

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



Arraignment procedures in Nassau County District Court have changed a great deal over time. It wasn't so long ago that 18b attorneys were not assigned to represent the clients they arraigned in Arraignment A. And we're sure you remember a time when it was virtually unheard of for there to be a disposition in Arraignment B.

As all things do, the Court's arraignment procedures have changed. To meet the moment, 18b updated our Arraignment policies and procedures as well. Now, in order to be an Attorney of the Day in Arraignment A, you must be on the Felony or Major Felony Panel. And we established the Major Felony and Misdemeanor Catch Lists to ensure continuity of representation from arraignment to verdict for every single 18b client who goes through Arraignment A.

For any of you who have worked in Arraignment B over the past few years, you know that it has largely become a disposition part. Now, more often than not, clients who are arraigned in this part, are offered some

FIRST IMPRESSIONS MATTER: ARRAIGNMENT POLICIES AND PROCEDURES IN DISTRICT COURT

form of disposition from the District Attorney's Office, whether that disposition is an ACOD, a 240.20, or a parking ticket.

While there is much to be said on both sides of the debate about whether this is a positive change or not, this shift in practice requires 18b Attorneys of the Day working in Arraignment B to ensure that they have adequate time to conference matters with their clients in advance of their arraignments.

The increased importance of the pre-arraignment conference was one of the driving factors in our decision to hire a full-time Spanish/English Paralegal to assist attorneys in District Court.

We want to reiterate and emphasize the importance of the following ACDP Policies: **all Attorneys of the Day in Arraignment B must be at District Court no later than 9:15 AM and you must not schedule appearances in other court parts on days when you are the Attorney of the Day.**

First Impressions

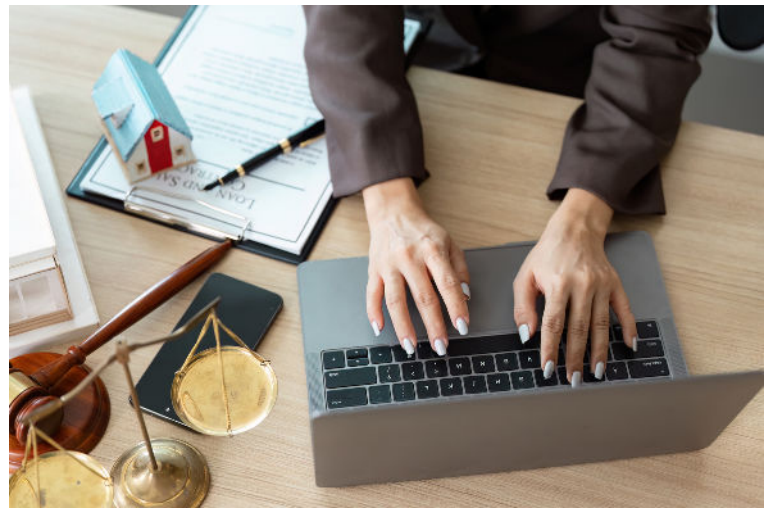
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Every morning, no later than 9:15 AM, the Attorney of the Day should make an announcement in the Arraignment B courtroom letting the audience know who you are, why you are there, and telling the them that anyone and everyone who does not have a retained attorney should follow you out of the courtroom to the neighboring conference room, where they can line up to conference their case.

Adelle will translate the Attorney of the Day announcement into Spanish and will then assist with anything you might need, whether that's prepping clients who are waiting on the line by telling them what paperwork you might need or find helpful, or translating for Spanish speaking clients.

The most important takeaways are that the Attorney of the Day must conference every case prior to arraignment and must not leave the part to handle cases elsewhere in the building. If there is a circumstance where the Attorney of the Day is meeting a client for the first time at the podium standing before the arraignment judge, as frequently happens when clients arrive to court late, you should request a second call to provide you with an opportunity to conference the case.

We also want to alert you to the fact that District Court has changed procedures to allow Defendants to vacate warrants until 4 pm. This means that if you are the Arraignment B/D Attorney of the Day and the part has gone down before 4pm, you may receive a call to return to court if there is a warrant return that Legal Aid cannot stand on.



18B FUNDS LEXIS ACCOUNTS FOR THE NCBA ACDP CRIMINAL PANELISTS!

The days of receiving bankers' boxes full of discovery materials the day before trial are thankfully in the rearview mirror. For the most part, discovery reforms have changed all of that.

Now, you receive terabytes of information, (hopefully) just a few days or weeks after your client was arrested. As you all know, you receive that information in no discernible order, and you have to download it all onto massive hard drives so you can sift through it to find relevant evidence.

Criminal Defense attorneys are receiving more information, from more sources, than ever before. And what do you do with that evidence once you've identified it? How do you use this bounty of evidence to your client's best advantage? How do you move to exclude a piece of evidence you've never heard of before? What is the latest ruling from the Second Department on COC and SOR validity? How do the reforms to the discovery laws affect your case?

Figuring out the answers to these questions, and all of the others, posed by your vast new

trove of discovery materials, can take hours. Sometimes even figuring out what questions to ask can take hours!

We are so thrilled to be able to say, help has arrived! Thanks to a DCJS grant, 18b is elated to be able to pay for Lexis+ AI accounts for every single one of our Criminal Panelists.

The Lexis accounts we are funding offer a myriad of benefits, and in order to be sure you are receiving the most out of your access, we strongly encourage you to reach out to our Lexis Solutions Consultant, Gail Lenson, for training. You can contact Gail at gail.lenson@lexisnexis.com and 917-570-3552.



Don't let this be you! Reach out to Gail today!

At this time of togetherness and joy, we at the 18b office are sending you our best for a holiday filled with all the magic of the season! May you have a happy and healthy holiday and may the new year ahead bring peace, hope, and light to us all!



MATCHMAKING 101: 18B & LIRIAC

In 2010, the Supreme Court announced in Padilla v. Kentucky, 559 U.S. 356 (2010), that non-citizens facing criminal charges are entitled under the Sixth Amendment's right to counsel provision, to informed, accurate advice and assistance from counsel in avoiding the potential negative immigration consequences of any guilty plea.

Giving competent advice pursuant to Padilla, requires knowledge of immigration laws that are complex and constantly in flux. Immigration consequences stemming from even minor charges like disorderly conduct or petit larceny can be serious and certain, including mandatory detention and removal.

Similarly, dispositions in Family Court can result in adverse immigration consequences affecting life-altering decisions such as custody, visitation, adoption, and termination of parental rights.

To ensure that you, as assigned counsel, have access to the support needed to provide effective assistance to clients with immigration concerns, in 2016, ILS created a statewide network of Regional Immigration Assistance Centers (RIACs),

staffed by attorneys and other professionals with extensive expertise in immigration law. This innovative program was the first of its kind in the nation. The extensive services provided by RIAC staff include immigration advisals in criminal, appellate, and post-conviction matters, as well as in Family Court cases carrying potential immigration consequences. The RIACs also offer extensive trainings to counsel and others.

On Long Island, our panelists are served by the Long Island RIAC, or LIRIAC. LIRIAC's goal is to support appointed counsel in helping your non-citizen clients to make informed choices regarding any adverse immigration consequences which may arise from a Criminal or Family Court proceeding.

LIRIAC provides timely and confidential consultations about the immigration consequences of any plea offer or Family Court disposition. They help you meet your obligations under Padilla to provide accurate and detailed information to your non-citizen clients about the impact of the criminal charges they face. They also provide legal support and assistance that may be necessary to navigate away from potential immigration consequences that a non-citizen may incur from a Family Court proceeding or disposition.

If you are asking yourself, "Do I still need to contact LIRIAC if my non-citizen client is just pleading to Dis. Con. or accepting an ACOD," the unequivocal answer is a resounding, "YES." Even seemingly minor offenses or violations can have devastating immigration consequences, consequences of which you are likely not even aware because you are a family or

criminal law attorney and not an immigration attorney.

Did you know that, depending on the client's circumstances, for immigration purposes, a plea to a Dis. Con. is sometimes preferable to an ACOD? Did you know that there are some subsections of the Burglary statute that will result in mandatory detention and removal, and there are some that don't?

You cannot be expected to be an expert in criminal law and immigration law, nor can you be expected to be an expert in family law and immigration law. However, your clients are constitutionally entitled to your expertise as well as the expertise of an immigration law specialist. That is where LIRIAC comes in.

Many of you have expressed concern about or asked why our Case/Defendant Information Forms in the Arraignment Parts include the question, "Were you born in the United States." The answer is simple: every client who answers, "No," to that question must have their case referred to LIRIAC prior to any disposition. Padilla requires that referral.

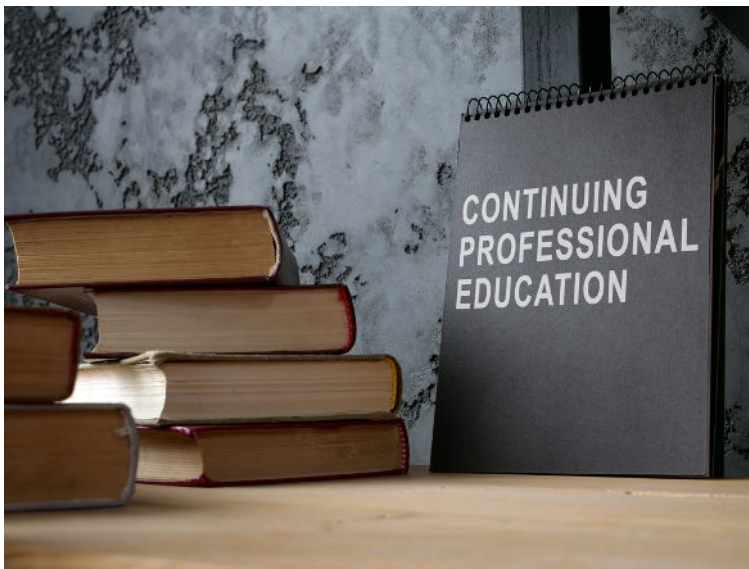
You can make referrals by emailing LIRIAC a completed Nassau 18b LIRIAC Intake form, found on their website at:

<http://www.longislandriac.com/resources.html>

And you can contact our LIRIAC liaison, Jackeline Saavedra-Arizaga, Immigration Unit Attorney at 929-279-3628 or via email at jssaavedraarizaga@sclas.org. Please also remember that Adelle can and will help you complete the referral process!



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NCBA ACDP
SPANISH/ENGLISH PARALEGAL
516-780-2004
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THE TIME IS NOW! DON'T FORGET TO SEND IN YOUR CLE CERTIFICATES!

Remember, in order to remain in good standing on the 18b panel, you must annually complete 6 CLE credits in the field of law which you practice for 18b and/or ethics and/or trial skills. Your proof of completion must be submitted to our office no later than December 31st of each year. Please email your certificates of completion to Judy at Judith.Kabashi@nassau18b.org.

We also wanted to let you know about some great CLE opportunities at the NCBA, and beyond, that are happening both before and after the holidays.

Following in the footsteps of our extremely successful Annual Criminal Law Update, we are thrilled to bring you the first annual Family Law Update. Sure to become a perennial favorite for family law practitioners, the inaugural session of this program shall address developments and practice tips for custody, neglect and abuse, and family offense matters, evidentiary issues at trial, GAL appointments, and mental health evaluations, with a focus on the most frequent issues family law attorneys will encounter in litigation practice. This will be a hybrid program, so you can attend in person or via Zoom. December 10th; 1:00-3:00, 2 CLE credits in Areas of Professional Practice.

What Criminal Attorneys Need to Know About Family Court Practice: Debunking Myths. This training, presented by NYSDA, is designed for criminal attorneys to learn about the implications of family court involvement that will impact their criminal case. The presenters will discuss the difference in burdens of proof between criminal and family court, best practices in handling a criminal case when there is a concurrent family court case, and why it is essential to review and give due consideration before giving any advice on a Child Protective Services (CPS) case where there is a pending criminal matter. The CLE is free of charge and provides 1.5 credits in Areas of Professional Practice. January 30th, 1:00-2:30, online only. Register here:

<https://www.nysda.org/events/register.aspx?id=2014131&itemid=810636fc-f661-4d96-a5b9-1ec69c122963>



Corrections Communications

Visiting and communicating with your incarcerated clients can be extraordinarily difficult, frequently far more difficult than it should be. We think that forewarned is forearmed. To that end, we wanted to make you aware of two situations at the Nassau County Jail.

We have received word that on more than one occasion, when a flash drive of discovery and an accompanying letter are sent to an incarcerated client through USPS, the letter arrives but there is no flash drive to be found. We believe that when the letter is going through the automated processing machinery, the flash drive is forced out of the envelope and is lost. The envelope and letter survive and arrive opened and the flash drive is gone.

One proposed solution is taping the flash drive to the letter. We understand that dropping off flash drives at the jail is not a solution because it appears that there is no regular mechanism for getting flash drives from the visiting area to the law library where your clients can review the discovery. Rather, it is a situation where the drives are brought there if and when someone has time or remembers.

We have also received news that the jail has changed their procedures for entry to the facility. You can now enter only at the South Gate (the gate closer to the hospital). All attorneys are being “escorted” by a sheriff’s vehicle which leads you in your car to the parking area. It is the same procedure upon leaving the facility.

We do not know the rationale behind the change in procedures and have reached out for an official policy statement or directive from Corrections officials. We will certainly share it with you if one is forthcoming.





DON'T FORGET ABOUT THE NCBA ACDP SECOND CHAIR PROGRAM!

The Nassau County Bar Association Assigned Counsel Defender Plan has launched a second chair program with two goals in mind: to give assigned counsel attorneys additional experience on trials with the expectation that the second chair will eventually be elevated to the next panel tier upon completion of the panel prerequisites and application, and to offer the assistance of additional counsel to experienced attorneys who have complex cases. This mutually beneficial pilot program also provides lead counsel with assistance with especially difficult felony cases. Just as importantly, it provides the client with an added team member to help with the case and optically “level the playing field” at trial. Second chairs are routinely used in public defender offices and institutional providers on trial cases, as well as in the District Attorney’s Office. The Office of Indigent

Legal Services’ Assigned Counsel Programs Black Letter Standards, released in July 2019, cites as necessary under Section 4.2.e the creation by the ACDP of a Second Chair Program to provide necessary trial experience to attorneys.

We are thrilled to be able to institute this program and fund the Second Chair attorneys directly via grant funding received from New York State. This means that for all attorneys who are sitting as Second Chair attorneys, you will be paid the statutory rate, but you will be paid directly by ACDP. The processes for requesting a Second Chair, or to become a Second Chair, as well as how to bill for your services are spelled out in the pages below.

Please note the record requirements!

1) If a Second Chair is appointed via Order of Assignment on a trial and that Second Chair Attorney is on a lesser level panel as the Primary Attorney. i.e.: if a Major Felony attorney is the Primary Attorney in the matter and the Second Chair Attorney is a member of the Felony Panel, the following protocol must be met:

a. The client first must agree, in writing, to the addition of a Second Chair in his or her case. This agreement must be signed and dated by all parties on the defense side: Primary Attorney, Second Chair Attorney, and client. This agreement must fully explain that the Second Chair Attorney will be unable to discharge the duties of the Primary Attorney should something render the Primary Attorney unable to try the case. A copy of this agreement must be forwarded to the NCBA ACDP office by either attorney upon execution so it will be a part of both attorneys' file.

b. There must be a statement, on the record, by the trial judge that should the Primary Attorney be unable to proceed to or complete trial, that the Second Chair Attorney cannot take over the handling of the case as the Second Chair Attorney has not yet met the requirements to be placed on the same panel as the Primary Attorney.

c. The attorney assigned as the Second Chair Attorney will be placed onto the elevated panel for that case ONLY, for the purposes of billing reasonable and legitimate work done on the trial case. The Second Chair Attorney will be removed from the elevated panel list at the submission of the voucher.

2) Any member of the Nassau County 18B Criminal Panel who is a Primary Attorney on a case, may request the appointment of a Second Chair to assist them in handling a case. All such requests must be made to the NCBA ACDP Administrator or Deputy Administrator. If the Primary Attorney seeks the appointment of a specific attorney as a

Second Chair, upon receiving approval from the NCBA ACDP Administrator or Deputy Administrator, the Primary Attorney will proceed directly to their client to obtain their consent and signature on the Nassau County Bar Association Assigned Counsel Defender Plan Second Chair Pilot Program Agreement. The Primary Attorney will then proceed directly to the Court with their request that the Court appoint their selected Second Chair. If the Primary Attorney seeks the appointment of a Second Chair, but does not have a specific attorney in mind, all such requests will be made to the NCBA ACDP Administrator or Deputy Administrator. Upon receiving such a request, the NCBA ACDP Administrator or Deputy Administrator, working with the assistance of the other employees of NCBA ACDP, will work to find a suitable Second Chair Attorney for the matter. Upon receiving agreement from the Primary and Second Chair Attorneys that the appointment would be suitable to both, the Primary Attorney will proceed to their client to obtain their consent and signature on the Nassau County Bar Association Assigned Counsel Defender Plan Second Chair Pilot Program Agreement. This agreement must be signed and dated by all parties in the matter: Primary Attorney, Second Chair Attorney, and client. A copy of this agreement must be forwarded to the NCBA ACDP office by either attorney upon execution so it will be a part of both attorneys' file. The Primary Attorney will then proceed to the Court with their request that the Court appoint their selected Second Chair.

3) Any member of the Nassau County 18B Criminal Panel who seeks admission to an elevated panel may request to be appointed to a case as a Second Chair. All such requests must be made to the NCACDP Administrator or Deputy Administrator. Upon receiving such a request, the NCACDP Administrator or Deputy Administrator, working with the

SECOND CHAIR PROGRAM

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assistance of the other employees of NCACDP, will work to find a suitable opportunity for the prospective Second Chair Attorney. Upon determination that a suitable Second Chair opportunity has been found, including the consent and agreement of both the Primary and Second Chair Attorneys, the Primary Attorney will proceed to their client to obtain their consent and signature on the Nassau County Bar Association Assigned Counsel Defender Plan Second Chair Pilot Program Agreement. The Primary Attorney will then proceed to the Court with their request that the Court appoint their selected Second Chair.

4) As a pilot program, the NCACDP has the right to amend the above protocol as it sees fit at any time with the goal of providing enhanced quality representation to all assigned counsel clients.

5) In all cases, the Primary Attorney, Second Chair Attorney, and Client must sign the appropriate NCBA ACDP Second Chair Pilot Program Agreement and forward a fully executed copy of the Agreement to the NCBA ACDP Office.

Copies of the relevant Agreements appear on the pages below.



Nassau County Bar Association Assigned Counsel Defender Plan Second Chair Pilot Program Agreement When Second Chair is Being Elevated For Purposes of Instant Case

Please be advised of the following rules regarding the Second Chair Pilot Program for the Nassau County Bar Association Assigned Counsel Defender Plan. If in Agreement, all parties should sign and date the Agreement and forward it to the NCACDP office upon execution to Lindsay Boorman at Lindsay.boorman@nassau18b.org.

This Agreement permits attorney _____ to be a Second Chair attorney on the case of _____/Ind#_____. While attorney _____ is admitted to the New York State Bar, an attorney in Good Standing, and on the Assigned Counsel Panel in Nassau County, said attorney does not have the same level of requisite experience and qualifications as your Primary Attorney.

The assigned Second Chair Attorney shall be authorized to participate in any relevant activity required as part of the defense under the direct supervision of the Primary Attorney.

Should your Primary Attorney be unable to proceed to and complete your representation, including the trial of your matter, the Second Chair Attorney will not be permitted to take over the case as the Primary Attorney, and a new attorney will be assigned to the case with the requisite experience and qualifications to handle this matter. The Second Chair Attorney, however, will remain on the case in her/his existing role as Second Chair.

The Primary Attorney must ask the presiding trial judge to make a statement on the record at the beginning of the assignment that should the Primary Attorney be unable to proceed to or complete said representation, that the Second Chair Attorney will not be permitted to take over the case as the Primary Attorney.

Client (printed name)

Client (signature) Date

Primary Attorney (printed name)

Primary Attorney (signature) Date

Second Chair Attorney (printed name)

Second Chair Attorney (signature) Date

Nassau County Bar Association Assigned Counsel Defender Plan Second Chair Pilot Program Agreement When Second Chair is Already On Requisite Panel

Please be advised of the following rules regarding the Second Chair Pilot Program for the Nassau County Bar Association Assigned Counsel Defender Plan. If in Agreement, all parties should sign and date the Agreement and forward it to the NCACDP office upon execution to Lindsay Boorman at Lindsay.boorman@nassau18b.org.

This Agreement permits attorney _____ to be a Second Chair attorney on the case of _____/Ind#_____. While attorney _____ is admitted to the New York State Bar, an attorney in Good Standing, and on the Assigned Counsel Panel in Nassau County, said attorney is not your Primary Attorney.

The assigned Second Chair Attorney shall be authorized to participate in any relevant activity required as part of the defense under the direct supervision of the Primary Attorney.

Should your Primary Attorney be unable to proceed to and complete your representation, including the trial of your matter, the Second Chair Attorney may be permitted to take over the case as the Primary Attorney, however, that is within the sole discretion of the judge handling the case at the time any such issue might arise. Should the judge decide to appoint alternate Primary Counsel other than the Second Chair Attorney, the Second Chair Attorney, will remain on the case in her/his existing role as Second Chair.

The Primary Attorney must ask the presiding trial judge to make a statement on the record at the beginning of the assignment that should the Primary Attorney be unable to proceed to or complete said representation, that the Second Chair Attorney will only be permitted to take over the case as the Primary Attorney if the judge, in their sole discretion, authorizes such.

Client (printed name)

Client (signature), Date

Primary Attorney (printed name)

Primary Attorney (signature), Date

Second Chair Attorney (printed name)

Second Chair Attorney (signature), Date



Do You Know About the ILS Statewide Support Center?

Trial Lawyers, This is For You Too!

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. The best way to reach out to the ILS Support Center is via their consultation intake form:

<https://nysils.questionpro.com/a/TakeSurvey?tt=QaQQCBMLG80EChrPeIW9eQ%3D%3D>

Or via their main email:

SASC@ils.ny.gov

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. Please remember you still need to obtain a court order to employ some of these experts' services.

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.

Contact them today to find out how they can help you!



Decisions of Note

People v Berry | November 20, 2025

Appellant appealed from a Fourth Department order affirming his conviction, after a jury trial, of six counts of third-degree CPCS, one count each of second and third-degree CPW and three counts of second-degree criminally using drug paraphernalia. Leave was granted by Judge Ogden, who dissented in the Fourth Department, and the case was placed on the Sua Sponte Merits (SSM) calendar. The Court of Appeals modified by dismissing four counts of the indictment, which relied on proof obtained pursuant to the search warrant, and remitting the case to Supreme Court for resentencing on the remaining counts. The evidence supporting the search warrant failed to satisfy the basis of knowledge requirement of the Aguilar-Spinelli test: the informant's statements provided no indication that the information was based upon personal observation and did not describe appellant's activities with sufficient particularity to warrant an inference of personal knowledge. Further, the information conveyed by the informant was not corroborated by police observation. Accordingly, the search warrant was not supported by probable cause and the evidence seized pursuant to the warrant should have been suppressed.

People v Berry (2025 NY Slip Op 06358).

Matter of McCook v Delbrune | November 19, 2025

Father appealed from a Nassau County Family Court order denying his petition to modify the parties' divorce judgment to grant him sole legal and physical custody and granting the mother's modification petition to limit his parenting time to supervised therapeutic parental access with the parties' children. The Second Department modified by vacating the provisions resuming father's unsupervised parental access when "deemed appropriate by the therapeutic agency," directing that the therapeutic parental access continue until successful discharge by the therapeutic agency and granting the therapeutic agency the discretion to expand and/or modify father's parental access but otherwise affirmed. Family Court impermissibly delegated its authority to the therapeutic agency: (1) to determine when therapeutic parental access would cease and when the father's prior stipulated unsupervised parental access schedule would be reinstated, and (2) to exercise the discretion to expand and/or modify the father's access to the children.

https://nycourts.gov/reporter/3dseries/2025/2025_06322.htm



Contact Us



Do you have colleagues who are interested in joining an 18B panel? Do you have questions about the case management system?

We're here for you! Email or call us with any questions or concerns.

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