

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

**ANNUAL REPORT 2004**

## INTRODUCTION

The Assigned Counsel Defender Plan, established on January 24, 1966 by Resolution of the Nassau County Board of Supervisors, is now in its 40<sup>th</sup> 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 261 private attorneys who comprise the various assigned counsel panels. The following are the events that occurred and accomplishments that were realized during 2004.

## 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. Prior to 2001, delay in receiving the January payment from the County led to the borrowing of funds to permit the office to function. The borrowed funds were repaid upon receipt of the first County check, but the interest on the loan was an expense paid by the Bar Association. Since 2001, the contracts have been finalized well in advance of January and the January checks have been received in time for this office to function without the necessity of borrowing funds and incurring interest costs.

In 2004, in late October, the 18B Administrator communicated with the Nassau County Attorney's Office in an effort to negotiate all aspects of the 2005 contract well in advance of January, 2005. Certain contract changes were agreed upon, and the proposed contract was signed by the Nassau County Bar Association President and returned to the County on December 3, 2004. Unlike years past, the 2005 Contract did not have to go before the Rules Committee of the Nassau County Legislature because it was agreed by both contracting parties that the Contract was required by State law and was thus exempt from Rules Committee approval pursuant to Nassau County Local Law 37-2000, section 1 8 ex. It is thus anticipated that no borrowing will be necessary in 2005.

## COMPUTERIZATION

During 2004, the final steps were taken to construct a Website for the Nassau County Assigned Counsel Defender Plan. A hosting site was chosen and various forms, motions and information were transferred to it. By late 2004, the site was up but still needed adjustment. It is virtually certain that the website will be launched in early 2005.

## **COUNTY CLAIM VOUCHERS**

**A County claim voucher (the NIFS 560 form) must be submitted in duplicate every time an 18B attorney seeks to be paid. In years past, we at times ran short of such forms and were dependent on the County to supply us with more. In June of 2004, the 18B Administrator sought permission from the County to duplicate this form on the office's upcoming website so that it could be downloaded by individual Panelists. On June 30, 2004 that permission was granted and it is anticipated that this form will be available to all Panelists via the internet in 2005.**

## **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, family law, trial or appellate practice during each 12 month period from September 1<sup>st</sup> through the following August 31<sup>st</sup>.**

**On May 10, 2004 the first 18B CLE program of the calendar year was held. The topic was "Parole Revocation". It was run by Todd Houslanger and included a distinguished Panel consisting of the Honorable Alexander Rivkin, the Honorable Terry J. Saunders, Peter Doret and Rosa Arguellas-Doret. It counted as 2 ½ hours of Professional Practice credits and ½ hour of Ethics credits.**

**To ensure that all Panelists were in compliance with 18B CLE rules, letters were sent in August, 2004 to a number of attorneys who had not yet fulfilled the 6 hour requirement. Followup letters and faxes were also sent and/or telephone calls made to each of the delinquent panelists. All but 3 complied with the requirements. Those 3 were removed from the panel.**

## **SCHEDULING OF ASSIGNMENTS**

**In order to remain with the Assigned Counsel Defender Program, Panelists must respond to requests for them to accept a fair share of daily assignments. If a Panelist does not respond to letters requesting them to accept assignments they are given fair notice that their continued failure to respond will lead to their termination from the Panel. In 2004, 7 panelists were removed for failure to accept assignments.**

## **CONTINUING LEGAL EDUCATION CREDITS FOR PRO BONO WORK**

**In June of 2002, the Nassau County Assigned Counsel Defender Plan was approved as a Pro Bono CLE Provider. Pursuant thereto, 18B Panelists were able to accrue 1 CLE credit for every six hours spent on 18B cases where they received no fee from the defendant, up to a maximum of 6 credits during any one reporting cycle (2 years). In 2004, sixty six (66) panelists were awarded CLE credits pursuant to this program. Unfortunately, the New York State CLE Board changed the language governing these credits, and as of September 30, 2004 this office's Pro Bono CLE Provider status was rescinded.**

## **CHANGE IN APPELLATE DIVISION RULES**

**In the August 28, 2003 edition of the New York Law Journal, it was reported that the Appellate Division, Second Department, was contemplating a rule change that would prohibit an 18B attorney from taking any fee from a defendant on a case where that attorney had been assigned as 18B counsel. The reported reason for the rule was that there was anecdotal evidence that 18B attorneys in some counties had strong-armed indigent defendants and into paying them money on the promise that the attorney could then do a more professional job.**

**The adverse ramification of such a rule in Nassau County is that 18B Panelists in Arraignment B and in the 511 Vacate Calendar Part represent all defendants, both indigent and otherwise, who appear without an attorney. They do this as a service to the Court. This office's concern was that the ultimate wording of the new rule might be overly broad so as to not only solve the problem but to prohibit 18B attorneys from representing non indigent defendants, even if the defendants desired such representation and even though the 18B attorneys had done nothing wrong.**

**The 18B Administrator met with the Presiding Justice of the Appellate Division, the Honorable A. Gail Prudenti, in late October 2003 in an effort to bring this inequity to her attention. Thereafter, in December, 2003, the topic was brought to the attention of the Executive Committee of the Nassau County Bar Association and at their suggestion a letter was sent to Justice Prudenti by the 18B Administrator setting forth proposed language for any rule change that would protect indigent defendants without penalizing 18B practitioners. In the spring of 2004, this office received word from the Appellate Division that the language suggested by the Nassau 18B office was being used in the newly revised rule. As a result, the problem was solved with no adverse ramifications to Nassau 18B Panelists.**

## **INTEGRATED DOMESTIC VIOLENCE COURT**

**In September, 2004, the Office of Court Administration announced that Nassau County had been chosen as a site for an Integrated Domestic Violence (IDV) Court. This Court is designed to handle both criminal and Family Court matters involving a single individual and put those cases before a single judge.**

**In order to represent indigent persons both as to the criminal matter and Family Court matter, 18B Panelists must be familiar with both criminal practice and Family Court practice. From September through December 2004, the 18B Administrator, in conjunction with personnel from the Nassau County District Attorney's office and the Nassau County Legal Aid Society set up a criminal court training program for those 18B Family Court Panelists who wished to learn criminal practice. Concurrently, Office of Court Administration personnel prepared a Family Court training component for those 18B criminal court Panelists who wished to learn Family Court practice.**

**Preparation for both the criminal component and Family Court component were finalized in late 2004. The actual training sessions are scheduled to be held in January and February of 2005.**

### **STAFF**

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

**Respectfully submitted.**

**Patrick L. McCloskey**

**Mineola, New York  
January 25, 2005**