

ACDP NEWS

THE MONTHLY NEWSLETTER OF THE NASSAU COUNTY BAR ASSOCIATION ASSIGNED COUNSEL DEFENDER PLAN[©]



ACDP Goes Back to School **(2 Months Late)!**

Now that our kids are back into their school routines, it's time for us to head back to school as well!

ACDP is proud to be working with the Nassau Academy of Law to sponsor or co-sponsor several very exciting, upcoming CLE opportunities.

Remember, each CLE sponsored by ACDP is a CLE that you can attend for free, and each credit you earn will count towards the 6 CLE credits you are required to obtain annually in order to remain in good standing on the 18B Panel.

Here are some CLEs on the immediate horizon that are of greatest interest to you, as members of the 18B Panel:

Criminal Law and Procedure Update 2023

In-person attendance is strongly recommended, and those who attend in person will be given a full set of printed materials as well as light refreshments.

A hybrid option is offered via Zoom.

November 28, 2023, 1:00 pm-4:00 pm

2.5 Credits in Professional Practice; .5 Credits in Ethics; free for 18B Panelists!

This perennial favorite for our criminal law practitioners will address developments in federal and state case law and recent statutory changes.

Our guest speakers will be Hon. Mark D. Cohen (Ret.), Distinguished Jurist in Residence at Touro University Jacob D. Fuchsberg Law Center and Kent Moston, Esq., Training Director of the Legal Aid Society of Suffolk County. The event's moderator will be our own Administrator, Robert Nigro.

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Introduction to SORA Hearings and Appeals
December 6, 2023, 12:30 pm-2:00 pm
1.5 Credits in Professional Practice; free for 18B Panelists!

New York's SORA imposes significant, life-altering registration and verification requirements on thousands of New Yorkers who have been convicted of a covered sex offense. The obligations imposed vary based on the "risk level" assigned to a registrant after a court hearing. To effectively participate in such proceedings, criminal law practitioners must be familiar with the Act and its myriad provisions, including the fact that the hearing attorney is automatically assigned to be the appellate attorney should the defendant choose to appeal their risk level assessment.

This CLE aims to demystify the contours of the law and provide instructions and guidance to attorneys handling these matters.

Our guest speakers will be Nicole Geoglis, Esq., and Ava Page, Esq. Ms. Geoglis a Supervising Attorney at the Center for Appellate Litigation (CAL) and Director of CAL's Sex Offender Registration Act (SORA) Practice. She represents SORA-impacted clients and supervises a team of attorneys who handle risk-level determination and modification proceedings and appeals. Ms. Page is a Supervising Attorney at Appellate Advocates. She specializes in defending clients impacted by SORA at hearings, on appeals to the Appellate Division and Court of Appeals, and in modification petitions.

If you are considering adding SORA representation to your practice, this is a must-attend program!



The Impact of Forensic Entomology in Medico-Legal Investigations

December 7, 2023, 12:30 pm-2:00 pm
1.5 Credits in Professional Practice; free for 18B Panelists!

Forensic entomology is a field of the forensic sciences focused on those insects and arthropods that, because of their behavior, can provide potentially useful information during forensic investigations. Certain insects can be important informants on several questions related to death investigations, such as the presence of substances in the body, postmortem movements of the remains, and the estimation of the minimum time of death.

This presentation will discuss the general principles and practice of forensic entomology, highlighting the potential and the limitations of the field through real criminal cases. The presentation will also discuss how forensic entomological evidence has been presented in court by experts, who the experts are, and what impact it has had in sentences and exonerations.

Our guest speaker will be Denise Gemmellaro, PhD, D-ABFE, an Assistant Professor, Department of Biological Sciences, Kean University, Union, NJ. She is a Member, American Board of Forensic Entomology (ABFE), Promoted to Diplomate in 2023. Dr. Gemmellaro is a co-publisher of Biochemistry and Molecular Biology Education.



Get What You're Owed!

In last month's edition of the ACDP News, we reminded you that if you have submitted an application for an enhanced rate or to exceed the statutory cap, and you feel it's been improperly denied, you have recourse! We advised that in such cases, you have the option to file an appeal directed to Judge DeStefano.

We are excited to inform you that in the first decision we are aware of Judge DeStefano issuing in connection with such an appeal, he ruled in favor of the 18B Panelist who filed the application!

We've copied some relevant portions of the decision here for your review.

Please feel free to reach out to the ACDP office to obtain a copy of the full decision.

"While the County Law authorizes compensation of assigned counsel in excess of the prescribed statutory limits in extraordinary circumstances, it does not, however, define the term 'extraordinary circumstances.' Moreover, the determination of extraordinary circumstances and additional compensation are within the discretion of the court (*People v Walker*, 135 Misc2d 370 [Supreme Court Bronx County 1987]). As such, upon review pursuant to 22 NYCRR 127.2(b), the administrative judge may modify a trial judge's fee award if it is an abuse of discretion (see also *Levenson v Lippman*, 4 NY3d 280[2005]).

In determining whether extraordinary circumstances exist to compensate an attorney of an indigent defendant beyond the statutory limit set forth in Section 722-b of the County Law, the court considers the following: the complexity of the issues; the seriousness of the charges; the extent to which counsel was compelled to expend additional hours due to circumstances beyond his or her control; the extent to which additional time was unnecessarily and unreasonably

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expended; the purpose of the assigned counsel program and, to a lesser degree, the actual hours expended; the results achieved; the experience and stature of assigned counsel; and the cost of similar services provided by a private counsel (*People v Walker*, 135 Misc2d at 370, supra; see also *People v Sinkler*, 157 Misc2d 103, 105 [Supreme Court Monroe County 1983]; *Matter of Armani*, 83 Misc2d 252 [County Court Hamilton 1975]; *Matter of Crimi*, 60 Misc2d 144, 146 [County Court Monroe County 1969]).

Based upon a review of the papers submitted, the court finds that 'extraordinary circumstances' have been demonstrated entitling [the 18B attorney] to compensation over and above the statutory limit of \$2,400. Such an additional award can and should be made in a sum which is reasonable and appropriate considering the unique circumstances presented by [the 18B attorney's] application, including, the numerosity and serious nature of the charges pending, the review of voluminous discovery, motion practice, and the dismissal of all charges."

This is an important decision and

we urge you to reach out to us for a full copy should you be considering filing an application to the Administrative Judge.



Vouchers:

Please be sure you are using the most recent version of the ACDP Vouchers, which are available on our website. **The correct version of the Criminal Voucher is dated 9/13/23.** Please triple check your vouchers before you submit them to make certain that you have entered all dates correctly (i.e., 10/06/23). **If your annual subtotals do not equal your total, DO NOT SUBMIT THE VOUCHER!** If this happens to you, please call or email the office so that we can address any calculation issues before you go through the trouble of submitting it and having it rejected.

Enhanced Rate Orders

Please remember that if you are seeking \$158 per hour on work done prior to April 1, 2023, **you must still obtain and submit an Order allowing you to be paid at that rate.**

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Appellate Voucher Update:

The Presiding Judge of the Appellate Division, Second Department is requiring that Assigned Counsel from all 10 counties within the Second Department use one, uniform voucher. The Second Department staff has created the Voucher, which is very similar to the one we have been using, and it is currently on our website for you to download. It was also emailed by ACDP staff to each member of the Appellate Panel. We are advised by the Chief Clerk of the Appellate Term that they will also accept the uniform Appellate Voucher developed by the Second Department.

Nassau County Claim Vouchers:

Please remember to fill in **all** of the requested information on the Nassau County Claim vouchers, including your title ("Attorney" is completely sufficient), and the date, and be sure to print and sign your name in the correct places.

Weekday Catching Attorney Procedures:

On weekdays, if the Attorney of the Day in Arraignment A is not on the Major Felony Panel, the Catching Attorney for Major Felonies is the FSP Backup Attorney of the Day. If the FSP Backup Attorney of the Day is not on the Major Felony Panel, the Catching Attorney for Major Felonies is the FSP Primary Attorney of the Day. If you are the Catching Attorney for Major Felonies on a weekday, please be sure to call Arraignment A/Centralized Arraignment Part at or around 3:00 pm to find out if

you have been assigned to any cases. The number for Arraignment A/Centralized Arraignment Part is 516-493-4334.



Don't Forget LanguageLine!

Don't forget to take advantage of your access to LanguageLine! In order to access the LanguageLine Phone Interpreting service, please call or email Lindsay Boorman at 516-747-8448 or lindsay.boorman@nassau18b.org to obtain your attorney ID number. Then follow the following steps:

HOW TO ACCESS AN INTERPRETER:

1. DIAL: 1-866-874-3972
2. PROVIDE: 696875
3. INDICATE: the language you need
4. PROVIDE your attorney ID number.

Document the interpreter's name and ID number for your reference. Brief the interpreter and give any special instructions.



Do You Know About the ILS Statewide Appellate Support Center?

The ILS Statewide Appellate Support Center has been established to provide support, free of charge, to counsel providing mandated representation **at all stages of a case, trial, appellate, and post-conviction, including on 440.47 motions!**

Do you need assistance with a brief or motion?

They can offer templates, statements of law on many frequently encountered issues, and guidance on how to use these materials.

Do you need assistance with DVSJA advocacy under 440.47 or 60.12?

The Center can provide support! They are available for case consultations and can provide resources and templates for your DVSJA claims.

They can brainstorm with you and, where appropriate, explore your issues with the DVSJA Statewide Defender Task Force. Contact Elizabeth Isaacs at 518-881-6451 or Elizabeth.Isaacs@ils.ny.gov to explore the resources available to you!

Do you seek to advocate for a favorable disposition?

They can consult with you on how to use a social worker, case manager, or mitigation specialist; strategies for using these resources to connect clients to appropriate treatment services; and how these services can assist you in discovering and highlighting mitigating history.

Is there a critical issue you wish to present and preserve for appellate review?

The Center can consult with you about how to do so effectively.

Want to be mooted for your next appellate argument?

Send them the briefs, and they will put together a panel for a virtual moot court session.

Contact them today at SASC@ils.ny.gov to find out how they can help you!



Decisions of Note

People v Mensah | November 8, 2023

The appellant appealed from a Kings County Supreme Court judgment convicting him of 2nd degree assault based on his guilty plea. The Second Department modified by deleting a probation condition that required the appellant to consent to a search of his person, vehicle, or home by a probation officer and/or the officer's agent, and consent to the seizure of any illegal drugs, paraphernalia, or other contraband found during the search. This condition was not reasonably related to the appellant's rehabilitation—he was a first-time offender, was not armed with a weapon during the offense, and was not in need of substance abuse treatment.

People v Mensah (2023 NY Slip Op 05622)

People v Palacios | 2023 WL 7291803

Palacios moved to dismiss misdemeanor charges on speedy trial grounds. New York County Supreme Court denied the motion. The charges against Palacios arose from two separate incidents. Initially, he was charged with misdemeanors relating to the second incident, and he was later charged with a felony relating to the earlier incident. After the misdemeanor 30.30 period had expired, Palacios was indicted in a concurrent presentation for both incidents in single indictment. An initial charge starts the speedy trial clock running, but the charges upon which a defendant is ultimately accused and prosecuted determines the applicable 30.30 period. Here, the criminal action commenced upon Palacios' arrest following the second incident, but the six-month felony speedy trial period applied to all charges contained in the single indictment.

People v Palacios (2023 NY Slip Op 23347).

Matter of Otero v Walker | November 9, 2023

The father appealed from a Suffolk County Family Court order that granted the mother's modification petition seeking sole legal and residential custody of the child based on the father's default and denied the father's attorney's request to schedule an inquest on the mother's petition. The Second Department reversed the denial of an inquest, vacated the award of sole custody to the mother, remitted for an inquest, and otherwise dismissed the father's appeal. Family Court erred by granting the mother's petition without considering any evidence or testimony, despite the father's attorney providing a reasonable excuse for the father's absence. Salvatore C. Adamo represented the father.

Matter of Otero v Walker (2023 NY Slip Op 05607)



Contact Us

Do you have colleagues who are interested in joining an 18B panel? Do you have questions about filling out the vouchers? We're here for you! Email or call us with any questions or concerns.

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