

February 6, 2008

Dear 18B Panelist,

This letter addresses the following topics:

- Upcoming C.L.E. Programs
- Notice to Defendants With Immigration Problems
- Convictions Under V.T.L. 600-2
- Efficiency in Part 9
- Speedy Trial Dismissal
- Additions to Experts Panel

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

I am pleased to announce three CLE programs that will be given in the near future. While two of these programs are more applicable to criminal defense practitioners and one is more applicable to Family Court Practitioners, all are free to all 18B attorneys in good standing. The programs are as follows:

DNA Unraveled  
Demystifying Forensic DNA Analysis  
Tuesday, February 26, 2008  
5:30 – 8:30 P.M.

**A brochure for this program is enclosed.** If you wish to attend, please complete it and return it to the Nassau Academy of Law at the Bar Association.

Taking and Perfecting a Criminal Appeal  
Thursday, April 17, 2008  
If interested, mark your calendar.  
Brochure is not yet available.

Everything You Always Wanted to Know About  
Family Court Appellate Practice But Were Afraid To Ask  
Thursday, May 8, 2008  
5:30 – 8:30 P.M.  
If interested, mark your calendar.  
Brochure is not yet available.

### **NOTICE TO DEFENDANTS WITH IMMIGRATION PROBLEMS**

Panelist Paul Zsuffa suggested that we prepare a Notice that can be given to defendants who may have immigration problems, so that if they are removed from the Nassau County Jail by Immigration or Homeland Security, and are thereafter released by Immigration or Homeland Security, they do not think that their Nassau County case is similarly resolved. Paul drafted such a Notice and we have had it translated into Spanish. **Both forms are included in this mailing.** I urge you to provide this Notice to defendants who may encounter such a situation, and I thank Paul for this idea and for his help.

### **CONVICTIONS UNDER V.T.L. 600 Subd 2**

Panelist Dan Friedman warns that if your client pleads guilty to a DWI and to VTL 600 Subd. 2 (leaving the scene of an incident without reporting, where there is an injury to another person) there is an independent license revocation pursuant to 600 Subd 2 that overrides your ability to get your client a conditional license. Even if Probation indicates that a conditional license is in order, it will do no good. Bottom line: try to avoid pleas to V.T. L. § 600 Subd. 2. Our thanks to Dan for his advise.

### **EFFICIENCY IN PART 9**

Panelists Brian Griffin and Bill Kephart met late last year with Judge Donnino, Judge Maron and ADA Ken Fitzgerald concerning the time it takes to get in and out of Part 9. As a result of this meeting, Brian advises the following:

- You can now call the District Attorney's office to schedule a conference **the afternoon before** the return date in Part 9.
- The District Attorney's office is making increased efforts to get the files in the courtroom without the need to conference. If you have a plea or sentence, there's a good chance your file will be waiting for you.
- Judge Maron indicated that he will take the bench early if work is waiting for him. If you get to Part 9 early you may be able to get out early.

- Judge Donnino and Judge Maron both indicated that, if requested, sentences will be put on for 2 P.M.

My thanks to Brian and Bill for these potential time savers.

### **SPEEDY TRIAL DISMISSAL**

Panelist Lee Kleinhardt had a 20 count indictment dismissed late last year on speedy trial grounds. According to Lee, after the six month period had run, the District Attorney's office urged him to accept a plea to two counts of disorderly conduct. When he refused, they indicted his client on the original charges and on an additional 16 felony counts. Lee stood his ground and moved to dismiss.

The District Attorney's office contended that although the speedy trial time had run on the counts charged in the original felony complaint, the Grand Jury's indictment for the 16 additional charges constituted separate proceedings and, as to those, the speedy trial time did not begin to run until the indictment had been handed up.

In a decision by Judge Kase, the Court ruled that the subsequent return of an indictment charging other crimes that are part of the criminal action referred to in the felony complaint does not mark the commencement of a separate criminal action. Accordingly, the Court dismissed the entire indictment.

Lee's motion papers are enclosed. Much of what is recited is fact specific to this case, but much of it applies to Speedy Trial dismissals generally and may be useful to you in that regard. The motion papers also detail an interesting story about the District Attorney's office's conduct in this case; conduct referred to by Lee as "disgraceful". A copy of the Court's decision is also enclosed. My thanks to Lee for sharing this with us.

### **ADDITIONS TO EXPERTS PANEL**

The following expert has been added to our Experts Panel:

#### Psychiatry

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As always, I thank you for your participation on the 18B Panel and I wish you a healthy and successful 2008.

Very truly yours,

Patrick L. McCloskey