

THE ERIE COUNTY BAR ASSOCIATION'S
AID TO INDIGENT PRISONERS' SOCIETY INC.

ERIE COUNTY ASSIGNED COUNSEL
PROGRAM

PANEL ATTORNEY HANDBOOK



403 Main Street
Suite 215
Buffalo NY 14203
716-856-8804

<https://www.assigned.org/>

TABLE OF CONTENTS

I.	INTRODUCTION/MISSION	3
II.	LEADERSHIP STRUCTURE	3
III.	INITIAL PANEL APPLICATION/ACCEPTANCE/TRAINING	6
IV.	PANEL MEMBERSHIP CRITERIA	7
V.	QUALIFICATIONS FOR SPECIFIC PANELS	10
VI.	CRIMINAL DIVISION MENTORSHIP PROGRAM	13
VII.	CRIMINAL PANEL REVIEW PROCEDURES	20
VIII.	CRIMINAL COUNSEL AT FIRST APPEARANCE (CAFA)	22
IX.	ASSIGNMENT PROCESS (Incl. Co-Counsel and Second Chair)	27
X.	ATTORNEY SUPPORT AND ACP RESOURCES	31
XI.	COMPENSATION AND BILLING	39
XII.	COMPLAINT REVIEW PROCESS	41
XIII.	ACP RIGHT TO REFUSE REPRESENTATION	44

I. INTRODUCTION/MISSON

The ACP's principal goal is to provide indigent clients with the highest level of competent, ethical, and effective legal representation in Criminal and Family Court cases. We stand with our panel to protect client rights through zealous advocacy at every stage of the proceedings and to achieve the best possible outcome in every case. To accomplish these objectives, the ACP is structured and staffed to ensure that our panel attorneys are provided with the training and resources required to deliver the highest quality representation to their clients.

MISSION STATEMENT

The ACP strives to help those who cannot help themselves, those who face steep odds against the power of the State, and who struggle with poverty, mental health issues, helplessness, and dread. The attorneys in the program save lives and save families. Panel attorneys are the first line of defense for the freedoms granted to us by the Constitution and the Bill of Rights.

II. LEADERSHIP STRUCTURE

As a not-for-profit organized under 501(c)(3), the administration of the ACP is overseen by a Board of Directors, all of whom are attorneys and some of whom are judges. One of the Board's principal functions is to ensure that the ACP administrative office performs its duties independently and in accordance with the NYS Office of Indigent Legal Services (ILS) standards to ensure that ACP attorneys are receiving the best training and resources available to provide effective legal representation to every client.

The Board appoints the ACP Executive Director/Chief Defender and may establish policies to support implementation of ILS standards.

EXECUTIVE DIRECTOR/CHIEF DEFENDER

The Executive Director/Chief Defender (ED/CD) reports directly to the Board of Directors. The ED/CD is responsible for promoting and implementing ACP'S purpose and objectives and for the oversight and management of the ACP office and its staff. The ED/CD also is responsible for ensuring that the ACP complies with ILS standards.

CHIEF FINANCIAL OFFICER

The Chief Financial Officer (CFO), is responsible for the overall fiscal operation of the ACP, including oversight of office technology and Human Resources (H.R.). The CFO plans, implements, manages, and controls all aspects of the financial and accounting requirements of all ACP activities, interacts, as needed, with panel attorneys, auditors, bankers, the Board of Directors, government agencies, tax authorities and the like.

Most importantly, the CFO ensures timely and accurate payment of panel attorneys after their vouchers have been approved. The CFO also oversees and updates the ACP'S Case

Management (Defender Data Version 7) system, making sure that it meets the ongoing needs of panel attorneys and ACP staff. The CFO collaborates with the system developer to troubleshoot issues that may arise, develop reports, and make modifications as required.

FIRT DEPUTY DEFENDER - CRIMINAL DIVISION

The First Deputy Defender (FDD) is responsible for supervising and working with the ACP Criminal Division Deputies, LEAD Social Work Program and Criminal Investigations supervisors and the Criminal Division Court Liaison to ensure that ACP attorneys receive all the legal support they need to represent their clients properly and effectively. The FDD provides leadership to the Criminal Division and is responsible for evaluation and management of Criminal Division Staff performance. The FDD also participates in individual and group case conferences with ACP attorneys as well as ACP legal training CLEs. The FDD reports to the ED/CD on all administrative matters involving or affecting the Criminal Division. The FDD participates in the oversight of case assignments to panel attorneys, manages, in conjunction with the Deputy for QA, the process for periodic review of panel attorneys, and approves requests for expert witness services for criminal division panel attorneys.

SECOND DEPUTY - FAMILY COURT

The Second Deputy is responsible to train and mentor new attorneys who enter the Family Court Panel. The person acts as the principal contact between the ACP and the Family Court Judges and Administration. The person supervises the Family Court division supervisor(s), deputy(ies), paralegal(s) and administrative assistant; the Family Court CLE program and represents the ACP on various Family Law related committees.

The person consults with panel attorneys on matters of law and legal strategy, monitors legislative changes in the law as they relate to Family Court, and advises panel attorneys of such developments. Additionally, the person reviews and resolves client complaints, supervises the ACP Family Court mentoring program, and reviews and approves requests for expert witness services for the family court panel attorneys.

CRIMINAL - DEPUTY FOR QUALITY ASSURANCE

The Deputy for Quality Assurance (Deputy for QA) deputy's principal function is to ensure that ACP attorneys are being provided with mentoring resources to satisfy the level of legal representation expected by ILS, Rules of Court, and the New York Rules of Professional Conduct (RPC). This deputy oversees our mentorship program which provides experienced attorneys to counsel and guide newer attorneys on every aspect of client representation from commencement through disposition. This deputy also manages the criminal panel review process, and participates in said reviews, in concert with the FDD. This Deputy handles all attorney complains in the first instances and prepares reports and memorandum for review/action by the FDD and ED/CD. When the FDD is unavailable, the Deputy for QA shall undertake his/her duties.

CRIMINAL - DEPUTY FOR APPELLATE AND LITIGATION SUPPORT

This deputy is often the first point of contact with ACP attorneys in the field who have procedural, substantive, or practical questions about developments in their cases. This deputy may direct the attorney to the pertinent statutes or case law or may provide the answer to counsel's legal conundrum. This deputy gives guidance and assistance to help counsel develop or refine a motion or memorandum and gives strategic assistance when counsel is on trial. (ACP also has designated writers to draft motions but attorneys are generally expected to do their own work which they are welcome to submit for review and editing). This deputy also develops and participates in CLE presentations, participates in criminal case conferences, and participates in periodic review of panel attorneys.

CRIMINAL - DEPUTY FOR FORENSIC PRACTICE

This deputy is responsible for connecting panel attorneys with experts of their choosing and using ILS funding to compensate experts. ACP has developed a network of experts who can consult and testify on matters of science and technical knowledge in the areas of ballistics, blood spatter analysis, DNA, cause and manner of death, the reliability of eyewitness identification testimony, accident reconstruction, Cellebrite, forensic accounting, Matterport 3D imaging of crime scenes, and every other area of specialized knowledge.

Experts can help our attorneys better understand the science of their case, properly prepare for cross examination of the People's expert, and testify for the defense as needed.

The Forensic Deputy is also available to confer, individually or in concert, with our other deputies, with counsel in preparation for trial or during trial as issues arise. This deputy also participates in the development and presentation of CLE'S, maintains our expanding library of forensic resources and legal treatises, and participates in periodic review of panel attorneys.

CRIMINAL-DEPUTY FOR TRAINING AND CONTINUING LEGAL EDUCATION (CLE):

This deputy develops and presents CLE programs, facilitates CLE presentations by other agencies/outside speakers, assists panel attorneys with legal and trial practice questions individually or in group case conferences, oversees the training of new and emerging felony panel attorneys and those seeking to advance to felony defense work or membership on specialized panels.

This deputy also drafts frequent articles on a myriad of legal subjects designed to provide our panel attorneys with a handy reference on prominent issues (e.g., voluntariness of statements, Y.O eligibility, and admissibility of hearsay) relevant to any given case. This deputy also participates in periodic review of ACP panel attorneys. Further, this deputy manages the new attorney training program as well as the felony attorney training program. This deputy is the Director of the "John R. Nuchereno Center for Legal Excellence." Finally, this Deputy is

responsible for assigning administrative tasks appurtenant to CLEs (assembly of materials, preparation of attendance materials, tracking attendance, etc.) and preparing the annual Accredited Provider Report to the NY CLE Board.

III. INITIAL PANEL APPLICATION/ACCEPTANCE/TRAINING

- a. An application for admission to the ACP and its various panels can be found at the ACP website at <https://www.assigned.org/join-our-panel/>
- b. Applications must be completed in full and should specify the panel(s) to which counsel seeks admission. Incomplete applications will not be processed.
- c. The FDD will review all competed criminal applications. The Second Deputy will review all Family Court Applications. Each will advise the ED/CD of pending applications in advance of approval.
- d. Applicants must have read and pledge to abide by the New York Rules of Professional Conduct (RPC).
- e. If approved, the applicant shall be admitted to the training program for their respective panel(s).
- f. The First/Second Deputy as applicable will advise the applicant in writing of the decision on the application.
- g. Initial Criminal defense applicants must complete the entry-level training course administered by the Deputy for Training and CLE which is held three (3) times per year and at such other times as meets the needs of the Program. This training course includes completion of a “mock trial” exercise.
- h. Where an applicant to the Family Court panel has no prior Family Court experience, the applicant must attend the Family Court training class which shall be held at least one time per calendar year. The training will be in person although the sessions will be recorded. An applicant will be allowed to miss one session but must view the recording in order to be ultimately formally admitted to the Family Court panels. If the applicant misses an additional session their candidacy will be terminated, and they can apply for the training the following year.
- i. Upon completion of the Family Court classroom training, the applicant will be assigned a small number of cases which the applicant will work on in conjunction with the Second Deputy. After such time as is deemed appropriate by the Second Deputy the applicant will be released to take cases on their own. The applicant will be so informed by letter or email. Unless and until the applicant is formally released, their

admission to the panel is provisional and they may be removed from same for any or no reason.

- j. Where an applicant has prior Family Court experience, at the discretion of the Second Deputy, the applicant may be allowed to view video trainings to gain provisional admission to the panel. Upon completion of the video training, the applicant will be assigned a small number of cases which the applicant will work on in conjunction with the Second Deputy. After such time as is deemed appropriate by the Second Deputy the applicant will be released to take cases on their own. The applicant will be so informed by letter or email. Unless and until the applicant is formally released, their admission to the panel is provisional and they may be removed from same for any or no reason.
- k. Generally, new Family Court panel members will be assigned to custody/visitation and family offense matters. Once the panel member has demonstrated sufficient proficiency in those cases, the candidate may be assigned support violation cases. Admission to the abuse/neglect panel will be made by invitation and/or written request of the Second Deputy only.
- l. Following completion of the approved training course(s), prospective panelists shall provide to ACP attestation(s) that said programs have been fully completed.
- m. Prior to admission to the criminal panel, the prospective panelists shall be provided with a “mock trial” problem and directions on their roles and responsibilities for said problem. They shall thereafter be directed to appear at a designed time and location for the purpose of discharging their role in the mock trial.
- n. Following the mock trial, ACP Deputy Staff shall make a recommendation to the FDD as to the candidate’s admission. The FDD will advise the ED/CD of pending applications in advance of approval. The candidate shall be notified in writing as to their rejection or admission to the criminal panel.
- o. Attorneys who are not granted admission to the ACP (Criminal or Family Court), either after application or training/mock trial, may reapply after one year of the denial. Upon reapplication, they must provide updated information with respect to their experience handling criminal matters, including participation in any relevant CLEs, second chair activity and working with a more experienced attorney on criminal matters.
- p. At the discretion of the FDD, in consultation with the ED/CD a new panel attorney may be assigned felony level cases or be placed on “specialty panels.” Decision whether to elevate new panel attorneys to these panels shall be based on an assessment of the attorney’s experience and skills.

- q. Attorneys seeking elevation to the Felony panel from the Misdemeanor panel shall be required to complete a felony attorney training program administrated by the Deputy for Training and CLE. Completion of a “criminal hearing” exercise will be required at the close of this program.

IV. PANEL MEMBERSHIP CRITERIA

- a. ACP attorneys must be admitted to practice law in New York courts and be in good standing with the Office of Court Administration. Upon request, ACP attorneys must provide the Program with a “Certificate of Good Standing” attesting to their “good stating” status as an attorney in NYS.
<https://www.nycourts.gov/courts/ad4/Clerk/AttyMttrs/baradmin.html#Certificates>
- b. It is strongly recommended that all panel attorneys maintain adequate levels of malpractice insurance.
- c. Attorneys must always comply with the *New York State Rules of Professional Conduct*, *New York State Attorney Disciplinary Rules*, *New York State Office of Indigent Legal Services Black Letter Standards for Assigned Counsel*, and any applicable rules and regulations from the New York State Office of Court Administration governing attorney practice in the discharge of their professional responsibilities and obligations.

<https://www.nycourts.gov/legacypdfs/rules/jointappellate/NY-Rules-Prof-Conduct-1200.pdf>

<https://www.nycourts.gov/ad3/AGC/Forms/Rules/Rules%20of%20Professional%20Conduct%2022NYCRR%20Part%201200.pdf>

<https://www.ils.ny.gov/files/ACP%20Black%20Letter%20Standards%20070119.pdf>
- d. Attorneys must be members in good standing of the Bar Association of Erie County. Panel members should also consider joining other relevant professional organizations such as the BAEC Criminal Law Committee, the New York State Bar Association (NYSBA), the New York State Defenders Association (NYSDA), and the New York State Association of Criminal Defense Lawyers (NYSACDL).
- e. ACP attorneys must keep the ACP administrative office informed of any changes to their contact information.
 - a. Criminal Panel Liaison Michelle DePasquale: mdepasquale@assigned.org
 - b. Family Court Panel Liaison Erin Fahey: efahey@assigned.org
- f. ACP attorneys must earn at least six (6) CLE credits annually in areas that are specific to their area of practice (Criminal or Family Law) and must provide proof of same upon request.

- g. ACP attorneys must cooperate with monitoring, performance evaluations, and investigations of any complaints, including billing discrepancies, by the appropriate ACP personnel.
- h. ACP attorneys must become familiar with the use of Defender Data Version 7 (DD7). This system will be utilized for all assignments, data reporting, vouchering, support service requests as well as secure communication with ACP.
- i. ACP attorneys who have a legal or ethical conflict, such as employment with any law enforcement agency or full-time work in a prosecutor's office, cannot participate as an ACP panel attorney.
- j. To promote consistency and continuity of representation, the same attorney should handle all (Criminal or Family Court) cases involving the same client. If an assigned attorney discovers that a client is already being represented by another assigned attorney in another pending case, the later-assigned attorney (or the earlier-assigned attorney upon learning of the new matter), should contact the ACP Assignment Team Leader who will then take appropriate action with respect to legal representation of the client. Assignment Team Leader: Torie Kubiak: vkubiak@assigned.org
- k. ACP attorneys should create a separate file for each case assigned to them and maintain such physical files or an electronic mirror image in perpetuity. 22 NYCRR Part 1200, § 1.15(d).
- l. Once assigned to a case, ACP attorneys remain the counsel of record through conclusion of the case unless and until specifically relieved of the assignment. 22 NYCRR Part 1200, §1.16 [d]. Requests to be relieved from cases in municipal courts must be directed to the FDD. A reason for the request for re-assignment must be provided. Re-assignment of the case shall be at the discretion of the FDD in consultation with the ED/CD. Requests to be relieved on matter in Superior Court must be directed to the Court. ACP will thereafter re-assign the matter unless the Court has directed re-assignment from the bench.
- m. Panel members may only accept assigned cases for which they have been approved by the ACP. Should an attorney not authorized to accept a certain type of case (i.e., felony, specialty panel) then that attorney shall immediately reject the assignment and contact the ACP assignment office (info@assigned.org) to advise of the mistaken assignment.
- n. Additional qualifications may be set by the ACP program for continued assignments including, but not limited to, attendance at specific CLE programs and participation in mentoring or second chair programs.

A panel attorney's first duty is to the client, to the exclusion of all other considerations. Attorneys should endeavor to contact clients as soon as possible after assignment for the purpose of introduction and case discussion.

- o. A panel attorney assigned to represent a client is prohibited from later engaging in a retained relationship with that client on the specific case to which they were assigned. Panel attorneys operating in the capacity as “Attorney of the Day (AOD)” or “Attorney on Call (AOC)” are prohibited from soliciting clients for retained relationships or later accepting a retainer from a client they appeared on a specific case with as AOD or AOD.
- p. **Engaging a retained relationship with a client on a case where the attorney had previously been assigned is in violation of your ethical and professional obligations and grounds for removal from the panel. This prohibition stands irrespective of whether the client is later determined ineligible for assigned counsel. Soliciting assigned clients for a retainer, or accepting anything of value as compensation on an assigned case is strictly prohibited.**
- q. Panel attorneys are forbidden from engaging in conversations about the nature of representation, the specific facts of any case, or in any way moving to dispose of a case for a client who has entered into a retained relationship with another attorney. At the direction of the court, an assigned attorney may be permitted to stand in for retained counsel for the sole and limited purpose of arraignment or adjournment of a matter. **Communicating with retained clients about the nature of a case, or soliciting already retained clients for subsequent retainer by you, is a violation of your ethical and professional obligations and is grounds for removal from the panel.**
- r. Panel Attorneys are required to re-certify each calendar year. Notices regarding re-certification will be sent in early January. Failure to timely re-certify may result in suspension from the ACP.

V. QUALIFICATIONS FOR SPECIFIC PANELS

Admission to all panels require adherence to all rules noted above and shall be subject to review by the Program.

Where a waiver is required to eliminate any requirement for panel participation, said waiver must be requested in writing and directed to the ED/CD. All waiver requests will be reviewed and decisions on requests shall be made in writing.

1. **Criminal Panels** - Admission to higher felony level panels and/or any “specialty panel” shall require the consent of both the FDD and the Deputy for QA.
 - a. **Misdemeanor Panel (\$60/hour)**
 - Admission to ACP after application and review
 - Completion of ACP New Attorney Training Program and Mock Trial
 - Completion of ACP DD7 Video Training
 - Participation in Mentorship Program for at least the first twenty-four (24) months of placement or ED/CD Waiver.

b. C/D/E Felony Panel (\$75/hour)

- All Misdemeanor Panel Qualifications or ED/CD Waiver.
- Five (5) years admission to the NYS Bar.
- At least Two (2) years admitted to Misdemeanor Panel or ED/CD Waiver.
- At least one (1) Attorney review cycle completed or ED/CD Waiver.
- Completion of ACP Felony Attorney Training and Mock Hearing.
- Interview and Review of skills prior to placement. Participation in Mentorship Program for at least the first twenty-four (24) months of placement or ED/CD Waiver.

c. Violent Felony Panel (\$75/hour)

- All C/D/E Felony Panel Qualifications or ED/CD Waiver.
- At least two (2) years admitted to C/D/E Felony Panel or ED/CD Waiver.
- At least one attorney review cycle as C/D/E Felony Attorney or ED/CD Waiver.
- At least one (1) solo/primary counsel C/D/E Felony trial (jury/non-jury) to verdict or ED/CD Waiver.
- At least one (1) second chair Violent Felony Jury Trial to verdict or ED/CD Waiver.
- Interview and Review of skills prior to placement.

d. Homicide Panel (\$75/hour)

- All Violent Felony Panel Qualifications or ED/CD Waiver.
- At least ten (10) years admitted to New York State Bar.
- At least two (2) attorney review cycles as Violent Felony Attorney or ED/CD Waiver.
- At least two (2) solo/primary counsel Violent Felony jury trials to verdict or ED/CD Waiver.
- At least two (2) Homicide second chair jury trials to verdict or ED/CD Waiver.
- Interview and Review of skills and experience prior to placement.

e. Justice Courts/Treatment Court AOD/AOC Panel (variable rates)

- All Misdemeanor Panel Qualifications.
- At least one (1) year admission to Misdemeanor Panel or ED/CD Waiver.

f. Adolescent Offender (AO) AOC Panel (variable rates)

- All C/D/E Felony Panel Qualifications or ED/CD Waiver.
- Completion of Appellate Division 4th Department AFC Training.

g. Superior Court AOD Panel (\$75/hour)

- All C/D/E Felony Panel Qualifications or ED/CD Waiver.

h. Erie County Appellate Panel (\$75/hour)

- All C/D/E Felony Panel Qualifications or ED/CD Waiver.
- Completion of ACP Erie County Appellate Training.

i. 4th Department Appellate Division Panel (\$75/.hour)

- All C/D/E Felony Panel Qualifications or ED/CD Waiver.
- Two (2) years admission to Erie County Appellate Panel.
- Completion of 4th Department Appellate Training Program.

j. SORA Panel (\$75/hour)

- All C/D/E Felony Panel Qualifications or ED/CD Waiver.
- Demonstrated experience handling registerable offense cases.
- At least one (1) sex offense jury trial to verdict as solo or second chair or ED/CD Waiver.
- Interview and Review of skills prior to placement.

k. IDV Panel (\$75/hour)

- Admission to Misdemeanor, C/D/E, Violent Felony Panel as determined by level of criminal offense in IDV or ED/CD Waiver.
- Completion of ACP Family Court Training.
- Interview and Review prior to placement.

l. 440/440.47 (DVSJA) Panel

- Admission to C/D/E Felony Panel or ED/CD Waiver.
- ACP 440/440.47 Training.
- Interview and Review prior to placement.

m. Parole Panel (\$75/hour)

- Admission to C/D/E Felony Panel or ED/CD Waiver.
- ACP Parole Training.
- Interview and Review Prior to Placement.

n. Legal Research and Writing Panel (\$75/hour)

- Admission to C/D/E Felony Panel or ED/CD Waiver.
- Interview and Review Prior to Placement.

2. Family Court Panels

All paid at \$75.00 per hour:

a. ARTICLES 5-6 PANELS: (paternity, custody/parenting time)

- This panel consists of attorneys who have been trained in the areas of paternity, custody, and parenting time law. This is the most prevalent area of assignments.

b. ARTICLE 4 PANEL: (support violation matters):

- This panel consists of attorneys who have been trained in support violations and who have expressed interest in this area of practice. Generally, attorneys are not assigned to these matters until they have gained experience in Article 5, Article 6, and Article 8 matters.

c. ARTICLE 8 PANEL: (family offense matters):

- The Article 8 Panel consists of attorneys who have been trained in Family Offense matters. Like Article 5-6 Panels, this is a frequent area of assignment.

d. ADOLESCENT OFFENDER PANEL: (criminal matters for 16–17-year-old offenders):

- This panel consists of attorneys who have Criminal and Family Court experience. Panel members must also belong to the AFC (Attorney for the Child) program. These practitioners represent youth who are charged criminally with Penal Law offenses. If a matter is transferred to Family Court (from the Youth Part of Superior Court), the attorney will remain on the case as an AFC.

e. ARTICLE 10 PANEL: (abuse and neglect matters):

- Admission to this panel requires extensive experience in other areas of Family Law, litigation, and a strong desire to handle Abuse and Neglect cases. Attorneys may be asked to join this Panel based on demonstrated quality of representation in other areas of Family Law or they may apply in writing to be admitted to the panel. The Deputy of the Family Division will train and mentor all new members of this panel until such time as they have demonstrated the skills needed to undertake such assignments.

f. FAMILY COURT – ATTORNEY OF THE DAY (AOD)

- There is an AOD on call for all FC panels (AO, Art 4, Art 6/8, & Art 10) during Court hours. When an Adolescent Offender (AO) matter comes in afterhours, the Criminal Court AOC handles the matter as a criminal matter. The AO matter is then transferred to the AO part for assignment and further proceedings.

VI. CRIMINAL DIVISION MENTORSHIP PROGRAM

The purpose of this program is:

- To ensure the training and continued development of new panel attorneys in their first twenty-four (24) months at both the misdemeanor and felony level; or until a panel attorney's first "Panel Review" following addition to the misdemeanor or felony panel; whichever comes earlier.
- To develop and encourage a sense of comradery among the mentor and mentee attorneys, as well as other panel attorneys and ACP administration members.
- To continue the development and training of panel attorneys to expand their knowledge and in-court experience for elevation to the felony, violent felony, and homicide panels; and
- To create mentor-at-large positions for support to the homicide and violent felony panels to ensure panel members of all experience levels have a resource point if needed.

Policy and Procedures for Mentors:

1. Participation in the mentorship program as a mentor attorney is voluntary. Mentor attorneys must be willing and able to dedicate the requisite time to the mentorship program and be willing and able to follow the delineated policies and procedures of the mentorship program. A premium payment of \$150/hour for all work performed as a mentor will apply.
2. A mentor's roster of mentees shall not exceed five (5) attorneys, inclusive of both misdemeanor and felony panelists unless expressly allowed by the Deputy for QA in consultation with the FDD and the ED/CD.
3. Current panel attorneys that wish to become mentor attorneys shall submit a request in writing to the Deputy for QA. The requests will be reviewed and approved by the Deputy for QA and the FDD. An interview and review prior to placement as a mentor may be required at the discretion of the Deputy for QA in consultation with the FDD.
4. Mentors must meet minimum qualifications required of Violent Felony panel attorneys.
5. Mentors will work with mentees during the periods prescribed below and dependent upon which panel their mentee has been placed.
6. Mentors will counsel their mentees on matters which include, but are not limited to:

A. Establishing the mentoring relationship:

Set goals and expectations for the mentoring relationship. Establish lines of communication between the mentor and the mentee including, where appropriate, in-person meetings, virtual meetings, email, letters, phone calls, and text messages.

B. Ethical Considerations:

Help the mentee understand how to handle difficult ethical situations that arise in criminal defense practice. Include how to respond to complaints and grievances.

C. Introduction to the legal community:

Assist the mentee in becoming familiar with local court personnel and practices. Attend court sessions in Justice Courts, County and Supreme Courts with each mentee on a regular basis.

D. Law Practice Management:

Introduce sound practices necessary to sustain an ethical and successful private criminal defense practice that serves both assigned and retained clients. The solo practitioner is the most common form of practice for criminal defense lawyers on our panel.

E. Working with the Client:

Instruct on best practices for communicating with clients and involving clients in decision making. Attend client interviews in both the office setting and in jail. Stress how important communication is in maintaining a good attorney client relationship.

F. Initial Interview and Pretrial Release:

Develop skills for conducting an initial interview and advocating for a client's pretrial release. Ensure that the mentee is familiar with the forms of bail; see CPL 180.80, 170.70.

G. Case Evaluation and Theory of the Case:

Address how the mentee is to develop a theme/theory of the case that will be effective in plea negotiations or trial.

H. Investigation and Discovery:

Develop the mentee's skill in conducting investigations and discovery. Encourage the mentee to use the ACP in-house investigator assigned to their case or to make a request for assignment directed to the Supervising Investigator.

I. Use of Experts:

Develop case evaluation strategies which inform as to when, and to what extent to utilize an expert(s) for the case. Confer with the mentee and the Deputy for Forensic Practice to evaluate what expert support is appropriate for the case. Counsel the

mentee on the procedures for requesting experts and how to best utilize them to improve the defense of the client's case.

J. Pretrial Motions:

Encourage the mentee's effective use of common pretrial motions. It is necessary to know when to file and how to draft such motions. Share, where appropriate, sample motions; review the mentee's draft motion before it is filed.

K. Plea Negotiations:

Teach the mentee how to negotiate a plea and counsel clients about a plea offer. Advise the mentee relevant to the District Attorney's plea policies;

L. Trials:

Help the mentee to develop skills in preparing for and conducting trials both jury and non-jury; counsel the mentee on waiving a jury especially in Justice Courts; train the mentee on the process from motions *in limine*, to jury selection (unless it's a bench trial); show the mentee how to identify possible *Batson* issues; assist the mentee to deliver an effective opening statement, to conduct purposeful and damaging cross examinations, to make meaningful objections that not only keep out harmful evidence but preserve the record for appeal, to make a specific motion for Trial Order of Dismissal, to decide when to put on a defense case, to actively participate in charge conferences, to deliver persuasive closing arguments; and counsel the mentee to know when to object to the prosecutor's summation.

M. Sentencing and Post Trial Proceedings:

Explain to the mentee the role of defense counsel at sentencing and the mentee's post-trial (plea) obligations to the client. Emphasize the role of the attorney in helping to craft the presentence report through probation and how to obtain assistance from the Assigned Counsel's Mitigation Specialist (Tara Evans, Esq.: tevans@assigned.org.) Explain to the mentee the obligation to file a Notice of Appeal and instruct on how to move for the assignment of Appellate Counsel.

N. At a minimum, mentors shall:

Attend all mentee court appearances and client interviews for least the first five (5) cases (not resolved at arraignment) for their mentee at both the misdemeanor and felony levels.

- Attend at least the 1st misdemeanor and/or felony criminal trial for their mentee, whether that trial is jury or non-jury.
- Attend any case conference scheduled by their mentee(s) with ACP during the duration of the mentorship;

- Be available for questions and consultation from their mentee during the period of mentorship.
- Each week, talk to each mentee by telephone, in-person or virtual conference.
- Be responsive to ACP regarding the progress of the mentee(s), which includes filing written documentation of progress, issues, concerns and development strategy at least bi-weekly, or more often at the request of the Deputy for QA.
- As soon as practicable, notify the Deputy for QA of the mentee's violation of any rules, regulations and ethical requirement.

Policies and Procedures for Mentees:

1. All newly admitted misdemeanor and C/D/E felony panel attorneys are required to participate in the mentorship program unless granted a waiver by the ED/CD. The Deputy for QA will assign a mentee to a mentor and send an email to each making an introduction. The mentee attorney is responsible for contacting the mentor attorney to set up their initial meeting.
2. Any panel attorney that the Deputy for QA and the FDD deem in need of furthering training and support may be placed into the mentorship program as a mentee at the discretion of the Deputy for QA and/or the FDD.
3. Current panel attorneys that wish to participate in the mentorship program as a mentee, who have not already been assigned a mentor, may contact the Deputy for QA and request mentorship.
4. A mentee will: i) meet with, or ii) have a substantive telephone discussion with their mentor at least once per week for the first three (3) months of their mentorship, or until the conclusion of the mentee's fifth (5th) case from the inception of mentorship; whichever comes sooner. Thereafter, meetings or substantive telephone discussions will be at the discretion of the mentee and/or mentor on an as needed basis.
5. A mentee will meet with the Deputy for QA once a month during the first 6 months of their mentorship on a schedule developed and communicated by the Deputy for QA.
6. A mentor is required to appear at all court appearances, and follow the mentee from commencement to resolution, on their first five (5) cases at both the misdemeanor and felony level.

- a. As to the first five (5) assigned cases at either the misdemeanor or felony level: BEFORE accepting any case assignment in DD7, the mentee is required to confer with their mentor to ensure their mentor can be present at the first court appearance. If the mentor cannot be available, the mentee must reject the case.
 - b. A mentee and mentor shall jointly schedule subsequent court appearances on the five (5) cases to ensure that both can be present.
 - c. A mentor will review the court paperwork for the mentee's first five (5) cases and assess the mentee's skill, knowledge level, and understanding of the accusatory instrument, supporting depositions, criminal records, and other included paperwork.
 - d. A mentor will review client intake and interview procedures and participate in the interviewing of the mentee's first five (5) clients, whether in custody or out-of-custody.
 - e. A mentor must be able to make this time commitment to be eligible to participate in the mentorship program.
7. A mentor for a felony level mentee shall assist the mentee with the grand jury process, negotiating a plea offer, monitoring CPL §§190.50 and 190.80 motions, SCI pleas, and indictment procedures.
8. A mentee is encouraged to shadow the mentor when possible; and especially where the mentor is engaged in testimonial proceedings. A mentee shall not bill on any matter where they are shadowing their mentor. A mentor shall advise their mentee(s) of any opportunities to observe testimonial proceedings.
9. A mentee is encouraged to observe court proceedings whenever possible. A mentee should observe specialty courts to become familiar with their policies and procedures. A mentee is encouraged to observe arraignments, evidentiary, suppression, and felony hearings, trials, and sentencings whenever possible.
10. After a mentee's first five (5) cases are concluded, the mentor need not attend every court appearance or client interview but shall remain available to do so at the request of the mentee and within the confines of their schedule.
11. At the conclusion of twelve (12) months from the inception of either misdemeanor or felony mentorship, the mentor and mentee will meet with the Deputy for QA to review the mentee's progress, offer suggestions for improvement and discuss any issues.
12. At the mentee's first Panel Review after placement on the misdemeanor or felony panel, the Deputy for QA will assess whether the mentee has progressed to the point

where mentorship is no longer required. If the Deputy for QA is satisfied in this regard, then mentorship shall be discontinued. However, mentorship may be extended for an indefinite period at the discretion of the Deputy for QA in consultation with the FDD.

13. Meetings between the mentor, mentee and Deputy for QA can occur on a more regular basis should the need arise.

Mentor at Large: Violent Felony (VMAL), Homicide (HMAL), Parole (PAML), DVSJA (DVSJAMAL)

1. Selection and Participation as a Mentor at Large (VMAL, HMAL, PMAL or DVSJAMAL) shall be at the discretion of the Deputy for QA in consultation with the FDD and subject to the approval of the ED/CD, taking into account the candidate's knowledge, skill, experience and availability.
2. The Mentor at Large shall be available to consult with panel attorneys on their cases and provide support including, but not limited to:
 - Review of accusatory instruments and discovery to determine sufficiency and strategy.
 - Attend cases conferences with ACP where requested.
 - Meet jointly with clients where requested.
 - Attend testimonial proceedings, including trials, if available.
 - Attend other important court proceedings where requested and available.
3. A Mentor at Large shall not be assigned as co-counsel on any cases but shall instead operate in a support role providing guidance to the representing attorneys.
4. Members of the panels are strongly encouraged to discuss their cases with the Mentor at Large.

The Mentor at Large, in addition to completing a monthly voucher, shall file a monthly report with the Director for QA. This report shall include the cases on which the mentor has consulted, an assessment of the representing counsel and any other issues the mentor feels are relevant to their assignment and work as mentor.

VII. CRIMINAL PANEL REVIEW PROCEDURES

1. Frequency and Schedule

- Criminal Panelists will be reviewed every two (2) years. Reviews will occur each month from September-November and January-June. No reviews will occur in

December, July or August. Reviews will be scheduled by the Criminal Court Liaison and the Deputy for QA.

- Reminders will be sent, together with your review cases 60 days prior to the in-person meeting. The schedule will also be posted on our website for easy reference ([www.assigned.org/criminal courts/attorney resources/panel review schedule](http://www.assigned.org/criminal_courts/attorney_resources/panel_review_schedule)).
- Reviews will occur Monday-Wednesday in the first week of the month. (2-3 reviews per day) (except where the first Monday is a Holiday, then the schedule is Tuesday-Thursday). Thursday will be held as an “overflow” day for those attorneys who cannot attend their M-W appointment time. Friday would be overflow for weeks where the first Monday is a holiday. Reviews will run from 10 am to 1 pm and will be scheduled back-to-back as much as possible. Reviews will be no longer than 60 minutes.
- In the event a panel attorney misses the appointment due to emergent and compelling circumstances, the attorney will be allowed to reschedule the following month. The Criminal Court Liaison would be responsible for scheduling, notification, and reminders of all reviews on a schedule designated by the Deputy for QA. To reschedule, please contact Michelle DePasquale (mdepasquale@assigned.org) or Lori Hoffman (lhoffman@assigned.org.)
- An attorney who misses two (2) consecutive scheduled review appointments without sufficient cause will be ineligible for new assignments until the review occurs.
- Reviews will be scheduled in advance. We will endeavor to keep the same slots assigned year to year. New panelists will be added in free slots with at least a one-year gap from admission to the first in-person review.

2. Materials to be Reviewed/Preparation

- Five (5) cases from the evaluation period (previous two years) will be selected for review. Only cases where voucher exceeded 10 hours or there was a trial will be selected, unless the Deputy for QA determines otherwise.
- The Deputy for QA will select the cases for review and communicate said cases to the attorney 60 days prior to the review. A “Case Review Report” must be prepared by the attorney for each case and submitted no later than one week prior to the panel review meeting.
- The Judges on two (2) cases selected by the Deputy for QA will be contacted to provide performance feedback. A “Judicial Questionnaire” form will be utilized to record results.

- The Deputy for QA will complete a “Panel Review Metrics” Form for each attorney reviewed. The form will be available to the attorney following the review upon request.
- Any other relevant information relevant to attorney performance gathered in the periods between reviews shall also be available for review during the in-person meetings.

3. Participants and Roles

- Criminal Court Liaison: Responsible for scheduling panelists, notification of review dates/times and re-minding at 60 days prior to the meeting. Also responsible for collection and compiling of summaries and material prep for meetings.
- Deputy for Quality Assurance (Process Leader): Mandatory Interview Participation; Responsible for case selection (communicated to attorney 60 days in advance), communication to Deputies of Judicial contacts (2 cases/attorney); data compilation (one sheet for each attorney; see metrics sheet attached), schedule removal/slotting of new attorneys.
- First Deputy Defender: Mandatory Interview Participation, Communication to panel of new process, schedule and review of concerns, Interview MC, Final sign off on review and promotion, backup to the Deputy for QA on case selection and data compilation, backup/support on judicial contact.
- Deputy for Forensic Practice: Mandatory Interview Participation. Review usage of experts per attorney prior to interview, prepare questions based on review.
- Deputy for Training/CLE: Mandatory Interview Participation. Review with eye toward enrichment/training opportunities.
- Deputy for Appellate and Litigation Support: Mandatory Interview Participation. Review with eye toward areas of needed litigation assistance.
- Executive Director/Chief Defender: Voluntary Interview Participation
- Supervising Investigator: Voluntary Interview Participation
- Director, LEAD: Voluntary Interview Participation
- Mitigation Specialist, Voluntary Interview Participation
- Mentor Assigned to the Panelist: Voluntary Interview Participant
- Mentor(s) at Large: Voluntary Interview Participation for an attorney serving on their panel.

4. The In-Person Review

- Reviews will be done in person so long as circumstances allow.
- Review metrics and identified areas of concern.
- Review case summaries and specific questioning on strategy/outcomes.
- Overall verbal review, recommendation.
- Feedback from Panelist.
- Review will be utilized to analyze performance, discuss issues both positive and negative, and assess panelists for relevant to felony or specialty panels.

VIII. CRIMINAL COUNSEL AT FIRST APPEARANCE (CAFA)

a. CAFA Roles and Responsibilities

The Assigned Counsel Program is required by the New York State Office of Indigent Legal Services to provide counsel for all indigent clients at their first appearance. ACP discharges this responsibility through its Attorney of the Day (AOD) and Attorney on Call (AOC) program. Our office assigns AOD and AOC to all municipal courts in Erie County (except for Buffalo City Court), Superior Court Criminal Special Term, Parole Recognizance hearings and Adolescent Offender (AO) arraignments.

The AOD and AOC panels consist of attorneys who handle Criminal Court arraignments in the local court and in the superior courts as needed. The AOD appears on regularly scheduled court dates. The AOC appears -- often on short notice -- for custodial arraignments (and return on bench warrants) that occur outside regular court hours or on weekends/holidays.

The AOD/AOC Attorney is expected to make all such appearances, enter a plea of not guilty and make any appropriate arguments with respect to bail. Since they will not be the attorney assigned to represent the defendant in subsequent proceedings, they should not accept any discovery materials that may be tendered on the spot by the prosecutor. Instead, they should make a note of the attempted provisions of discovery and include that information with the paperwork which includes the AOD/AOC Client Information Sheet, accusatory instruments and NCIC Report.

Other than consenting to a dismissal or a parking ticket, the AOD or AOC **should not** counsel the client to enter a guilty plea to any offense at the first appearance.

A failure to appear for an arraignment is unacceptable. Aside from potentially causing clients to be detained for longer than necessary, it causes the ACP to be in violation of a contract with the NYS Office of Indigent Legal Services. An attorney failing to attend arraignments may be grounds for removal from the AOD/AOC Panel.

The AOD/AOC Attorney is responsible:

- To appear for all shifts to which they have been assigned.

- If AOC, to be available during all “on call” hours.
- To complete “AOD/AOC Client Case Info Form”
https://www.assigned.org/wp-content/uploads/2022/07/AOD.AOC_CASE.CLIENT.INFO_FINAL_1.pdf
- To provide client with an “Important Notice of Your Rights” form”
https://www.assigned.org/wp-content/uploads/2022/06/AOD.AOC_Client.Rights.FINAL_.pdf
- To answer calls from courts and ACP during their assigned shifts
- To communicate unavailability immediately to CAFA Coordinator Melissa Breidenstein (Melissa.Popple@assigned.org) or FDD Kevin Stadelmaier (kstadelmaier@assigned.org).
- To provide all paperwork to ACP either electronically (email a PDF scan) or in-person drop off no later than 24 hours after arraignment (unless QRF -- see below)

b. **CAFA Coverage Responsibilities**

COVERAGE RESPONSIBILITIES FOR “ATTORNEYS ON CALL” (AOC responsible for locating coverage within their region; ACP will assist if needed)

- The AOC Regions are:
 - Region A: Amherst, Town of Tonawanda, City of Tonawanda, Williamsville, Grand Island and Kenmore
 - Region B: Clarence, Town of Lancaster, Alden and Newstead
 - Region C: Cheektowaga, Depew and Village of Lancaster
 - Region D: Lackawanna, West Seneca, Blasdell, Elma, Town of Orchard Park, Village of Orchard Park and Marilla
 - Region E: Town of Hamburg, Village of Hamburg, Evans, Eden, Angola, Boston and North Collins
 - Region F: Aurora, Wales, Colden, Holland, Concord, Sardinia, Springville and Collins
 - Region G: Buffalo Adolescent Offender and NFTA Adolescent Offender

- An attorney scheduled as the “Attorney on Call (AOC)” in any region must be available for all arraignments which occur in that region during their assigned week(s). Please note that arraignments/ROWs may occur in the mornings, afternoons or in the evenings dependent upon Court hours of operation. AOC’s are required to know when the Courts in their regions have off-hours and to be available for calls during those hours.
- Although Courts have been advised to first contact the “attorney of record” on a “return on bench warrant” if that attorney is either unwilling or unable to appear, the AOC is obligated to appear for an “off hours” bench warrant return.
- Some regions have two attorneys assigned. Arraignments should be relatively evenly split between these two attorneys although attorneys should not unilaterally divide the weekly coverage. Instead, calls should be answered cooperatively each day of the assigned week.
- AOCs (not AOD) are assigned as Holiday coverage for all courts. AODs will not be assigned to any Court on a Holiday.
- In the event the AOC will be unavailable due to illness, conflicts, or other emergent circumstances, the AOC is responsible to find coverage from among the other attorneys assigned as AOC in your region.
- If an AOC require coverage, they are to seek it out as soon as they are aware of the conflict or unavailability.
- In those regions where two attorneys are assigned each week (Region A, D and Buffalo City), the assigned attorney should begin with a call to the other attorney assigned that week.
- Once located, please alert Melissa Breidenstein (Melissa.Popple@assigned.org) as to who will be covering your shift(s). We will then transfer the “on call number” to that attorney.
- If, after attempting to locate coverage, the AOC is unable to find same, they are to alert Melissa as soon as possible so that she can assist in finding coverage.
- Unless coverage has been assigned, it is unacceptable for an AOC to fail to attend a shift, or to advise the court of their unavailability.
- The AOC attorneys in each region are listed here: <https://www.assigned.org/criminal-courts/for-the-courts/aoc-calendar/>

COVERAGE RESPONSIBILITIES FOR THE ATTORNEYS OF THE DAY (if requested, ACP will assist in locating coverage)

- An attorney scheduled as the Attorney of the Day (AOD) in any court is to be available for arraignment coverage in that court on that given day.
- Although the majority of assignments are now assigned Pre-Arrestment, the AOD is responsible for all custodial arraignments, ROWs and unassigned walk-in arraignments which occur during their shift.
- In the event the AOD is unavailable due to illness, conflicts, or other emergent circumstances, the AOD can either personally locate coverage *OR* ACP can locate coverage for you.
- If the AOD locates coverage, then the AOD is to advise Melissa Breidenstein (melissa.popple@assigned.org) as to which attorney will cover the shift.
- If the AOD requires ACP to assist in locating coverage, the AOD is to contact Melissa Breidenstein upon awareness of the unavailability so that she can locate/assign coverage for that date/court.
- Unless coverage has been assigned, it is unacceptable for an AOD to fail to attend a shift, or to advise the court of their unavailability.

c. **Quick Reaction Force (QRF) Protocols**

On occasion, an AOD/AOC may arraign a client in municipal court who, due solely to the presence of two prior felony convictions and the lack of a Superior Court Judge, may be remanded without bail. For clients who fall under that specific set of circumstances, ACP has developed a QRF protocol to get these cases heard in Superior Court Criminal Special Term as early as the same day.

Policy and Eligibility:

1. Participation in the QRF is voluntary and will come with a premium payment. Participating attorneys will voucher at the felony assignment rate for the drafting, service and appearance on the bail applications in Superior Court Criminal Special Term, along with a \$50 per hour premium payment (\$125/hour).
2. Attorneys accepting QRF assignments agree that the bail motion will be filed as soon as soon as possible after accepting the assignment and said motion will be argued at the earliest possible time made available by the Criminal Special Term Judge. QRF Attorneys must make the drafting, service and appearance on these cases their highest priority once assignment is accepted. Failure to prepare, serve, and appear expeditiously may affect future QRF assignments.

3. QRF Attorneys will be contacted personally by phone, text or e-mail. Assignments must be accepted immediately, and in no event later than 30 minutes after contact is initiated.
4. All QRF attorneys must be familiar with how to draft, file, serve, schedule and argue a Superior Court Bail Application. If the Deputy for QA believes an attorney requires training in any, or all, of these procedures before being accepted onto the QRF, that training will be provided by ACP.
5. Continuity of representation is paramount. QRF attorneys will continue the representation of the client in the arraigning court until disposition. All QRF Panel members will be felony qualified.
6. AOD/AOCs who wish to participate in the QRF, and keep any QRF eligible file they arraign, may do so long as they meet the minimum required qualifications set by ACP and outlined above.
7. QRF attorneys will only be assigned cases from the lower courts where they have indicated a preference to take cases from to maintain continuity of counsel.
8. All AOD/AOC will be trained on the QRF notification process and be required to follow same on any applicable file they arraign regardless of their future representation on the file.

Procedure:

1. At arraignment, if a lower court Judge REMANDS a client because said client has two prior felony convictions and/or the lower court is not permitted to set bail for any other reason, one of the following MUST OCCUR:
 - A. So long as the AOC/AOD Attorney is a “QRF-Qualified” Panelist, the AOC/AOD may choose to keep the file for the purpose of filing the Superior Court bail motion and continued assignment to the case. In that event, the AOC/AOD will notify Director for QA Lori Hoffman lhoffman@assigned.org, Director for Litigation Support David Heraty dheraty@assigned.org, and AOC/AOD Supervisor Melissa Breidenstein Melissa.Popple@assigned.org of their intent to keep a file and act as QRF.
 - B. If the AOD/AOC is either not qualified as a QRF, the matter is a felony and the AOD/AOC Attorney is not felony qualified, or the AOD/AOC does not wish to engage as QRF, they must immediately notify Director for QA Lori Hoffman lhoffman@assigned.org, Deputy for Litigation Support David Heraty dheraty@assigned.org, and AOC/AOD Supervisor Melissa Breidenstein

Melissa.Popple@assigned.org of the need for a QRF Assignment. All paperwork associated with that case must be transmitted immediately.

2. Once a QRF Attorney has been established, said Attorney must, as soon as possible after accepting the assignment, engage in drafting, scheduling, service and appearance on the motion before the Superior Court Criminal Special Term Judge. This work must be given the highest priority.
3. Following the appearance in Special Term, the QRF Attorney shall contact both Director for QA Lori Hoffman (lhoffman@assigned.org) and Director for Litigation Support David Heraty (dheraty@assigned.org) to inform them of the result of the bail motion.
4. Once the matter is formally assigned in DD7, the QRF Attorney will log their time spent engaged in the QRF Process (Drafting, Filing/Serving and Appearance) under the “DD7 Expense” Tab for that client. The hours spent (kept in six-minute increments) should be multiplied by \$125 and placed in the “Amount” Box. The “Comment” Box should note “QRF Bail Motion.” Thereafter, all paperwork associated with the QRF process shall be uploaded to the “Documents” Tab.

Where you believe a client meets the conditions above, immediately following arraignment please email Deputy for QA Lori Hoffman (lhoffman@assigned.org) and Deputy for Appellate a Litigation Support David Heraty (dheraty@assigned.org). The email should include a scan of the client’s accusatory paperwork and NCIC report. ACP will thereafter endeavor to schedule the matter for Superior Court bail motion ASAP.

IX. ASSIGNMENT PROCESS

1. Standard Assignments

- a. The Executive Director/Chief Defender shall oversee the rotation and coordination of panel attorneys and implement a fair process for assignments based on attorney level of experience in relation to the nature and complexity of the case, caseload and demonstrated quality of performance in representing ACP clients.
- b. The selection of assigned counsel for a case is made by or at the direction of the ED/CD or their designee (e.g., Assignment Supervisor, the FDD, the Deputy for QA, the Second Deputy – Family Court) and is based, as noted above, on the experience and ability of counsel in relation to the nature and complexity of the case.
- c. Judges may make assignments of ACP panel attorneys on a rotating basis, utilizing the periodic lists of ACP attorneys approved and provided by the ACP.
- d. In Criminal matters, absent exceptional circumstances, an attorney can receive no more than five (5) new case assignments per day. In Family Court matters, absent exceptional circumstances, an attorney can receive no more than no more than

three (3) new case assignments per day. Caseloads must be verified by ACP *via* the Court Report System. No ACP attorneys shall have any adverse action taken against them for rejection of cases due to sound reasons involving their own personal or professional circumstances.

- e. If an attorney is currently representing a client on a pending matter or has recently represented the client on a concluded matter, and the client “picks up” a new case, the same attorney will be assigned to represent the client on the new matter. If a different attorney has been inadvertently assigned, he/she should promptly advise the ACP of the engagement of the other attorney so that the ACP can decide whether to re-assign the new case to the original lawyer or allow it to remain with the new attorney. Whenever possible, and if in the client’s best interest, decisions will be made to promote attorney/client continuity of representation.
- f. In the event of a declaration of delinquency/violation of probation, every effort will be made to reassign the same attorney who represented the client on the underlying matter. The same will be true for violations of conditional discharge, revocations of an ACD and any post-judgment proceedings. (e.g., non-payment of restitution).
- g. In the event that there is a client with an outstanding bench warrant (whose case was necessarily closed upon the warrant being issued) who contacts our office for representation, we will make every attempt to re-assign the attorney who had previously represented the client. That attorney will be contacted for the purpose of re-assignment and for the client’s return to court.
- h. Prior to the start of each Superior Court term, our office sends to the Superior Court Judges a list of attorneys who may be assigned to cases from the bench. These are typically conflict cases where the prior attorney has been relieved, or those indicted matters that had not previously been commenced in lower court. The lists are populated on a rotating basis. It is expected that if a Superior Court Judge selects a panel attorney from the list for an assignment, then the panel attorney will accept that said assignment. **Our office cannot negate or change a Superior Court Bench assignment, because that assignment constitutes an Order from the Court. If a panel attorney receives a bench assignment, and intends to decline it, then the panel attorney must contact the assigning court and request that the court assign another attorney. Please do not contact our office seeking to have the case re-assigned. Only the court may re-assign under these circumstances.**
- i. All cases assigned by ACP shall come to you through the DD7 notification system. You will be assigned cases based on the above criteria. Please either reject or accept a case as soon as possible. An assignment not accepted within twenty-four (24) hours will be assigned to another panel attorney. There is no means for the original attorney to submit a voucher for their work on the matter if they did not accept the case in DD7. A mentee attorney shall check with their

mentor before accepting a case, where the mentor would be required to be present for arraignment.

- j. Assignments will only be made consistent with the panel level. An attorney who receives an assignment above their level shall reject the assignment and contact our assignment office immediately.
- k. A cases may be assigned both Pre-Arraignment and Post Arraignment (where the arraignment was done by AOD, AOC or by the Legal Aid Bureau of Buffalo in Buffalo City Court.)
- l. It is ACP policy to foster attorney/client continuity wherever possible. As such, ACP will endeavor to assign a “new” client case to the attorney who previously or currently represents the client on other matters.
- m. An attorney who receives a “Pre-Arraignment Assignment” shall, within twenty-four (24) hours of the assignment, contact the client for the purpose of introduction, communication about their case and completion of the Confidential Report of Financial Status (CRFS) and Pre-Arraignment Case/Client Information Form. The CRFS together with the Pre-Arraignment Client Information Form must be submitted as soon as possible after arraignment; no later than twenty-four (24) hours after arraignment.

CRFS: https://www.assigned.org/wp-content/uploads/2022/06/CRFS.Revised.FINAL_.pdf

Pre-Arraignment Client Information Form: https://www.assigned.org/wp-content/uploads/2022/07/PREARRAIGNMENT.CASE_.CLIENT.INFO_.FINAL_.pdf

- n. An attorney who is assigned from the bench or subsequent to arraignment, shall first contact the client for the purpose of introduction, communication about their case and completion of Confidential Report of Financial Status (CRFS) and the Non-AOC/AOD, Non-Pre-arraignment Assignment Case/Client Information Form. These documents must be submitted as soon as possible after assignment.

Non-AOC/AOD, Non-Pre-arraignment Assignment Client/Case Information Form: https://www.assigned.org/wp-content/uploads/2022/07/POSTARRAIGNMENT.CASE_.CLIENT.INFO_.pdf

- o. All Homicides and A/B Violent Felony matters will automatically be assigned a co-counsel. The obligation of co-counsel is the same as primary counsel; to zealously represent the defendant. Both attorneys should confer to devise a strategy of representation that allows the vast work associated with these serious matters to be divided equally. A less experienced attorney may sometimes be

placed as co-counsel with a more experienced attorney to enhance the development of the panel.

- p. If a co-counsel is not initially assigned, a panel attorney can make a requests for a co-counsel assignment directly to the FDD through DD7 notes or *via* e-mail. Requests will be reviewed and granted on a case-by-case basis.
- q. Caseloads shall be reviewed on a periodic basis to ensure that compliance with New York State Office of Indigent Legal Services Caseload Standards.

2. **Violent Felony Co-Counsel Assignments**

- Open to attorneys on the Homicide, Major Violent Felony and Felony Panels.
- Where ACP assigns on a Homicide or “B” Violent Felony and above, two attorneys shall be immediately and automatically assigned to the file.
- “A” and “B” Non-Violent felonies will not automatically receive an assignment.
- Both Attorneys shall be permitted to bill their work at the Felony rate.
- For Homicide matters, at least one of the attorneys must be on the Homicide Panel. The other may be selected from the Homicide or Major Violent Felony Panel.
- For “A” and “B” Non-Homicide Violent Felonies, at least one attorney must be selected from the Homicide or Major Violent Felony Panel while the other attorney may be a participant on the Felony Panel.
- Attorneys on the Misdemeanor Panel are ineligible for the “Violent Felony Co-Counsel Program” except with express permission from the FDD under exceptional circumstances.
- Application may be made for co-counsel on matters below “B” Violent. Requests will be considered on a case-by-case basis and should be sent to the FDD and Deputy for QA.
- Requests for a 3rd Attorney on complex cases will be assessed on a case-by-case basis and should be sent to FDD and Deputy for QA.
- Attorneys in “Co-Counsel” situations shall split the duties nearly equally; but ultimate split of responsibility shall be decided upon by representing counsel.
- While opportunities exist for learning and enrichment, the primary goal of this program is to ensure fulsome defense by mitigating capacity issues.

3. **Second Chair Program Assignments**

- Open to Misdemeanor Panel Attorneys.
- To promote learning and mentorship, Misdemeanor panel attorneys will team with qualified Felony panel attorneys to represent on felony level cases.
- As this is primarily an educational experience, Second Chair opportunities are paid at \$75/hour up to a cap of \$1,500.00 per case.
- At least one “Second Chair” felony assignment is required before promotion to the Felony Panel.
- No more than two (2) Second Chair opportunities will be offered to a Misdemeanor panelist in any one calendar year.
- All Misdemeanor panelists will be given the opportunity to apply for a “Second Chair” opportunity.
- Second Chair opportunities will primarily be offered on “C” Violent Felony matters and below and assignments and will be made by the Deputy for QA.
- Where possible, Second Chair assignments shall be made between Mentors and Mentees.
- Second Chair Attorneys shall be given substantial work to complete on the file; including client contact, motion drafting and trial preparation.
- While the “lead” attorney maintains responsible for the file, consideration should be given to the opportunities for learning that exist.
- The Deputy for QA and the FDD will meet with both attorneys at the conclusion of the case to debrief.

X. **ATTORNEY SUPPORT AND ACP RESOURCES**

a. Case Conferencing

The ACP provides guidance and support to criminal panel attorneys by making the ACP attorney-leaders (FDD, Deputy for QA, Deputy for Litigation Support/Appeals, Deputy for Forensic Practice, and Deputy for Training/CLE) available upon request for group and/or individual case conferences as well as doing a mock trial of your case.

Information about each of these persons is on our website at <https://www.assigned.org/meet-our-staff/>.

Case conferences are designed to assist a panel attorney with any issues arising in their representation of their client, such as defense theories and available motion practice. The

one-on-one case conference is a collaborative effort designed to assist with issue spotting and to gain multiple perspectives on the same set of facts. The Criminal Division also holds two semimonthly group case conference where panel attorneys are encouraged to connect with their colleagues and discuss trending legal issues and case-specific issues (2nd Thursday at 8:30; 3rd Thursday at 12:30). The semimonthly case conferences are designed to foster relationships and the exchange of practice pointers.

b. Independent Experts: <https://www.assigned.org/expert-panels/>

Experts are now, more than ever before, a vital part of criminal defense practice. ACP can provide our criminal and family court panel attorneys with independent experts to assist with getting the best possible outcome for their client. ACP has access to experts in a wide variety of fields including DNA analysis, psychology, pharmacology, serology, crime scene analysis, accident reconstruction, arson investigation, ballistics, and more.

The panel attorney may choose from the experts listed or request an alternative expert. The Deputy of the Forensic Practice Group will help facilitate getting your expert paid from ILS funds. The ACP processes expert invoices upon receipt (*not* at the close of the case) and payment will issue at the time of month-end processing (the first Friday of the month.) Here is a link to the Expert Panel: <https://www.assigned.org/expert-panels/> . To request your expert and assure payment, please take the following steps:

- Once you have received names, contact the expert to discuss your case.
- Once the expert agrees to take your case, print the “Scope of Work and Estimated Costs” form from DD7 “Documents” and send to the expert to be completed and returned electronically. This document should be e-mailed to eileen.gallagher@assigned.org and apoulos@assigned.org. This will provide us with a description of the services and the estimated costs/hours involved, which of course may be less or greater than the final costs. <https://www.assigned.org/wp-content/uploads/2022/06/Expert-Investigator-Estimate-of-costs-Fillable.pdf>
- Attorney requests “Pre-Authorization” from DD7. On your specific case, navigate to the “EXPENSES” Tab. On the top of that tab, click “Pre-Auth.” Select the Expense Type and The Service Provider. If your provider is not listed, please contact Amber Poulos so it can be entered into the system. Please list the estimated amount your expert advises the services will cost. Again, the cost ultimately may be more or less than this amount.
- The “Pre-Authorization” will be reviewed and approved by ACP Staff (Eileen Gallagher/Amber Poulos and Kevin Stadelmaier)
- Approval. Once pre-authorization has been granted, several documents in DD7 will be populated with the expert and case information.

A. “Expert Expense Pre-Authorization Approval Letter”

B. “Expert Voucher” This ACP voucher form may be used OR the expert may utilize their own form provided all costs billed in .1 increments, the work is dated and specifically outlined.

C. “Expert/Investigator Cost Verification” To be used at the close of the case.

- End of the Case. At the conclusion of the case, submit to the expert electronically the “Expert/Investigator Costs Verification.” Have the expert sign and return that document to you together with their final itemized bill or ACP voucher. Sign and e-mail the verification and final voucher/bill to eileen.gallagher@assigned.org.
- Final Review. ACP will check to ensure that the “Scope of Work and Estimated Costs” document is in our system, the bill/voucher complies with hours/specificity requirements and that the costs are not grossly out of line with the initial estimates. If everything aligns the bill will be approved and paid. If there are questions, you will be contacted.

c. Mock Trials/Hearings/Appearances

ACP Deputies and Mentor staff are available to conduct mock trials, hearings and other appearances with sufficient notice. We can arrange mock jury selections, cross examinations on specific issues and other interactive scenarios designed to improve your performance. Please contact one of our Deputies to schedule a time to review your needs in this regard.

d. On Site-Resources

The ACP’s training room has desktop computers available to panel attorneys with free access to WESTLAW for legal research. Free copy machines are available to duplicate documents, records and other reproducible discovery materials to send to your client and experts. Attorneys have access to practice treatises which are available for check-out or copying of relevant chapters (<https://www.assigned.org/research-materials/>)

ACP also has a state-of-the-art training room for in-person presentations, ZOOM presentations and case conferences with counsel. This space can also readily be used as a mock courtroom where a panel attorney can work on trial skills from jury selection to closing argument.

e. Free/Reduced Cost Continuing Legal Education Credits

Whether in-person, by ZOOM or hybrid, criminal and Family Court panel attorneys should make every effort to attend (or view later by video recording) every CLE program that the ACP has to offer -- including those put on by outside presenters in cooperation with the ACP. These programs provide counsel with both the substantive and procedural fundamentals of criminal defense work and Family Law practice and keep counsel up to

date on the latest developments in the law. By staying current, counsel can handle every assigned case just as they would a retained case.

Each CLE will give you an advantage in the courtroom and prepare you to advocate from a foundation of knowledge and a position of strength, and earn you the respect of the court and the confidence of your client. These CLE will provide tools and resources for a thorough investigation and critical evaluation of your case, provide information with respect to the available choices, and enable you to advise your client of consequences (direct and collateral) so the client can make an informed decision.

Additionally, the ACP welcomes panel attorneys to request topics for future CLE and workshops. Panel Attorneys who prepare and present topics for CLE are entitled to an honorarium currently set at a flat rate of five hundred (\$500) dollars.

- f. [Access to the LEAD \(Liberating and Empowering All Defendants\) Social Work Program.](https://www.assigned.org/criminal-courts/community-resources/leadprogram/)

The ACP LEAD Program has a growing staff of professionally licensed social workers (Licensed Master Social Worker, or LMSW) who can provide comprehensive and individualized assessments to defendants. Through these assessments, the LMSW can provide expertise on outside services and referrals to meet the needs of the clients we serve. Our LEAD program demonstrates a holistic and optimistic approach to defendants. We believe in looking at the underlying circumstances that contribute to the client's contact with the criminal justice system. Our program takes pride in leading a client to a successful future by presenting alternatives to incarceration, presenting a rationale to decrease the term of incarceration, and to decrease recidivism in Erie County.

An LMSW can help you get a fuller picture of your client's life and circumstances. The goal is to help you communicate more clearly and advocate creatively for favorable outcomes that allow him/her to address their needs, improve their situation and stay out of jail. The ACP social workers are trained in conducting trauma-informed motivational interviews of clients to encourage them to communicate openly and honestly so that counsel can identify relevant factors that can guide the representation and enable counsel to advocate for an appropriate disposition that is tailored to the client's needs.

Still wondering "*What do I need a social worker for?*" The answer: to better understand the underlying basis (e.g., childhood trauma, learning disability, drug or alcohol addiction) of your client's conduct, to connect the client with appropriate services, and to give the judge a good reason(s) -- in the event of a conviction -- to impose a rehabilitative/restorative sentence rather than a punitive one.

The ACP has independent LMSWs available in the event of a conflict of interest arising from multi-defendant matters. To have a LEAD social worker assigned, contact LEAD Program Director Amy Trabert, LMSW, through the DD7 Notes portal or e-mail at ATrabert@assigned.org.

g. Family Court Social Worker

The Family Court Social Worker is a LMSW (Licensed Master Social Worker) who works directly with the Family Court panel attorneys to coordinate services for Family Court clients in Article 10 cases (allegations of abuse/neglect.) The LMSW works directly with clients at the direction of the Panel Attorney in an interdisciplinary fashion. This includes assisting the client in the areas of mental health and substance abuse treatment, housing, transportation, or any other issues which may arise over the course of the representation. The goal is always to achieve the best possible disposition of the case for the client. The LMSW may, at the direction of the Second Deputy – Family Court, be assigned to other Family Court matters.

The ACP also has independent contractor social workers who provide a variety of services for panel attorneys, such as home studies. <https://www.assigned.org/staff/holly-edwards-lmsw/> To have a family social worker assigned contact Family Court Supervising Social Worker Holly Edwards, LMSW, through the DD7 Notes Portal or by e-mail at HEdwards@assigned.org.

h. Mitigation Specialist

The ACP Sentence Mitigation Specialist is an attorney who has the ability and resources to take an in-depth dive into the client’s background and case circumstances and to utilize that information to submit a detailed memorandum aimed at giving the Court a reason(s) to impose the least restrictive and most restorative sentence. In contrast to the usual practice associated with the Probation Department’s Pre-Sentence Report (PSR), a defense mitigation memorandum accentuates the positive: underscoring favorable facts and providing a more complete, client-centric picture to present context to the client’s conduct.

The Mitigation Specialist can also gather relevant records (e.g., education, employment, mental health, military) that can serve to support why a rehabilitative/restorative sentence would be a better outcome than a punitive sentence, and to provide the assigned attorney with ammunition to advocate for a more suitable plea offer.

<https://www.assigned.org/staff/tara-evans/>

To request a Mitigation Specialist contact Tara Evans, Esq. through the DD7 Notes Portal or by e-mail at TEvans@assigned.org.

i. Interpreters

The ACP provides foreign language services to our Criminal and Family Court panel attorneys. The ACP understands that it is imperative that our panel attorneys have access to interpretation services to maintain regular communication with their non-English proficient clients. The ACP can help panel attorneys line up an interpreter who is fluent in understanding and speaking the client’s native language so that counsel and client can communicate effectively toward a successful resolution of the case, including avoidance or mitigation of adverse immigration consequences.

A panel attorney may request an interpreter through DD7 in the same manner for an expert, contract social worker or investigator: go to the pre-auth tab in the case and make a request. Additionally, the panel member can use the Language Line (<https://www.languageline.com/s/PersonalInterpreter>). If a panel attorney uses Language Line, they are to send an email to the Program's Katie Hartung (khartung@assigned.org) to advise that the Language Line was used, along with the date and case name; this required so the Program can reconcile the Language Line billing invoice.

j WNYRIAC-WNY Regional Immigration Assistance Center

<https://legalaidbuffalo.org/regional-immigration-assistance-center/>

The ACP panel attorneys have a close working relationship with the WNYRIAC which is located within the Legal Aid Bureau of Buffalo (LABB.) The WNYRIAC is funded by the New York State Office of Indigent Legal Services to assist mandated representatives in their representation of noncitizens accused of crimes or facing findings in Family Court. This follows the U.S. Supreme Court ruling in *Padilla v. Kentucky*, 559 U.S. 356 (2010), which requires criminal defense attorneys to specifically advise noncitizen clients as to the potential immigration consequences of a criminal conviction before taking a plea. The Center was established so that their attorneys can share their knowledge of immigration law with public defenders and 18b counsel to help counsel determine the immigration consequences of any particular case you may be handling. There is no fee for their services.

The WNYRIAC will provide individual case assistance, training, consultations, and support to appointed criminal defense counsel and Family Court attorneys in their representation of non-citizen clients. The RIAC can also assist with the analysis and filing of a NYCPL 440 motion for ineffective assistance of counsel if a client was not properly informed of the immigration consequences of a plea. These services are free to all counsel appointed to represent indigent non-citizen clients in Criminal and Family Court proceedings.

Sophie Feal, Esq., a public defender who practiced immigration law for almost 30 years before joining LABB, is the WNYRIAC Supervising Attorney. Sophie is available for consultations on the immigration consequences of criminal convictions and family court proceedings affecting parental rights.

These consultations are designed to allow the panel attorney to adequately advise a client who may experience a negative collateral consequence, such as deportation or inadmissibility because of a conviction, or because of a disposition in a civil matter (moral turpitude). **All panel attorneys are highly encouraged to use a WNYRIAC consult on each case involving a client who was not born in the United States.**

How to request a RIAC consult: <https://legalaidbuffalo.org/regional-immigration-assistance-center/>

1. Email Sophie Feal, Esq., at sfeal@legalaidbuffalo.org; or call 716-853-9553 x269.

2. Have the charges and plea offers, available for the RIAC.

k. ACP Website Resources: <https://www.assigned.org/>

Our criminal panel attorneys will have access to several resources on the ACP website. Those resources include calendar of events, DD7 training, a list of available research materials, attorney forms, law monographs drafted by the Hon. Tim Franczyk, J.C.C. (ret.) a listing of independent experts available to the panel, criminal investigation services, mentorship program information, CLE recordings and training material, NYPTI-Crime time (for sentencing and more), and your panel recertification short form.

Our family law panel attorneys have access to several resources on the ACP website. Those resources include calendar of events, DD7 training, a motions and form bank, CLE and training materials, and your panel recertification short form.

l. Criminal Investigative Unit

<https://www.assigned.org/criminal-courts/attorney-resources/criminal-investigation-unit/>

All panel attorneys are encouraged to use an ACP Criminal Investigator when they deem it appropriate after review of their discovery material. The ACP Criminal Investigators are available to provide the following assistance at the direction of the assigned attorney:

1. Service of subpoenas.
2. Service of evidence preservation letters.
3. Service of FOIL requests.
4. Locate clients and witnesses*
5. Conduct interviews.
6. Obtain written statements.
7. Document crime scenes and other relevant places by field sketch, diagrams, and photography, and obtain detailed information by measurements and Matterport 3D scans as well as identify and collect relevant evidence.

The ACP Criminal Investigator Unit consists of highly experienced criminal investigators who are retired from various areas of law enforcement, including the New York State Police, suburban police agencies, and the City of Buffalo. The investigators possess a variety of state and federal task force experience in the areas of drug trafficking, gang activity, fires, vehicle crashes, homicide, robbery, and burglary. They can collaborate and share their knowledge and resources to assist an attorney with insights on how to effectively challenge investigations and law enforcement conduct on their case.

All ACP felony and homicide matters automatically have an investigator assigned as soon as the panel attorney has accepted the case assignment. The investigator's name and assignment date can be found in the case team box on the DD7 case page and under the "People" tab. Upon receipt of the assignment, the investigator will review the charges and discovery material uploaded to the case file and contact the assigned attorney for direction. **As a rule, investigators will not take investigative action absent a request**

by the assigned attorney or an agreement with the assigned attorney as to the steps that should be taken.

Investigators are also trained to interpret data reports and can assist with review of video evidence and other discovery materials. Investigators work closely in appropriate cases with the ACP LEAD team of social workers as well as with the forensic specialist to identify and decipher forensic evidence for review by expert witnesses. The Unit can also assist with obtaining Cellebrite data collection from cell phones, tablets, and other electronics.

**On occasion, our panelists lose contact with their clients or essential witnesses. Often, they seek use of our investigative team to locate them. The tools we utilize to undertake client location differ dependent upon what status the client's case is in, as well as how receptive the client might be to our contact. When asking for this service, please be as clear as possible with our investigators as to what exactly you need the contact for. This is especially true if the contact is of critical need (i.e. an imminent indictment with a favorable offer on the table. Additionally, it is critical to inform us whether the client's case is in "bench warrant" status. It is not the policy to seek clients/witnesses using "in person contact techniques" where an individual is out on a bench warrant due to safety concerns except under extraordinary circumstances which can approved by the ED/CD or FDD.*

To obtain an investigator contact Supervising Investigator David Kubiak through the DD7 Notes portal or by e-mail at DKubiak@assigned.org.

m. Legal Research and Writing Assistance

Our Deputy for Appellate and Litigation support is available to provide legal research and writing support on a wide variety of topics concerning your practice. ACP maintains a panel of legal writers who can be engaged to provide briefs and other legal writing to support your practice.

If you require assistance in this regard, or you wish to join our panel of legal writers, contact David Heraty, Esq. through the DD7 Notes portal or dheraty@assigned.org

n. ACP Equipment

The Erie Counsel Assigned Counsel program has various items of equipment that are available for use by our panel attorneys. These items include laptops, an ELMO overhead projector, flash/hard drives and other items.

These items are available for use on a first come/first served basis. A full inventory of equipment for use can be provided upon request.

In order to utilize these items, please adhere to the following procedure:

- When an item of equipment is needed, please alert Marisa Giamberdino (mgiamberdino@assigned.org) and David Kubiak in DD7 Notes requesting use of

equipment. Please be as detailed as possible as to the equipment requested and the date(s) same is needed.

- Equipment requests, especially for laptops and the ELMO, should be made as soon as possible after you have received the date for the hearing or trial for which they are needed.
- If technical support for set-up or use is needed during hearings/trial, it can be provided. However, please make your requests for support at the same time as requests for equipment are made and communicate any schedule changes as soon as they are known.
- A sign-in/sign out sheet shall be utilized at the time the equipment is taken from/returned to the ACP offices. You will also read and sign the “Acknowledgement of Receipt of Erie County Assigned Counsel Property form” outlining your use of the equipment while it is signed out to you.
- Once equipment leaves the ACP main office, attorneys become responsible for the care and safekeeping of said equipment unless a designated ACP employee agrees to take custody of same. Costs for damage/loss may be assessed to attorneys at the discretion of ACP management.
- Attorneys may keep ACP equipment at their home or office while signed out, but it may not be left in any courtroom or location outside an attorney’s home or office.

XI. COMPENSATION AND BILLING

- a. Attorneys performing work for assigned clients are to be compensated at the rates of pay specified in County Law 18-b.
- b. Client’s must meet eligibility requirements promulgated by the New York State Office of Indigent Legal Services. <https://www.ils.ny.gov/node/88/eligibility-standards-related-documents-and-resources>
- c. Panel attorneys are required to collect and submit financial information contained in the Confidential Report of Financial Status (CRFS). Failure to timely obtain and submit this information may be grounds for denial of work performed on behalf of that client if the client is later found ineligible.
- d. No voucher shall be paid unless the CRFS and all other required information (Client Information Sheets, case closing information) has been submitted and reviewed.
- e. Attorneys are expected to document their work, providing detail and particularity, and accurately and honestly stating the amount of time (in hours or increments thereof) spent on any given task. Information on time spent must be logged into DD7.

- f. At the close of the case, the assigned attorney must indicate the disposition of the case (e.g., dismissal, acquittal, guilty verdict specifying the charge[s]), guilty plea (stating whether to the charge or to a lesser offense) and the sentence imposed. Any relevant explanation for the disposition should also be provided. Attorneys must also provide information as to the “activities” undertaken during their representation (i.e. hearings, special proceedings, motions, etc.)
- g. When the case is completed, and counsel has done everything to conclude the representation (including advising a convicted client with respect to his/her appeal rights and assisting in the timely filing of a notice of appeal and proceeding as a poor person), counsel should promptly submit his/her voucher in DD7 for review by the ACP and the court.
- h. If the ED/CD has any questions about, or detects any discrepancies in, a submitted voucher, counsel may be asked to answer any such questions or explain any such discrepancies before payment is approved. If the explanation is unsatisfactory, payment for that portion of the voucher will be denied.
- i. In any case where the hours spent working on a case exceed the statutory limits (\$4,400 [felonies/Family Court; \$2,400 misdemeanors/violations), counsel must submit to the Court a sworn affirmation setting forth the number of excess hours expended, and the nature of work performed in that time frame. Counsel should also explain why the additional work and time were required to represent the client properly and completely. Vouchers exceeding these limits will not be paid until a signed Order has been uploaded to DD7.
- j. Attorneys are limited to billing for actual and reasonable time for legal work performed.
- k. Attorneys shall be reasonably compensated for the actual work performed in service to assigned clients. Attorneys may bill for:
 - In-court time spent at/in court facilities including time spent in the presence of the judge, whether in the courtroom or in chambers.
 - For time traveling to correctional facilities to visit with clients.
 - For time spent meeting with clients and/or their family.
 - For time spent meeting with/preparing witnesses.
 - Time spent in conferences with opposing counsel and/or the client.
 - Time spent in the courtroom waiting for the judge to appear.
 - Time spent waiting for a jury verdict so long as the Judge has not ended deliberations on any given day.

- All other time spent representing a client, including time spent at court facilities for purposes other than appearing before the judge. (e.g., reviewing the file).
 - For representing clients in post-disposition matters including assisting the client in filing a notice of appeal and applying for poor-person relief.
 - For out-of-court time spent reviewing the accusatory instrument and all discovery (including documents, audio tapes, video tapes, police body cams and any other discovery).
 - For time spent writing motions, post-hearing memoranda of law, motions *in limine* and any other relevant motions.
 - For time spent in conference about the case (whether individual or group) with ACP deputies.
 - For time spent preparing and reviewing correspondence.
 - For time spent retaining and preparing experts.
 - For time spent preparing for motions and trial.
 - For time spent preparing mitigation and sentencing memoranda.
 - For time spent preparing vouchers to be submitted for payment.
- l. Time spent in court appearances on more than one matter or in representing multiple clients must be apportioned such that the time billed for each case/client reflects the actual amount of time spent on that client's case.
 - m. Vouchers must be completed and submitted on all cases where payment is requested. Vouchers should be submitted within thirty (30) days of case completion. Any voucher submitted more than six (6) months following completion of a matter to disposition shall be accompanied by a note in DD7 explaining the nature of the delayed voucher. After review, ACP management may ask for additional explanation or documentation before processing of such a voucher.
 - n. Any voucher submitted more than eighteen (18) months following completion of a matter to disposition shall be deemed abandoned and shall not be paid.
 - o. Denial of payment of vouchers (or portions thereof) may be appealed directly to the Executive Director/Chief Defender. The Executive Director/Chief Defender may request documentation in support of the appeal which the assigned attorney must produce.

- p. Double billing is never allowed. For example, if counsel spends two hours in court on two different cases, counsel must split the billing for the two vouchers submitted. The total number of hours billed for that in that court should equal two (2) hours, no matter how it is broken down between each client's case.
- q. **FALSIFICATION OF VOUCHERS IN TERMS OF WORK PERFORMED OR HOURS EXPENDED IS STRICTLY PROHIBITED. ANY ACP ATTORNEY WHO KNOWINGLY SUBMITS A VOUCHER CONTAINING FALSE INFORMATION WITH RESPECT TO THE WORK PERFORMED OR TIME EXPENDED WILL BE SUBJECT TO APPROPRIATE ACTION INCLUDING DENIAL OF PAYMENT, SUSPENSION/REMOVAL FROM THE PANEL AND POSSIBLE REFERRAL TO THE ATTORNEY GRIEVANCE COMMITTEE OR OTHER APPROPRIATE AUTHORITY.**

XII. COMPLAINT REVIEW PROCESS

The rules for handling complaints against ACP attorneys have been adopted by the ACP Board of Directors upon the understanding that membership as an ACP attorney is a privilege and not a right.

The policy of the ACP Board of Directors is:

1. All complaints against a panel attorney shall be reviewed by the ED/CD or their designee. If, after review of the complaint, the ED/CD determines that the alleged conduct underlying the complaint is consistent with ACP rules, standards and/or policies, they may dismiss the complaint without further inquiry/investigation. If further action is required, the ED/CD shall attempt to resolve the matter by problem solving with the panel attorney.
2. The ED/CD may suspend any panel attorney for a violation of ACP rules, standards, or procedures, for professional misconduct or other misconduct affecting counsel's ability to represent clients properly and effectively. A suspended attorney may be referred by the ED/CD to the ACP Board for further investigation or inquiry in accordance with these rules.
3. In the case of a suspension over three (3) months, the attorney may request a review by the Board. Such request must be made in writing to the ED/CD or President of the Board. <https://www.assigned.org/board-of-directors/>
4. An attorney who has been suspended is ineligible to accept or receive assignments during the period of suspension. During such period, the suspended attorney's cases will be assigned to a different lawyer who is qualified to handle such matters.
5. If an attorney is suspended from one or more panels, and the matter is referred to the Board for further review, then the Board, or an appropriate representative committee, shall meet in a timely manner to consider the matter.

6. When a matter is referred to the Board, the ED/CD shall inform the attorney of the substance of the complaint and provide him/her with a copy of these rules. The ED/CD will invite the attorney to submit a written response which will be forwarded to the Board.
7. When a complaint is referred to the Board, the Board may, if necessary, communicate with the complainant, the panel member involved, the ED/CD and anyone else who may have relevant information. The Board may also review any prior complaints made against the panel attorney. At the request of the panel attorney or ED/CD, the attorney may appear before the Board to address the allegations of the complaint.
8. At any such appearance, the following rules apply:
 - a. The appearance will be informal.
 - b. The ED/CD may present proof in support of their action/recommendation. The Panel Attorney has the right to be heard and may present evidence in his/her own behalf. The formal Rules of Evidence shall not apply.
 - c. Failure of the attorney to appear at any such requested appearance or to answer any relevant inquiries or to provide any requested information, documents or other materials under counsel's control shall be construed against the attorney.
9. After consideration of the relevant evidence, the Board may take one or more of the following actions that are consistent with each other:
 - a. Dismissal of the complaint and reinstatement of the attorney.
 - b. Issue a letter of counselling and reinstatement of the attorney.
 - c. Issue a written admonition with reinstatement of the attorney.
 - d. Continued suspension for a definite period not to exceed two years, or if already suspended, continuation of the suspension not more than two years from the date of initial suspension. Conditions may be imposed upon counsel's restoration to the Panel.
 - e. Removal from the Panel.
 - f. Recommendation for the substitution of the Panel Attorney on some or all the cases to which he/she is currently assigned.
 - g. Imposition of conditions upon the attorney's continuation on any or all the panels or upon retention of case assignments.
 - h. Any other appropriate action.
10. The Board shall promptly notify the Panel Attorney in writing of its decision and action taken. If such action includes removal or suspension from one or more panels, or from the ACP entirely, or involves imposition of conditions or substitution of counsel, the Board shall notify the attorney of the length of any suspension, the terms, and conditions of restoration, if any, the cases, or types of cases on which counsel will be replaced and any other conditions imposed. The determination of the Board is final.

11. No complaints, papers or other communications relating to any disciplinary matters referred to the ED/CD shall be disclosed except as necessary.

XIII. ACP'S RIGHT TO REFUSE REPRESENTATION

All ACP clients are entitled to be treated with dignity, compassion, and respect. Issues of poverty, substance abuse and mental illness can give rise to contentious lawyer-client relationships which can sometimes break down, necessitating the assignment of new counsel.

However, if a client has harassed, threatened and or intimidated three (3) attorneys (whether in-person or by written, telephonic or electronic communication) who have been forced to request removal on account of fear for their professional well-being or personal safety, then the ACP policy is to deny a further appointment of counsel.

When this occurs, such client will be informed in writing or by email that no further ACP representation will be forthcoming and that he/she must either retain counsel or represent themselves. Should the person decide to proceed *pro se*, the ACP may assign an attorney whose sole responsibility will be to serve in an advisory capacity, if necessary, from a safe distance.

EFFECTIVE DATE / AMENDMENTS TO THE RULES

These Rules are effective as of February 14th, 2023, and may be amended from time to time by the ACP. Panel attorneys shall be notified in writing of any such amendments.

ILS STANDARDS FOR CRIMINAL REPRESENTATION:

<https://www.ils.ny.gov/files/ACP%20Standards%20with%20Commentary%20070119.pdf>

ILS STANDARDS FOR FAMILY COURT REPRESENTATION:

<https://www.ils.ny.gov/files/Parental%20Representation%20Standards%20Final%20110615.pdf>

ILS STANDARDS FOR APPELLATE REPRESENTATION:

<https://www.ils.ny.gov/files/Appellate%20Standards%20Final%20010515.pdf>

2021 NYSBA STANDARDS FOR REPRESENTATION:

https://nysba.org/app/uploads/2020/02/Standards-for-Quality-Mandated-Rep_2021.pdf