

ACDP NEWS

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



SPOTLIGHT ON MITIGATION!

As you all know, Nassau 18b now pays directly for Mitigation Specialists, which means you no longer have to get a court order to retain these experts! As we mentioned in our last issue, this new policy has led to a dramatic increase in the demand for Mitigation Specialists. In order to meet that demand, we have been actively recruiting qualified Mitigation Specialists to join our Expert Panel.

We are so excited to be able to announce that Nassau 18b now has 6 vetted and qualified Mitigation Specialists on our Expert Panel to help you meet your clients' needs!

For anyone who's wondering, "What exactly does a Mitigation Specialist do," we thought we would introduce you to some of these experts and let you hear directly from them about what they do, and why it matters to you and your clients.

The contact information for all of our Mitigation Specialists appears at the end of this article, as does a recap of the process for how you can retain them, and how they can get paid upon completion of their work.

Spotlight

continued from page 1



Meet Kim Melendez, LCSW! Kim is a NYS Licensed Clinical Forensic Social Worker. She has been in the Human Services and Mental Health sector for over 24 years, including a decade in the field of Criminal Justice. Ms. Melendez is a private practice, Mitigation Specialist who has worked with defense attorneys and defense teams in order to evaluate individual clients and legal cases, with a view toward presenting alternative pleas and sentencing possibilities to the U.S. Federal Courts and NYS State Courts. She has assisted in pre-penalty and pre-sentence cases, including capital cases, in the United States District Courts for the Southern and Eastern Districts of New York. Her mitigation work utilizes the knowledge of biological, psychological, social, cultural, and socio-economic factors as they relate to the conditions of the various human developmental stages, the impact on decision-making, including criminogenic factors, risk factors, and protective factors. She also defines the mitigating factors, collateral consequences, and provides clinically-based recommendations that address rehabilitation and the prevention of recidivism.

When we asked Kim to tell us what exactly she does and why she feels it is so vital to criminal defense, she said, “I feel that Forensic Mitigation serves a critical role in criminal defense and I strive to bring a unique and powerful combination of empathy, clinical expertise, and systemic insight. Mitigation Specialists have a unique ability to humanize defendants, contextualize behavior, and advocate for rehabilitation rather than purely punitive outcomes and that makes them invaluable to defense teams—especially in capital or serious felony cases. My key goals are to humanize the defendant, explain the context of the crime, support fair sentencing, assist in plea negotiations, and aid in rehabilitation planning.”



Meet Gabrielle Maguire, LMSW! Following the receipt of her Masters of Social Work from NYU in 2020, Gabby spent 4 years as a Forensic Social Worker with the New York County Defender Services. In her role there, she conducted comprehensive clinical assessments for defendants facing felony and misdemeanor charges in New York County courts. Utilizing

motivational interviewing and trauma informed modalities, and working collaboratively with attorneys, investigators and paralegals, Gabby provided detailed pre-pleading and pre-sentencing memoranda in cases ranging from 220.03s to attempted murder. Gabby also has experience creating court-mandated treatment plans and evaluating defendants' psychological competency.

When we asked Gabby to tell us some more about her view of the role of a Mitigation Specialist, she said, "As a Forensic Social Worker and Mitigation Specialist, my role is to uncover and assist in narrating the often-overlooked human stories behind each of my client's lived experiences that have shaped their lives thus far. This process involves gathering comprehensive life histories, conducting interviews, and synthesizing clinical, social, and environmental factors that have influenced a client's behavior. The goal is to help the court see beyond the charges—to understand the person. By doing this work, I hope to contribute to more just, informed, and compassionate outcomes. Everyone has a story. My job is to make sure those stories get heard—and, most importantly, to remind the system that no one is the sum of their worst moments."



Meet Mandi Budah, LCSW! Mandi has been working as a Forensic Social Worker for over 10 years. Since 2014, she has been a Senior Forensic Social Work Consultant at The Consulting Project, a defense advocacy firm that has provided forensic mitigation services and advocacy for over 30 years. In her role there, Mandi prepares psychosocial assessments, pre-pleading and pre-sentence memoranda for clients with a broad range of local, state, and federal charges. She conducts clinical evaluations which enable her to recommend alternatives to incarceration and to provide sentencing recommendations focusing on mitigating factors.



Mandi was an Adjunct Professor at LIU teaching the classes, "Interviewing, Evaluating and Offering Treatment as a Forensic Social Worker," "Forensic Social Work with the Drug and Alcohol Population," and "Psychopathology Across the Lifespan" and she also presided over felony youth cases as the Suffolk County representative for the Honorable Fernando Camacho.

We asked Mandi to give us an insight into why she believes Forensic Mitigation is a useful arrow in a defense attorney's quiver. She said, "I find Forensic Mitigation to be powerful because it humanizes clients, revealing the full story behind the crime—not to excuse, but to understand. By addressing root causes like trauma, poverty, mental illness, and systemic injustice, mitigation work helps break cycles of harm, fosters healing, builds skills, and opens the door to lasting change. It doesn't just impact the courtroom—it transforms lives and reduces recidivism by giving people a real chance to do better."



Meet Michael Andrews! Michael has been the Program Director at the Nassau Alternative Advocacy Program, Inc. since 2013. In that role, Michael oversees program operations for a defender-based advocacy program focused on alternatives to incarceration. He and his team conduct comprehensive evaluations and present individualized plans that support diversion, treatment-based sentencing, or community supervision. In creating their detailed reports, Michael and his team focus on every client's unique story, documenting clinical, behavioral, and social service histories and needs. Based on

their evaluations, Michael and his team make specific recommendations for treatment, housing, educational, and support service needs, and they provide you with viable, community-based alternatives to incarceration. Michael also has a background as a substance use counselor. In that role, he conducted comprehensive biopsychosocial assessments and developed treatment plans for individuals with substance use disorders.

When we asked Michael to tell us what he feels Mitigation Specialists bring to the table, he said, "People don't just wake up and commit crimes—there's always more to the story. As a Mitigation Specialist, I bridge clinical insight with legal strategy, so the court sees more than a charge—it sees the human being behind it, and the path forward that fosters rehabilitation, reduces recidivism, and supports meaningful alternatives to incarceration. Through our NYS-DCJS-registered Defender-Based Advocacy program, we work to understand what led someone here, what they're up against, and what might actually help them move forward."

We've only introduced you to 4 of the 6 Mitigation Specialists who are now on our Expert Panel. They are all passionate, qualified, dedicated professionals who provide invaluable services to you and your clients. They work on felony matters as well as misdemeanor matters, and their work can frequently make the difference between a client going to jail and a client going home.

We urge you to follow the procedure on the next page to retain a Mitigation Specialist for all of your cases today!



Kim Melendez, LCSW
 kmelendez124@gmail.com
 917.723.4651

Mandi Budah, LCSW
 mandi.budah@gmail.com
 631-708-5576

Dianna Nain-Bradley, LMSW
 diannanain@aol.com
 917-805-6521

Gabrielle Maguire, LMSW
 gmaguiremsw@gmail.com
 732.688.3866

Michael Andrews
 michaelandrews@naapcs.org
 516-741-3110

Alison Rivera, LMSW
 ar4153@columbia.edu
 347-845-1862



- You, as the assigned attorney, fill out the “Request for Mitigation Expert Services” form and email that to Lindsay at lindsay.boorman@nassau18b.org, **along with your Order of Assignment to the case**;
- We approve it and email it back to you for your records and you retain your expert;
- Your expert does the work you’re asking for, being sure to keep detailed time records, as per usual;
- At the end of the case, your expert completes the “Mitigation Expert Request For Payment” form, including having you sign the “Attorney Certification” at the bottom of that form;
- Your expert then emails the completed form back to Lindsay, along with the detailed time sheet records, and their CV (18b will have their CV already, but for ease of processing, please attach it once again so it can be part of one, unified case package).

If you have any questions, or to receive additional copies of the required forms, please email Lindsay at lindsay.boorman@nassau18b.org.



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 process 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, that the following protocol is 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 in the matter: 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

continued from page 7

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](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 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 Brenda WW. | June 17, 2025 (Wilson, C.J.)

DVSJA | Standard of Review | PRS Required Under the DVSJA | Modified & Remitted | Dissent

The prosecution appealed from a Third Department order that reversed an order of Madison County Court denying respondent Brenda WW.'s application for resentencing pursuant to the Domestic Violence Survivors Justice Act (DVSJA) (CPL § 440.47; PL § 60.12); granted the motion; and reduced her sentence, as a second felony offender, from 20 years' imprisonment plus 5 years' PRS, to 8 years' imprisonment plus 5 years' PRS. The Court of Appeals affirmed the grant of DVJSA resentencing but remitted the case to the Appellate Division for further proceedings concerning the PRS term. The Court held that the Appellate Division's plenary factual review power allows intermediate appellate courts to review DVSJA decisions de novo and to reverse DVSJA denials without finding that the trial court abused its discretion. Because the Third Department's findings were supported by the record, the Court of Appeals had no basis to disturb them. The majority (Wilson, C.J.) also held that the DVSJA requires resented survivors to serve a term of PRS, citing PL § 70.45(2) (f) and PL § 60.12(8). Therefore, the Appellate Division erred in holding that the 7 years Brenda had served in excess of the new 8-year term should be credited towards her 5-year PRS term. The Court remitted the case to the Appellate Division for further proceedings, surmising that in imposing the maximum PRS term, the Third Department may have been influenced by the erroneous belief that Brenda would not in fact serve any time on PRS. In dissent, Judge Singas, joined by Judge Troutman, agreed with the majority's standard-of-review holding but disagreed on the PRS issue. As an initial matter, the dissent found the PRS challenge unpreserved, as it was raised for the first time in the Court of Appeals. Further, in the dissent's view, the "majority elide[d] the distinction between a court's duty to impose a period of [PRS] under the DVSJA and the execution of that portion of the sentence" (emphasis added). The latter is a question of sentencing calculation traditionally left to DOCCS and subject to challenge via a CPLR article 78 petition where, unlike here, DOCCS would be a party. Despite assurances that the Court's PRS holding is limited to DVSJA resentencings, the dissent warned that it could be applied to identical language in other PRS provisions, making it "likely [to] impact the calculation of sentences in other resentencing circumstances." The dissent also found that requiring successful DVSJA applicants to serve PRS contravenes the DVSJA's remedial purpose to redress excessive punishment for survivors of domestic violence, since community supervision "mimic[s] the abusive relationships that domestic violence survivors experienced...prior to incarceration." Finally, the dissent criticized the remedy of remittal, which would give an opportunity for the defense to seek a lower term of PRS, thereby affording relief to a non-appealing party. Veronica Reed represented Brenda WW.

https://nycourts.gov/reporter/3dseries/2025/2025_02611.htm



Decisions of Note



continued from page 12

People v Wheeler | June 18, 2025

Appellant appealed from a Kings County Supreme Court judgment convicting him of second-degree burglary and second-degree assault, upon a jury verdict. Upon remittitur from the Court of Appeals that reversed an earlier Appellate Division decision dismissing the second-degree assault charge for insufficient evidence, the Second Department modified by vacating the second-degree burglary conviction and sentence, granting appellant's motion to suppress identification evidence, and remitting for a new trial on the second-degree burglary charge, to be preceded by a hearing to determine whether an independent source existed for the complainant's identification of appellant. While the complainant's identification of appellant from a Facebook photo was not the product of a police-arranged identification procedure, the complainant's identifications of appellant "from a single arrest photograph were the result of unduly suggestive identification procedures, and those identifications should have been suppressed."

https://nycourts.gov/reporter/3dseries/2025/2025_03747.htm

Matter of Smisek v DeSantis | June 18, 2025

Appellant appealed from a Nassau County Family Court order denying her petition seeking to modify the existing custody order by awarding her sole legal and residential custody of the children. The Second Department reversed and granted her petition. Appellant mother showed a change of circumstances by demonstrating the deterioration in the parents' relationship, making joint custody no longer tenable. Mother was the more appropriate custodial parent, because she had more involvement in the children's day-to-day lives and was more likely to foster a relationship with the other parent. The court also gave insufficient weight to the wishes of the 12- and 9-year-old children.

https://nycourts.gov/reporter/3dseries/2025/2025_03727.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.

Robert.Nigro@nassau18b.org

Lindsay.Boorman@nassau18b.org

Debbie.Ally@nassau18b.org

Judith.Kabashi@nassau18b.org

Roberta.Costanza@nassau18b.org

Edrian.Ghoranlall@nassau18b.org

Stefanie.Giangregorio@nassau18b.org

516-747-8448