ACDP NEWS

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

On April 29th, Governor Hochul announced an agreement on the fiscal year 2026 NYS budget. The $254 billion dollar budget agreement includes many notable items, including a "bell-to-bell" cell phone ban in K-12 schools. Of primary concern to members of our Criminal Panels, are the changes to New York's Discovery laws which the budget contains. There has been much speculation about what would and would not ultimately be a part of the proposed statutory language. That language has now been released. While the Governor is taking a victory lap over securing changes to the reformed Discovery laws, in reality, the vast majority of the changes she sought, actually did not make their way into the final language of the proposed budget bill. There are some points which we wanted to highlight for our criminal law panelists.

The opening paragraph of CPL 245.20, paragraphs a, b, e, h, i, k, l, m, m, and subparagraph (i) of paragraph u has been amended as follows (underlined language has been added, bracketed language has been removed):

FAQ Continued from Page 1

"The prosecution shall disclose to the defendant, and permit the defendant to discover, inspect, copy, photograph and test [, all items] the following material and information [that relate to the subject matter of the case and are] in the possession, custody or control of the prosecution or persons under the prosecution's direction or control [, including but not limited to]:"

The qualifying language that the materials must be "related to the subject matter of the charges against the defendant or co-defendant in the instant case," or that they must be "related to the subject matter of the case" was added to each of the individual paragraphs referenced above.

There was a great deal of discussion about the standard "related to" being replaced by the standard of "relevance," however, the "relevance" standard is only mentioned in the new paragraph v, which is a "catchall." That paragraph reads, "Any other material and information relevant to the subject matter of the charges against the defendant in the instant case or a defense thereto that are not designated in paragraphs (a) through (u) of this subdivision."

The language which states that the prosecution does not have to obtain information by subpoena if the defense is also able to obtain the same information by subpoena, was simply reworded, but nothing substantive about the obligation or exception was altered.

Either party is permitted to redact SSNs and tax ID numbers, addresses "or other forms of contact information of witnesses" provided that for any witness disclosed, the disclosing party must provide at least "one form of adequate contact information," and any other material or information "not otherwise required to be disclosed . . . so long as the party making redactions based on the material not being required to be disclosed . . . provides the underlying reason for the redaction." Notable is also the requirement that if the contact information provided for a witness is incorrect or inoperative, the disclosing party must provide an alternative form of "adequate" contact information.

There were some changes to 245.50 subdivision 1. Amongst those changes, certificates of compliance are now required to state that, "[A]fter exercising due diligence and making reasonable inquiries and efforts to ascertain the existence of, obtain, and disclose material and information subject to discovery, the prosecution has disclosed and made available all known material and information it has obtained subject to discovery."

Motions challenging the validity of a COC or supplemental COC, must be filed within 35 days of the service of the certificate provided that the prosecution has filed an indictment or information prior to filing the COC. All motions challenging the validity of a COC must be accompanied by an affirmation that the moving party made good faith efforts to meet and confer with the prosecution regarding the issues forming the basis of the instant challenge and that the meet and confer efforts were unsuccessful.

The 35-day time period for bringing such motions can be extended upon a showing of good cause. However, any period of extension is excludable from 30.30 calculations unless the court finds that the prosecutor unreasonably delayed the moving party's meet and confer efforts or that the COC was filed in bad faith.

Regarding assessing due diligence, most of the People v. Bay, 41 NY3d 200, 212 (2023) factors were incorporated into the statutory language (efforts made by the prosecution to comply with the statutory requirements, the volume of discovery provided and outstanding, the complexity of the case, the explanation for any discovery lapse, and the prosecution's response when apprised of any missing discovery), however there was one Bay factor that is specifically absent: how obvious any missing material would likely have been to a prosecutor exercising due diligence. Instead, courts are asked to consider "whether the prosecutor knew that the belatedly disclosed or allegedly missing material existed . . ." There are additional factors courts must consider as well: "whether the belated discovery was substantively duplicative, insignificant, or easily remedied; whether the omission was corrected; whether the prosecution self-reported the error and took prompt remedial action without court intervention; and whether the prosecution's delayed disclosure of discovery was prejudicial to the defense or otherwise impeded the defense's ability to effectively investigate the case or prepare for trial."

The court is required to consider all of the enumerated factors, no one factor shall be determinative, and the court must explain the basis for its determination in writing or on the record.

When determining whether the prosecution acted with due diligence, the court must consider the "totality of the prosecution's efforts to comply with the provisions of [the discovery laws] rather than assess the prosecution's efforts item by item . . ."

The new provisions take effect 90 days after being signed into law, and the 35-day motion rule will run from the day the law goes into effect for all cases where a COC has been filed.

If anyone would like a complete copy of the statutory language, please reach out to Lindsay at lindsay.boorman@nassau18b.org. While the changes certainly erect additional roadblocks, they are not nearly as insurmountable as many feared they would be. As soon as we get more information, we will certainly share it with you.

DID YOU KNOW 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 5

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.

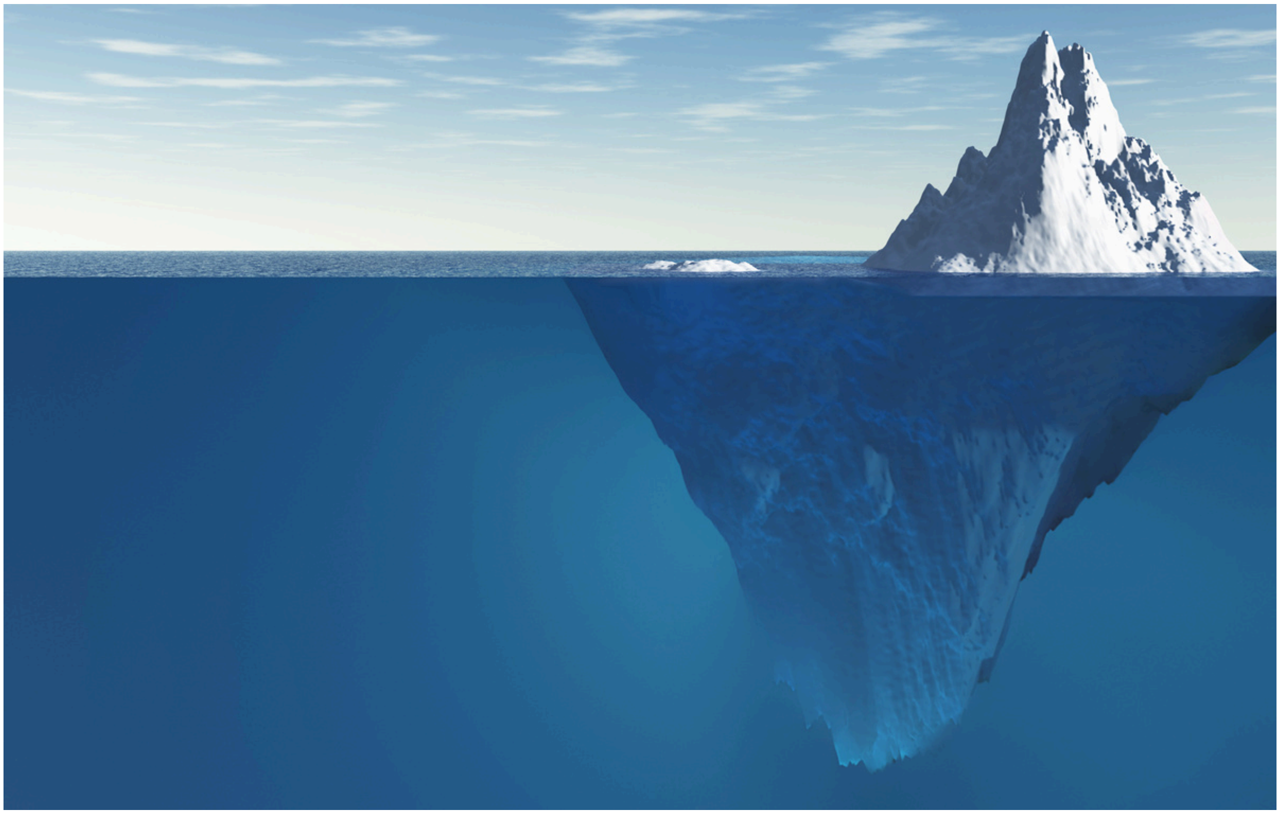
This Agreement permits attorney ____________________ to be a Second Chair attorney on the case of ____________/Ind#___________. While attorney ____________is admitted to the New York State Bar, an attorney in Good Standing, and on the Assigned Counsel Panel in Nassau County, said attorney is not your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



LOOK BELOW THE SURFACE WITH HELP FROM A MITIGATION SPECIALIST, NO COURT ORDER REQUIRED!

We are elated to announce that our direct payment of Mitigation Specialists has led to a 2300% increase in the number of clients receiving the services of a Mitigation Specialist. That's not a typo! In order to meet the increased demand for Mitigation Specialists, we have been actively recruiting these experts to our Expert Panel, and we are thrilled to say we have three new Mitigation Specialists available for retention. We are in the process of updating our Expert List, so in the meantime, please reach out to Lindsay if you are in need of these services and you need some assistance in finding and retaining the right expert for your case. Just by way of a recap, the process for retaining and paying a Mitigation Specialist is summarized below and you can email Lindsay to get copies of the forms you need:

- 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.

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

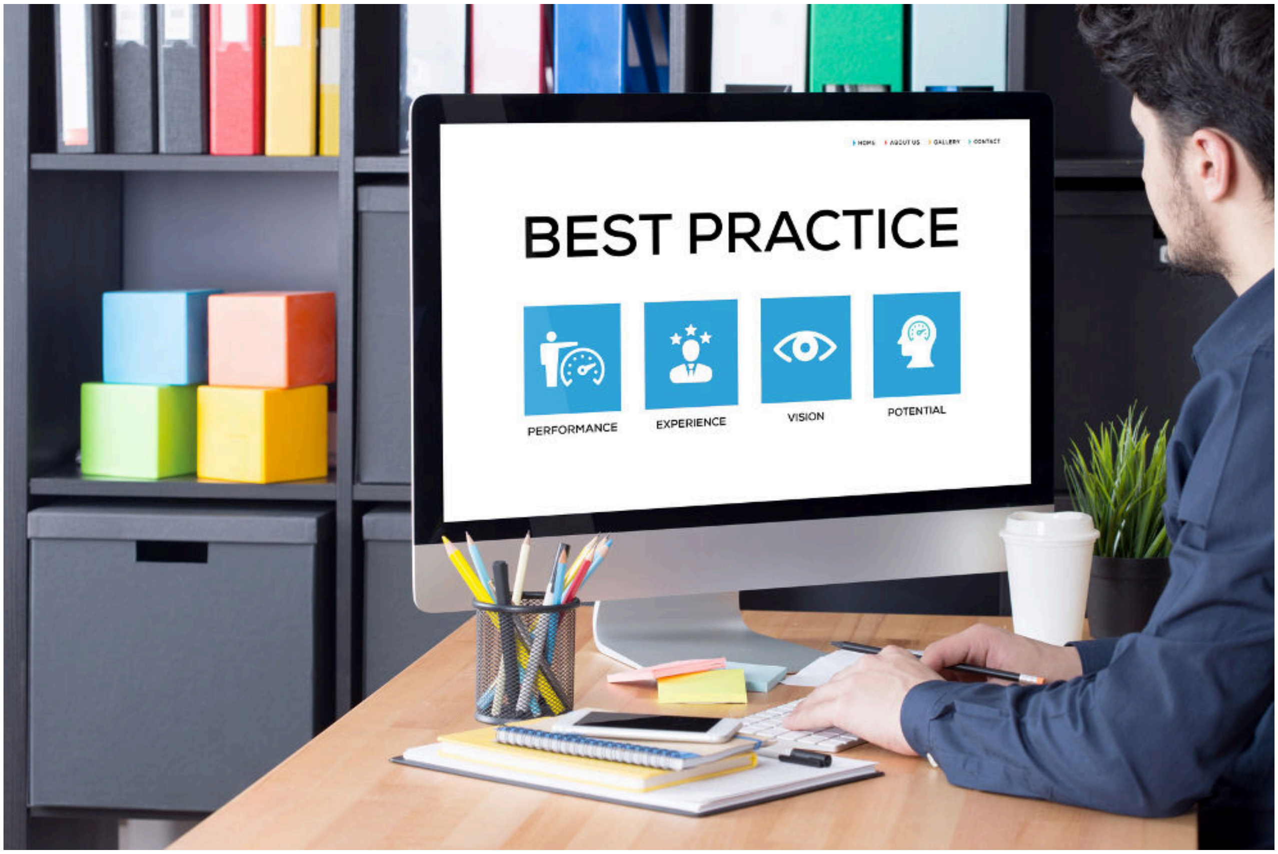
Do you seek to advocate for a favorable disposition?

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 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!



CMS BEST PRACTICES

The CMS is in full swing! Here are a few tips and tricks for how to use the CMS to the best effect:

- Parse out your timesheet entries! If you create a timesheet entry for 3.5 hours for Service Type "Email", that's a curious entry! When we expand the entry, we will likely find that in addition to an email, you drafted a memo to the file, you made 3 phone calls, you arranged a jail visit, and you prepped your opening statement for trial. Each of those activities should be an individual timesheet entry. It helps us and the court when we are reviewing vouchers, so please, take a few extra minutes to parse out your timesheet entries.
- Please remember that you must enter a disposition for every charge on a case even if the charges were dismissed! If your client was charged with Assault 2, Assault 3, and Harassment, and the case was disposed of by a plea to Assault 3 on the top charge with the remaining charges being dismissed in satisfaction, you would enter a disposition to the Assault 2 of "Guilty Plea - Lesser Charge," you'd select Assault 3 as the conviction offense and enter the rest of the requested information. After submitting that Disposition, you would add a new Disposition, this time selecting the remaining charges and entering the disposition of "Dismissed in Satisfaction." The remaining required fields would be pre-filled for you.
- Please note, when you're creating Attorney of the Day Vouchers, in the "Court" field, you must select the court PART where you were the Attorney of the Day, rather than just "District" or "County." Please also note that there are two different "FSP" assignments you can select, "FSP" and "FSP Backup." Please be sure to select the correct one.

Decisions of Note

People v Nesbitt | April 30, 2025

Appellant appealed from a Nassau County Court judgment convicting him of third-degree grand larceny and third-degree criminal possession of a forged instrument following his guilty plea. The Second Department remitted for further proceedings on appellant's application to withdraw his guilty plea and held the appeal in abeyance pending a report from the court on its findings. Prior to sentencing, appellant had requested that the court "take [his] plea back" because he had been "misled by his attorney." The court's removal of appellant from the courtroom without any further inquiry deprived him of a "reasonable opportunity to present his contentions," thereby preventing the court from making "an informed determination" as to the plea withdrawal application.

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

Matter of Clifton C. v Tory P. R. | April 30, 2025

Maternal grandfather and the child separately appealed from a Suffolk County Family Court order dismissing the grandfather's custody petition after a hearing. The Second Department reversed and remitted for a new hearing to determine custody based upon the best interests of the child. Under the totality of the circumstances, the grandfather had met his burden of proving extraordinary circumstances. The grandfather took care of the child for most of her life, including after the mother's death, while the father permitted it, "assumed the role of a noncustodial parent," and the child expressed a desire to continue residing with her grandfather. Finding no extraordinary circumstances, the court did not conduct a best interests hearing—which is now required.

https://nycourts.gov/reporter/3dseries/2022/2022_07506.htm

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.

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