

ACDP NEWS

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



Experience Counts!

Criminal defense attorneys who “hang a shingle” and begin as a solo practitioner, need to master the different skill sets of both pre-trial and trial advocacy, develop basic business skills, learn the dos and don’ts of local court culture, and develop client relations capacity.

And what about those attorneys who have been in practice for years and who are faced with a complex homicide trial that involves cell site analysis and DNA evidence? And let’s not forget attorneys who have been out of the criminal law sphere for a while and are considering applying to the panel.

All too often, these attorneys are on their own to figure out how to manage these complexities. Well, not anymore!

NCACDP is thrilled to announce the launch of our new NCACDP Mentoring Program! Experienced attorneys who have successfully managed the varied assortment of skills required to be successful in criminal law, are the best source of first-hand knowledge for how to successfully navigate the world of indigent client representation.

We want to make sure all of our panelists have access to this incredible resource: your own fellow panelists!

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Mentoring involves veteran, highly qualified attorneys working closely with less experienced attorneys to foster their professional growth and development. It is a well-recognized means of helping new attorneys develop criminal defense representation skills, acquire legal knowledge, build confidence and competence, and enhance professionalism.

Mentoring also involves attorneys who are skilled in specific areas, offering advice to their colleagues who may have been in practice for years, but who are seeking guidance in a particular area, or who may be considering expanding their practice areas (think trial attorneys considering handling appeals). Mentoring also promotes a culture of collaboration among attorneys.

We will be rolling out this new and exciting program over the winter. Please keep your eyes on your inbox for more information on this new initiative.



LanguageLine is Calling!

Don't forget to take advantage of your new 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:

The Nassau County Bar Association
Assigned Counsel Defender Plan, Inc.
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.



Important!

Get What You're Owed!

We know that several of you still have cases where you're submitting applications for Enhanced Rate Orders. If you have submitted such an application, and you feel it's been improperly denied, you have recourse! In cases where you feel your application has been wrongly denied, you should file an appeal directed to Judge DiStefano.

We are also advised that if your denied application included a request to go above the statutory cap of \$10,000, your appeal should contain a calculation showing what your hourly rate would be if the appeal were not granted.

For instance, if your application was related to a case that went to trial, where you spent a total of 200 hours over the life of the case, and

your application to exceed the cap were not granted, your hourly rate would end up being approximately \$50 per hour ($\$10,000/200 \text{ hours} = \50.00). It is important to make the Court aware of precisely how unjust a denial of your application would be.

Your appeal needn't be long, but please be sure to include an affirmation and your original application.

Remember, you're not just your client's best advocate, you are your own best advocate as well!

Finally, if you ever run into a situation where any application for an Order for an Interpreter is denied, you should immediately contact the ACDP office so that we can work with you to rectify the situation. You should never feel hamstrung in your ability to communicate with your client or witnesses.



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Vouchers:

Please triple check your vouchers before you submit them to the NCACDP office and make certain you have used the most recent form available on our website, and 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.

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 being reviewed by the Administrators of all Second Department ACDPs.

Once the voucher receives final approval it will be available on the “Vouchers” page of our website at the link which reads, “Click here for the Appellate Voucher”. 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.

Arraigning Defendants With Open Cases:

If you’re working in Arraignment A, and discover that a defendant has an open case, please ask the clerk to find out who the attorney on the open matter is

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so that the judge can assign the new case to the existing attorney. Please take the step of notifying the defendant's existing counsel that their client has a new case and let them know when the case will next be on in court. In order to ensure continuity of representation, it has been, and remains, the policy of NCACDP to have any new cases assigned to a defendant's existing attorney.

Resubmitting Vouchers:

If you are asked to resubmit a voucher for any reason, please return the voucher to the ACDP office, making sure it is addressed to the attention of either Bob Nigro or Lindsay Boorman.

Court Staffing:

As you all know, staffing levels in the courthouses have been a significant, and worsening, issue. We have received word that Nassau County should be receiving 27 new Court Officers this month. Those Officers will need to be spread among the 5 different courthouses, so while there may be some relief, the staffing levels are not where they should be. Due to these ongoing staffing issues, we are informed that circumstances may force the closing of certain County Court parts on certain days.

If parts are required to close, we are advised that we will receive at least one week's notice of the closure to allow parties to reschedule matters.

A notice will go out to all parties advising them which part will be down on which days. We will, of course, communicate any update we receive.

Orders for Enhanced Rate Still Required:

Please remember, if you are submitting a voucher seeking payment at the rate of \$158 per hour for any work done prior to April 1, 2023, **you must include a signed Order for an Enhanced Rate.**



VOLUNTEER ATTORNEYS NEEDED FOR CONSULTATIONS!

The Nassau County Bar Association, Nassau Suffolk Law Services, and the Safe Center invite all attorneys to volunteer for an in-person open house event at the Nassau County Bar Association. Any Nassau County Resident can attend and speak with an attorney for free.

Attorneys **do not** provide legal representation. The event runs from 2:00 pm-8:00 pm and volunteers are asked to sign up for 2-hour shifts. To volunteer, email or call Cheryl Cardona at openhouse@nassaubar.org or 516-747-4070, ext. 1231.



CRIMINAL LAW AND PROCEDURE UPDATE 2023

It's time for the annual Criminal Law and Procedure Update for 2023! The NCBA Assigned Counsel Defender Plan and the NCBA Criminal Law & Procedure Committee, are pleased to announce the annual Criminal Law and Procedure Update 2023, a joint program of the Nassau and Suffolk Academies of Law.

Join us at the Nassau County Bar Association for this perennial favorite CLE which will address developments in federal and state case law and recent statutory changes.

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

The program will be held on Tuesday, November 28, 2023 from 5:30 pm-8:30 pm and will only be offered as an in-person program. You will receive 2.5 CLE credits in professional practice and .5 credits in ethics. The program is appropriate for experienced attorneys, as well as newly admitted attorneys and is free for members of the 18B Panel and NCBA members as well.

Please email academy@nassaubar.org to register for this wonderful program!



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!**

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 advice on whether to use an investigator and if so, how?

The Center can consult with you on when and how to effectively use investigators in appellate and post-conviction matters.

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.

Have you been assigned to a DVSJA resentencing case?

They can brainstorm with you and, where appropriate, explore your issues with the DVSJA Statewide Defender Task Force.

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



Decisions of Note

People v Mendoza | 2023 WL 6302290

The defendant challenged a search warrant authorizing the search of his apartment. Queens County Supreme Court granted the motion and suppressed the firearms found during the search. The search warrant affidavit stated that a detective observed on two occasions Snapchat videos of the defendant holding what appeared to be a firearm. This did not demonstrate an ongoing or continuous pattern of criminal activity. It did not establish that the defendant possessed the firearm or that the firearm was in the apartment at the time of the search warrant application.

People v Mendoza (2023 NY Slip Op 23291)

Matter of Orobona v Cunningham | September 13, 2023

The father appealed from a Nassau County Family Court order that denied his motion to vacate a default custody order. The order awarded the mother sole legal and residential custody and granted the father parenting time as the parties agree. The Second Department reversed, granted the father's motion, and remitted. Family Court abused its discretion by denying the father's motion to vacate the default. A 2018 consent order granted the parties joint legal custody, the mother primary residential custody, and parenting time to the father. The mother filed a modification petition seeking sole custody. The case was adjourned for the father to obtain counsel. He did not appear at the next court date (a virtual appearance), and Family Court entered an order granting the mother sole custody. Two days later, the father moved to vacate the default order. Because resolution on the merits is preferred in child custody proceedings, the general rule as to opening defaults should not be strictly applied in custody cases.

Matter of Orobona v Cunningham (2023 NY Slip Op 04594)



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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