2 full time personnel and 1 part time clerk, is responsible for the administration of all aspects of the work of the 257 private attorneys who comprise the various assigned counsel panels. This report was written in December, 2002. The following are the events that occurred and accomplishments that were realized through December 15, 2002.

FINANCES

Each year, the Nassau County Bar Association enters into a contract with the County of Nassau, pursuant to which the Assigned Counsel Defender Plan receives money to operate. In years past, delay in receiving the first monthly payment from the County led to the borrowing of funds to permit the office to function. The borrowed funds would be repaid upon receipt of the first County check but the interest on the loan was an expense paid by the Bar Association. In 2002, the contract was finalized in a timely manner and the first County check was received in time for this office to function without the necessity of borrowing funds and incurring interest costs. On November 1, 2002, the 18B Administrator communicated with the Nassau County Attorney in an effort to negotiate all aspects of the 2003 contract well in advance of January, 2003. Those changes have been agreed upon and it is anticipated that no borrowing will be necessary in 2003.

COMPUTERIZATION

During 2001, we purchased new computer hardware and a new printer, converted to Optimum Online for speed and established an E-Mail address. From November 2001 through September of 2002, a new software program was installed that was designed to

ensure a more equitable distribution of assignments and that permits ease of modification in the future.

CONTINUING LEGAL EDUCATION REQUIREMENTS AND PROGRAMS

Pursuant to a direction of the Advisory Committee of the Assigned Counsel Defender Plan, each 18B Panelist must accrue at least 6 hours of CLE credits in an area related to criminal law or family law during each 12 month period from September 1st through the following August 31st.

On May 22, 2002, the first 18B CLE program of the calendar year was held. The topic was “Defense and Prosecution of Non-Citizen Criminal Defendants.” It was run by William Kephart, Michael Sepe and Howard Brill, and counted as 3 hours of Skills and/or Professional Practice credits.

On September 20, 2002, the second 18B CLE program of the year was held. The topic was the annual “Criminal Law and Procedure Update”. It was run by Kent Mosten and Mark Cohen and counted as 3 hours of Professional Practice credits.

To ensure that all Panelists were in compliance with 18B CLE rules, letters were sent in August, 2002 to a number of attorneys who had not yet fulfilled the 6 hour requirement. Follow up letters and faxes were also sent and/or telephone calls were made to each of the delinquent panelists. All but four complied with the requirements. Those four were removed from the panel.

CONTINUING LEGAL EDUCATION CREDITS FOR PRO BONO WORK

Early in 2002, the 18B Administrator applied to the New York State Continuing Legal Education Board to be approved as a Pro Bono CLE Provider pursuant to C.L.E.Regulation 3 D 11¹. In June of 2002, that approval was granted. Pursuant thereto, Panelists can now accrue 1 CLE credit for every six hours spent on 18B cases, up to a maximum of 6 credits during any one reporting cycle (2 years).

This benefit applies only to cases in which the panelists receive no fee of any kind from the 18B defendant (i.e. no split fee cases are applicable.) Ethics and Professionalism credits may not be awarded for such work, and this benefit in no way changes the office’s internal CLE requirement noted in the preceding section of this Report.

¹ CLE Regulations 3 D 11 reads in part as follows: “Credit may be earned for performing uncompensated legal services... Uncompensated legal services are legal services for which the provider of the legal services is not compensated by the recipient of those services... Eligibility for designation by the CLE board as an Approved Pro Bono CLE Provider is limited to... (Among others) subsidiaries of bar associations, which have as their primary purpose the furnishing of legal services to indigent persons.”

All panelists were advised of this new benefit on June 20, 2002 and a procedure was put into place for the panelists to receive such credits. As of the date of this report, seventeen (17) panelists have been awarded CLE credits pursuant to this new program.

NEW PROCEDURE IN ARRAIGNMENT B

It was brought to the attention of the 18B Administrator that Panelists in Arraignment B, when representing defendants who had received Simplified Informations charging one or more VTL violations, were not making a request on the defendants' behalf to receive a Supporting Deposition pursuant to C.P.L. § 100.25. This resulted in many such defendants being unentitled to one after 30 days had elapsed.

In order to prevent this from happening, all District Court panelists have been provided with a sample Demand form for use in the part.

NEW PROCEDURE REGARDING ASSIGNMENT OF CASES – DATA BASE

At least twice each day, this office receives inquiries from defendants or their families, asking us to provide them with the name of their attorney. In the past, we had to make one or more phone calls to the court clerk in order to obtain the information. In order to be able to answer the question more easily, we devised a daily assignment form that is faxed to each panelist assigned to a part (Parts 2, 8 and 9) on the day before the assignment. The panelist is asked to fill in the form with the defendant's name and docket number of each case assigned, and to fax the form back to us as soon as possible. The data from these forms is then placed on index cards, listing the defendant's name, the case docket number and the attorney assigned. All such cards are filed in alphabetical order, using the defendant's name as the primary indicator. This in-house data-base is now used to answer these questions more efficiently.

DEFENSE COUNSEL SCREENING BUREAU

The Defense Counsel Screening Bureau was abolished by the County in 2002, and all screening of defendants for purposes of Legal Aid and 18B eligibility have been conducted by the individual judges before whom such defendants appear. In the first quarter of 2002, it appeared that the amount of money we were spending on 18B counsel fees and expert fees was considerably greater than that spent over a similar period in 2001. Our initial conclusion was that there were a greater number of defendants being approved for free counsel in 2002 and that this in turn was due to the less stringent screening by the judiciary.

As a result of our initial alarm, a meeting was held with the 18B Administrator and representatives of the County Executive's office to discuss the possible re-institution of the Defense Counsel Screening Bureau. Soon after this meeting, however it became apparent that the differential in the numbers between 2002 and 2001 may have been caused not by the change in screening procedure but by the fact that there were a large

number of attorney and expert vouchers that had been held over from December of 2001 and had not been paid until 2002. The holdover (in effect a delay in the processing of these vouchers) was due to the imminent turnover in the administration of County Government from the Republican County Executive to the new Democratic County Executive.

The 18B Administrator carefully monitored this spending throughout 2002 and the result is that there is virtually no difference between the amount of money being spent for 18B attorneys and experts in 2002 and that spent in 2001.

On December 4, 2002 another meeting concerning this topic was held, including the Nassau County Attorney, personnel from that office, the head of the Nassau County Legal Aid Society and the 18B Administrator. At this meeting the financial similarity between 2002 and 2001 was acknowledged and as a result the County does not have any immediate plans to re-institute the former screening bureau.

INSTITUTION OF NEW PROCEDURE FOR SCHEDULING CASES

The most grandiose procedural change in recent memory involved the scheduling of assignments. It occurred in December of 2002, but the results of the endeavor will not be known until 2003. Under the former procedure, attorneys were scheduled for daily assignments on a month by month basis. Assignments for a given month were sent out in the previous month. Thus, for example, February's assignments would be sent out in early January; March's would be sent out in early February, etc. The problem with this system was that many attorneys had already filled their calendars with court dates for the upcoming month. As a result they would cancel their 18B assignment.

In the last quarter of 2002, we advised all panelists that we were changing the procedure in 2003 and that the change would begin in December of 2002. Under the new system, we are scheduling cases for 6-month periods and we are asking the panelists to select a certain number of dates of their choosing, depending upon which panels they are on. In this way we hope to eliminate cancellations and better ensure equality in the number of assignments given to the panelists.

The letters seeking such dates was sent to the panelists on December 6, 2002. As of this writing, we have received a great number of responses and are encouraged. We will of course be watching closely as the new year unfolds, to see if the results of this new procedure are as good as we presently anticipate.

PAY RATES

The 18B pay rates have not been increased by the State since 1986 and they thus continued to be a problem in 2002.

On March 19, 2002 the 18B Administrator and a small contingent from Nassau County traveled to Albany to lobby state legislators for 18B pay increases, as part of Gideon Day. Thus far, due in large measure to the events of September 11, 2001, our efforts have proved fruitless. We will continue to press our arguments in 2003.

One sign of a “progress of sorts” is the fact that during 2002, Judges in Family Court signed orders on 12 cases authorizing payment at the rate of \$75 per hour for both in court and out-of-court time. More recently, Judges in County Court approved such payment on 2 cases. This office did not protest any such payments.

STAFF

The support staff in the Office of the Administrator continues to be highly efficient and knowledgeable, and the ease with which the day to day functions of the office are handled is due in large measure to them.

Respectfully submitted

Patrick L. McCloskey
Administrator