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

Dba

ERIE COUNTY BAR ASSOCIATION'S ASSIGNED COUNSEL PROGRAM

PANEL ATTORNEY HANDBOOK

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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 sets policy for the ACP. The Board appoints the ACP Executive Director/Chief Defender to carry out its policies, manage operations, and may establish policies to support implementation of ILS standards.

ACP LEADERSHIP AND ADMINISTRATIVE STAFF

Board of Directors - https://www.assigned.org/board-of-directors/

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Paris Adams, Office Assistant

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.

FIRST DEPUTY DEFENDER - CRIMINAL DIVISION

The First Deputy Defender (FDD) is responsible for supervising and working with the ACP Criminal Division Deputies, 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 for training and mentoring new attorneys who enter the Family Court Panel. They act as the principal contact between the ACP and the Family Court Judges and Administration. The Second Deputy supervises the Social Work Program Director, deputy(ies), paralegal(s) and administrative assistant; as well as the Family Court CLE program, and also 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 Criminal 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 complaints in the first instances and prepares reports and memorandum for review/action by the FDD and ED/CD. The Deputy for QA is the principal supervisor for the Assignment Specialist. When the FDD is unavailable, the Deputy for QA shall undertake their 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 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 holds the honorific of 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.

FAMILY-DEPUTY FOR CHILD WELFARE

The Deputy for Child Welfare is responsible for running the Pre-Petition defense program at ACP. The Deputy will work in conjunction with the Family Court paralegal to triage incoming hotline calls, assign such cases as appropriate to themselves or one of the two designated Article 10 panel members for further legal action. The Deputy will assign a Family Court social worker to work in coordination with the attorney where appropriate to create the best possible outcomes for our families, supervise, coordinate and fully participate in community outreach to educate the public about their rights in a CPS investigation as well as to provide information about the availability of our new pre-petition service, supervise support staff (social worker, paralegal, administrative) insofar as their work is related to pre-petition matters and performs other Family Court related duties as assigned by the Second Deputy and or the Executive Director.

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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 First Deputy Defender 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. The FDD/Second Deputy may require an in-person interview before admission to the training program. Documentation to support admission may be requested. Please be advised that admission to the training program is not guaranteed, nor is admission to the panel. Applicants who fail to demonstrate sufficient commitment to the practice of indigent defense/family defense, and or who do not otherwise meet the approval of Criminal/Family Court leadership at any stage of the admissions process may be removed from consideration. Decision to not offer admission to the panel may be appealed to the ED/CD.

h. Initial Criminal Panel applicants must complete the entry-level training course administered by the Deputy for Training and CLE which is held two (2) 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. The initial training and mock trial requirement may be waived by the FDD after consultation with the ED/CD and Criminal Division staff upon good cause shown.

i. 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 once 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 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.

j. 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 or the Deputy for Child Welfare or another mentor as assigned. 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. Where an applicant has prior Family Court experience, at the discretion of the Second Deputy, the applicant may be allowed to view video training 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 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.

l. 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.

m. Following completion of the approved training course(s), prospective panelists shall provide to ACP attestation(s) that said programs have been fully completed.

n. 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.

o. 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 Executive Director/Chief Defender of pending applications in advance of approval. The candidate shall be notified in writing as to their rejection or admission to the criminal panel.

p. 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.

q. 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.

r. 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. This requirement may be waived by the FDD in consultation with the ED/CD upon good cause shown.

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. ACP attorneys must maintain their membership in the Bar Association of Erie County. Admission to the panel will entitle ACP attorneys to membership in the NYS Association of Criminal Defense Lawyers (NYSACDL) and the NYS Defender Association (NYSDA.)

d. 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

e. Panel members should also consider joining other relevant professional organizations such as the BAEC Criminal Law Committee, the BAEC Family Court Practice & Procedure Committee, the New York State Bar Association (NYSBA), the National

Association of Criminal Defense Lawyers (NACDL), and the American Bar Association (ABA.)

f. ACP attorneys must keep the ACP administrative office informed of any changes to their contact information. Contact the ACP Executive Assistant to update.

g. 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 the same upon request.

h. ACP attorneys must cooperate with monitoring, performance evaluations, and investigations of any complaints, including billing discrepancies, by the appropriate ACP personnel.

i. ACP attorneys must become familiar with the use of the Program's case management system, 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.

j. 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.

k. 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 Specialist who will then take appropriate action with respect to legal representation of the client.

l. 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).

m. 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.

n. Panel members may only accept assigned cases for which they have been approved by the ACP. Should an attorney not be 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.

o. 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, financial information gathering and case discussion.

p. 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.

q. **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.**

r. Attorneys who are first retained on a case may later be assigned to a case. While counsel should always endeavor to obtain a retainer large enough to cover the entire case, if (1) counsel has acted in good faith, (2) the case becomes more complicated than first anticipated, (3) the client qualifies and (4) you receive judicial approval, you may be assigned to complete the case. If this occurs, please address your concerns to the sitting Judge in your case. Ultimately it is their decision whether to allow you to be assigned.

s. Attorneys who are retained may obtain experts, investigators and other resources from ACP. Attorneys should file an affidavit with the Court and request payment of these resources under NY County Law 722-c. If the sitting Judge agrees that the resource is needed and the client does not have the means to pay for same, he/she may direct ACP to pay for these services at "Office of Court Administration" rates delineated in CL 722-c.

t. 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 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 privately retained clients for subsequent retainer by you, is a violation of your ethical and professional obligations and is grounds for removal from the panel.**

u. 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. Panel attorneys are required to renew their membership in the Bar Association of Erie County each calendar year. Failure to renew their membership may result in suspension from the ACP.

w. Attorneys who apply for admission to an ACP panel(s) who have a pending criminal or licensure proceeding(s) must await the conclusion of those proceedings before their application will be considered.

V. QUALIFICATIONS FOR SPECIFIC PANELS

Admission to all panels requires 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 First Deputy Defender (FSS) and the Deputy for QA.

a. Misdemeanor Panel $158/hour Admission to ACP after application and review

- Completion of ACP New Attorney Training Program and Mock Trial
- Completion of ACP DD7 Video Training
- Completion of DWI Video Training (after 2/1/2024)
- Participation in Mentorship Program for at least the first twenty-four (24) months of placement, or waiver by the Executive Director/Chief Defender (ED/CD.)

b. D/E Felony Panel $158/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.
- At least one "Second Chair" trial of "C" felony or above
- 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. C FELONY Panel $158/hour. All D/E Felony Panel Qualifications or ED/CD Waiver)

- Five (5) years admission to the NYS Bar.
- At least Two (2) years admitted to D/E Panel or ED/CD Waiver.

- At least one "Second Chair" trial of "A/B" felony trial
- Interview and Review of skills prior to placement.

c. A/B Felony Panel $158/hour

- All C/ Felony Panel Qualifications or ED/CD Waiver.
- At least two (2) years admitted to C Felony Panel 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 or Co-Counsel Violent Felony Jury Trial to verdict or ED/CD Waiver.
- Interview and Review of skills prior to placement.

d. Homicide Panel $158/hour

- All A/B 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 A/B 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 one (1) 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 ($158/hour for AOD (min. two (2) hour shift), $4,100/quarter (effective 1/1/24 for Justice Courts AOC regions) All Misdemeanor Panel Qualifications.

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

f. Adolescent Offender (AO) AFTER-HOURS AOC Panel ($1,800/quarter effective 1/1/24)

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

g. Adolescent Offender (AO) Daily AOC Panel: $120/day

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

h. Superior Court AOD Panel (($158/hour for AOD (min. two (2) hour shift))

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

i. Erie County Appellate Panel $158/hour

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

j. 4th Department Appellate Division Panel $158/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.

k. SORA Panel $158/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.

l. IDV Panel $158/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 IDV & Family Court Training.
- Interview and Review prior to placement.

m. Adolescent Offender Panel $158/hour

- Admission to the C/D/E, Violent Felony or Homicide Panel as determined by level of criminal offense in Youth Part
- Completion of 4th Department Enhanced JD Training

n. 440/440.47 (DVSJA) Panel $158/hour

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

o. Parole Panel $158/hour

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

p. Legal Research and Writing $158/hour

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

q. Mitigation Writers (Attorneys $150/hour; qualified non-attorneys, variable rates between $75 and $150/hour dependent upon experience (less than 5 reports: $75.00, more than 5 reports, less than 20 reports: $100.00, more than 20 reports: $150.00).

i. Training by Mitigation Supervisor

ii. Demonstrated knowledge of the criminal legal system

2. Family Court Panels($158/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. 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.

e. 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

Purposes:

- To develop a specific set or procedures and protocols for mentor and mentee attorneys to follow to ensure the training and continued development of new panel attorneys in their first 18 months on the Erie County Assigned Counsel Panel.

- 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.

- To create a mentor-at-large position for the homicide and violent felony panels, DVSJA panel, parole panel, and DWI panel to ensure panel members of all experience levels and fields of practice have a resource point if needed.

Policy and Eligibility:

1. Participation in the mentorship program as a mentor attorney is voluntary and will come with a premium payment. Participating mentor attorneys will voucher at the rate of $200/hr. 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. Failure to follow the duties and responsibilities below will result in status as a mentor being discontinued. While both mentor and mentee are independent contractors and thus are entitled to direct their own means of operation, learning the intricacies of criminal defense, as well as the policies and procedures of the Assigned Counsel Program are of critical importance. We would strongly suggest close adherence to the recommendations below.

2. A current panel attorney who wishes to be a mentor attorney will submit a request in writing to the Deputy for Quality Assurance. The request will be reviewed and approved by the Deputy for Quality Assurance and First Deputy Defender

3. Unless a waiver is granted by the First Deputy Defender, all newly admitted panel attorneys will participate in the mentorship program as a mentee until such time as the Deputy for QA and/or the First Deputy determine the attorney should graduate from the program or be removed for non-compliance. It is anticipated that new attorneys should be through the initial mentorship program in their first 18 months; however, this timeframe is fluid and can be shortened or extended at the discretion of the Deputy for Quality Assurance and/or the First Deputy.

4. Any panel attorney that the Deputy of QA and the First Deputy deem in need of furthering training and support may be placed into the mentorship program as a mentee at the discretion of the Deputy of QA and/or the First Deputy.

5. 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 Quality Assurance.

6. Failure of a new attorney to abide by the terms of the mentorship program as outlined below will result in case assignments being suspended and panel membership being reviewed.

Policies and Procedures Misdemeanor Panel:

Below please find suggested best practices for participation in the Misdemeanor Panel mentorship program:

1. Unless granted a waiver, all newly admitted panel attorneys will participate in the mentorship program. Mentee attorneys will be assigned mentors by the Deputy for QA. An email will be sent to the mentor and mentee attorney making introductions. It will be the responsibility of the mentee attorney to contact the mentor attorney for their initial meeting.

2. All mentees will be scheduled for training sessions as determined by the Deputy of QA, the First Deputy, and the Deputy for Training and CLEs.

3. Mentees should meet with or have a substantive telephone discussion with their mentor no less than once a week for the first 3 months of their mentorship. Thereafter meetings with or substantive telephone discussions will be at the discretion of the mentee/mentor.

4. Mentors should submit to the Deputy of QA a monthly report by no later than 11:00 am Friday outlining their mentees' progress, issues, concerns, and development strategy.

5. Mentors should appear at all court appearances and follow their mentee from commencement to resolution on their first 5 cases.

    a. Prior to accepting any case assignment in Defender Data 7, the mentee should confer with their mentor to ensure their mentor can be present at the first court appearance. If the mentor is not available, the mentee must reject the case.

    b. The mentors must be able to make this time commitment to be eligible to participate in the mentorship program.

6. Mentors should review the court paperwork for the mentee's first 5 cases and access the mentee's skill, knowledge level, understanding of accusatories, supporting depositions, criminal records, and other included paperwork.

7. Mentors should review client intake and interview procedures and participate in the interviewing of the mentee's first 5 clients whether in custody or out-of-custody.

8. Mentors should attend all court appearances with the mentee for the mentee's first five (5) cases.

9. Mentees are encouraged to shadow their mentors when possible.

10. Mentees are encouraged to observe court proceedings whenever possible. Mentees should observe specialty courts to become familiar with their policies and procedures.

11. Mentees are encouraged to observe arraignments, evidentiary, suppression, and felony hearings, trials, and sentencing whenever possible.

12. Mentees will be scheduled for a six-month meeting to assess progress in the program and to encourage continued participation and contact with ACP personnel.

13. Mentees should participate in at least three "New Attorney Group Case Conferences" in their first six months on the panel.

14. Mentees and/or mentors may be removed from the program at the discretion of the Deputy for QA and First Deputy.

Policies and Procedures Felony Panel:

Below please find best practices for participation in the Felony Panel mentorship program:

1. At the discretion of the Deputy for QA and First Deputy, a panel attorney may be elevated to the felony panel.

2. The mentee will continue to work with their mentor in concert with the above policies and procedures.

3. Mentees will be scheduled to attend training sessions as determined by the Deputy of QA, the First Deputy, and the Deputy for Training and CLEs.

4. Mentors should appear at all court appearances and follow their mentee from commencement to resolution on their first 5 felony cases.

5. Prior to accepting any felony assignment in Defender Data 7, the mentee will confer with their mentor to ensure their mentor can be present at the first court appearance. If the mentor is not available, the mentee must reject the case.

6. Mentors should review the felony complaint paperwork for the mentee's first 5 cases and access the mentee's skill, knowledge level, and understanding of the felony charges.

7. Mentors should assist the mentee in preparing for any felony hearings.

8. If a case is held for action of the grand jury the mentor should assist the mentee with the grand jury process, negotiating a plea offer, monitoring 190.50 and 190.80 motions, SCI pleas, and indictment procedures.

9. If none of the mentee's first 5 felony assignments are held for action of the grand jury, the Deputy for QA may request the mentor to appear at all court appearances for any of the mentee's future cases that are held for action of the grand jury.

10. Mentors and mentees should provide monthly reports to the Deputy for QA by 11:00am on the final Friday of the month.

11. After six months, the mentor and mentee will be scheduled to meet with the Deputy of QA to review the mentee's progress and determine whether the mentee will continue with the mentorship program at the same assignment level, begin to be trained for possible elevation to the violent felony panel, or be removed from the mentorship program.

Development of Specialized Panel Mentor-at-Large Positions:

With the development of specialized panels, including parole, DVSJA, DWI, and Homicide, mentor-at-large positions will be added to address the specifics needs of each of the panel members. This will ensure our panel attorneys have access to a known source of information, assistance, and guidance throughout their cases and during times of immediate need such as hearings and trials.

Mentors at Large may be called upon to provide not only guidance but technical assistance. This may include review of motions and other writings, strategic advice, and shadowing during client meetings, DA meetings and hearing/trial level proceedings. In some instances, mentors may shadow mentees through entire hearings and trials where circumstances require. Mentors at Large must commit to taking on this responsibility within reasonable boundaries.

New Panel Attorney Monthly Case Conferences:

With the addition of new panel attorneys, many of which have limited criminal defense experience, who will be handling solely misdemeanor files, a monthly case conference specifically for new panel members and mentees will be held the first Thursday of each month at 12:30 PM. These case conferences will be open to participants of the mentorship program and misdemeanor panel only to help cultivate a culture of comradery among the mentees and the ACP staff as well as their mentors. The case conferences can be used to ask case specific questions, general procedure questions, or to discuss any issues or concerns the misdemeanor panel attorneys may choose.

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 February-June. Reviews will not be scheduled for the months of December, January, July nor 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).

- 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 will be held as an "overflow" day for those weeks where the first Monday is a holiday. Reviews will run from 9 am to 11 am and will be scheduled back-to-back as much as possible. Reviews will be no longer than 30 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/Administrative Assistant would be responsible for scheduling, notification, and reminders of all reviews on a schedule designated by the Deputy for QA. To reschedule, please contact either the Deputy for QA or the Criminal Liaison/Administrative Assistant.

- 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.

- The Deputy for QA will select the cases for review and communicate said cases to the attorney prior to the review. A "Case Review Report" must be prepared by the attorney for each case and submitted no later than one business day prior to the panel review meeting.

- 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/Administrative Assistant: Responsible for scheduling panelists, notification of review dates/times and issuing a meeting notification 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, 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 process, schedule and review of concerns, final sign off on review and promotion, backup to the Deputy for QA on case selection and data compilation.

- Deputy for Training/CLE: Mandatory Interview Participation. Review with an eye toward enrichment/training opportunities for the panel member or for the panel as a whole.

- Deputy for Appellate and Litigation Support: Mandatory Interview Participation. Review with eye toward areas of needed litigation assistance.

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/or 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 County of Erie and the NYS Office of Indigent Legal Services. If an attorney fails to attend arraignments, that will 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” (available on website)
- To provide client with an “Important Notice of Your Rights” form (available on ACP website)
- To answer calls from courts and ACP during their assigned shifts

- To communicate unavailability immediately to CAFA Program Manager and First Deputy Defender

- 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 AO: 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 morning, afternoon or evening dependent upon Court hours of operation. AOCs 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 an ROW (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 requires coverage, they are to seek it out as soon as they are aware of the conflict or unavailability.

    - In those regions where two AOC attorneys are assigned each week (Region A, D and Buffalo City), the assigned attorneys should begin their coverage search with a call to the other attorney assigned that week.

    - Once located, the AOC who requires coverage is to alert the CAFA Program Manager as to who will be covering their shift(s). We will then transfer the "on call number" to the attorney who is now covering that shift(s.)

    - If, after attempting to locate coverage, the AOC is unable to find coverage, they are to alert the CAFA Program Manager as soon as possible so that they 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 on the website.

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 most non-custodial assignments are assigned Pre-Arraignment, 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 the CAFA Program Manager as to which attorney will cover the shift.

    - If the AOD requires ACP to assist in locating coverage, the AOD is to contact the CAFA Program Manager upon awareness of the unavailability so that they 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.

Procedure:

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, the following MUST OCCUR:

A. The AOD/AOC must immediately notify the Deputy for QA, the Deputy for Litigation Support, the Deputy for Training and CLE and the CAFA Program Manager of the need for a QRF Assignment. All paperwork associated with that case and the client's criminal history must be transmitted immediately.

B. Once the paperwork and criminal history is received, the ACP Deputies will evaluate the case for QRF eligibility. If the case is QRF eligible, the Deputy for Litigation Support will draft the QRF motion and then contact both the Erie County District Attorney's Office and the special term court to advise that a QRF motion is being filed.

C. If the QRF motion is filed BEFORE noon the matter will be heard in special term at 2:00 PM the same day.

D. If the QRF motion is filed after noon but BEFORE 4:00 PM, that matter will be heard in special term at 9:30 AM the next court date.

E. Either the Deputy for QA, the Deputy for Litigation Support, the Deputy for Training and CLE, or the AOD will appear in special term for the hearing of the QRF motion.

F. Once the matter is formally entered into DD7 and assigned, the Deputy or AOD that appeared on the QRF motion will send a Case Alert to the assigned attorney through DD7 advising of the client's release.

IX. ASSIGNMENT PROCESS

The Executive Director/Chief Defender, in consultation with the First Deputy Defender (FDD) and the Deputy for QA, 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.

a. NON-QUICK TURNAROUND CASES

Cases assigned to you, other than quick turnaround cases (i.e., those which return within 24-36 hours), which are not accepted twenty-four hours after assignment, will be rejected automatically and reassigned to another panel attorney. You can accept (or reject) your cases directly through DD7 or communicate your intent to accept (or reject) directly to Assignment Supervisor via e-mail, followed by formal acceptance in DD7 before 9am the next business day.

b. QUICK TURNAROUND CASES

For those cases which return to court within 24-36 hours (quick turnaround cases), you will likely be contacted by text message or e-mail to gauge your interest in accepting the case prior to assignment delivery in DD7. We STRONGLY encourage you to respond immediately to these communications. We will be moving quickly to assign these cases and delays in response times will cause us to move to the next attorney to secure sufficient preparation time for representing counsel.

As always, we would respectfully urge you to either ACCECPT or REJECT in a timely fashion. Your diligence will assist us in ensuring that clients assigned by the panel receive the best possible service; a goal I know we all share.

c. 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 Specialist, the FDD, the Deputy for QA, the Second Deputy – Family Court, the Intake Team Leader, the Deputy for Child Welfare, the Family Court Paralegal) and is based on the experience and ability of counsel in relation to the nature and complexity of the case.

d. 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.

e. Criminal matters: absent exceptional circumstances, an attorney can receive no more than five (5) new case assignments per day. 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. The Program will never take an adverse action against

an ACP attorney who rejects cases due to sound reasons involving their own personal or professional circumstances.

f. Whenever possible, and if in the client's best interest, decisions will be made to promote attorney/client continuity of representation. If an attorney is currently representing a client on a pending matter or has represented the client on a concluded matter within the last six (6) months, and the client is charged on a new matter, the Program will seek to assign the same attorney to represent the client on the new matter. If a different attorney has been inadvertently assigned, they 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.

g. 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).

h. If 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.

i. 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 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 reassigned. *Only the court may reassign under these circumstances*.**

j. 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 the case as soon as possible. An assignment not accepted within twenty-four (24) hours with 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. **NOTE: If you fail to accept a case in DD7, and that case is later assigned to another attorney, you will not be paid for work completed prior to the re-assignment. Even where not assigned to another attorney, ACP will determine on a case-by-case basis whether work performed prior to acceptance will be paid.**

k. 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.

l. Cases may be assigned both Pre-Arraignment and Post Arraignment (where the arraignment was done by an AOD, AOC or by the Legal Aid Bureau of Buffalo in Buffalo City Court.)

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.

n. An attorney who is assigned from the bench or after 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.

o. All Homicides will automatically be assigned a co-counsel. Counsel assigned to A/B Violent Felony matters will be offered co-counsel. ACP Criminal Division management may require co-counsel on a case-by-case basis. 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 request 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 compliance with New York State Office of Indigent Legal Services Caseload Standards.

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

- Open to attorneys on the Homicide, A/B and C Felony Panels.
- Where ACP assigns a Homicide, two attorneys shall be immediately and automatically assigned to the file. Both Attorneys must be members of the Homicide Panel.
- "A" and "B" Nonfelonies will not automatically receive an assignment. Upon assignment to an A/B felony, the assigned attorney will be contacted to determine the need and desire for Co-Counsel. ACP may insist on Co-Counsel. Co-Counsel on A/B Felonies may come from the C, A/B or Homicide Panel.
- Both Attorneys shall be permitted to bill their work at the regular rate.
- 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.

3. **Second Chair Program Assignments**

- To promote learning and mentorship, ACP Criminal Division management will team panel attorneys with qualified Felony panel attorneys to Second Chair on felony level cases and observe trials.
- As this is primarily an educational experience, Second Chair opportunities are paid at $158/hour up to a cap of three thousand, one hundred sixty ($3,160) dollars per case.
- A Misdemeanor panel member is required to complete at least one "Second Chair" felony trial assignment before promotion to the D/E Felony Panel.
- A D/E Felony panel member is required to complete at least one "Second Chair" Assignment to a "C" Felony or above trial before promotion to the "C" Felony Panel.
- A "C" Felony panel member is required to complete at least one "Second Chair" Assignment to an A/B felony trial before promotion to the "A/B" Felony Panel.
- An A/B Felony panel member is required to complete at least one "Second Chair" Assignment to a Homicide trial before promotion to the Homicide Panel.
- Where possible, ACP Criminal Division management shall make Second Chair assignments between mentors and mentees.

- Second Chair Attorneys shall be given work to complete on the file; including client contact, motion drafting and trial preparation.

- While the "lead" attorney maintains responsible for the file, the "lead" attorney shall consider the opportunities for learning that exist for the benefit of the Second Chair attorney.

- 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, , 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.

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 conferences 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. Here is a link to the Expert Panel: https://www.assigned.org/expert-panels/ .

Additionally, the ACP has a partnership with the Expert and Forensics Team at the New York State Defender's Association. To the extent you are unsure of (1) which expert to use; (2) whether you need an expert, and/or (3) how to effectively use an expert, we would strongly encourage you to reach out to NYSDA's Backup Center. They may also have suggestions for different litigation strategies for you to consider, and how different experts may be utilized depending on the approach you decide to take in your case.

They can be reached at forensics@nysda.org, info@nysda.org, by phone at 1-518-465-3524

To request your expert and assure payment, please take the following steps:

1. **Types of Services**. Assigned Attorneys may request authorization for payment of Experts and External Investigators. For simplicity's sake, we term all below as "experts."

2. **The attorney decides on expert.** If you are unsure of what expert you need or a specific recommendation for an expert, contact the First Deputy Defender. If you require an external investigator, because of a conflict with ACP Investigators, contact the Supervising Investigator. Once you have received names, contact the expert to discuss your case and the prospect of enlisting their services. Please note that we CANNOT pay a retainer up front. All costs will be billed and paid at the end.

3. **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 the First Deputy Defender and we can have the expert entered into the system; please have the expert's TIN/EIN for vouchering. Please list the estimated amount your expert advises the services will cost. Again, the cost ultimately may be more or less than this amount. If you are unsure of the amount, please put $1,500 as a place holder.

4. **Scope of Work and Estimated Costs Document.** Once the expert agrees to take your case, print the **"Scope of Work and Estimated Costs"** form from DD7 "Documents" and e-mail same to the expert to be completed and returned electronically. Once complete, this document should be e-mailed to the Voucher/Expert Processing Supervisor and the FDD. 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.

   However, please be cognizant of the need to contact ACP if the costs will exceed the "Scope of Work" during the course of the service. While we are fully aware that cost overruns do occur, we need to sign off on approval for the increased costs before they are incurred.

5. **Travel Scope of Work Document**. If out of town (i.e., from outside the 8th Judicial District) travel is required, the expert must complete the "Travel Scope of Work" Document outlining all estimated costs associated with travel.

6. **The "Pre-Authorization" will be reviewed and approved by ACP Staff**

7. **PLEASE NOTE: DO NOT ALLOW YOUR EXPERT TO BEGIN WORK ON YOUR FILE UNTIL ACP HAS APPROVED THE PRE-AUTHORIZATION AND SCOPE OF WORK.**

8. Once pre-authorization has been granted, several documents in DD7 will be populated with information about the expert and the case.

    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.

9. **End of Service**. At the conclusion of their service, email the "Expert/Investigator Costs Verification" to the expert. 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 Voucher/Expert Processing Supervisor.

10. **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 ACP Social Work Program
https://www.assigned.org/criminal-courts/community-resources/leadprogram/

The ACP Social Work 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 Social Work 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.

Below is a non-exhaustive list of the things with which our Social Workers can assist:

- Referral to appropriate agencies for services and case management services.
- Assistance with transportation. *
- Assistance with housing instability and location of appropriate housing. **
- Monitoring compliance with court mandated treatment including attendance verification.
- Assistance with applying and securing public benefits.
- Assistance with food instability.
- Emotional support during court appearances.
- Record (medical, mental, education) gathering and provision (30-day turnarounds).
- Providing written summaries of positive progress.

*Note that transportation requests through our contracted providers require 72 hours' notice.

**Please note that securing new housing is a complicated time-consuming process, especially with the population we serve. Please be patient with these requests as, dependent on the circumstances of the case and the background of your client, can exceed 6 months.

Please note that while we endeavor to assist in any way we can, there are certain things the Social Workers are NOT authorized to do. These ordinarily include:

- Appearance in court***
- Clinical evaluations and advice.
- Home visits.
- Medical record interpretation.
- Personal client transportation.
- Providing other ACP resources (expert provision and assistance, discovery review, investigatory support.)

***Although we value extensive client contact, the ACP Social Work Program must remain cognizant of their overall role; that of resource coordinator. The ACP Social Work Program is not a forensic social work agency. Our Social Workers are not clinicians. It shall be the policy of ACP that Social Workers are not to attend court proceedings without supervisory permission. If there is a critical issue that requires your social worker to attend a client's court proceeding, please make that request to our Social Worker and same will be communicated to management for consideration.

To have a social worker assigned, contact the ACP Social Work Program Director through the DD7 Notes portal or via e-mail.

g. Family Court Social Work

The Family Court Social Worker is an LMSW (Licensed Master Social Worker) who works directly with the Family Court panel attorneys to coordinate services for Family Court clients. 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 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 the ACP Social Work Program Director through the DD7 Notes Portal or via e-mail.

h. Sentencing Support: Mitigation Supervisor

The ACP Mitigation Supervisor 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 Supervisor can also gather relevant records (e.g., education, employment, mental health, military) that can serve to support how 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.

To request mitigation support, contact the Mitigation Supervisor through the DD7 Notes Portal or via e-mail.

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 Administrative Assistant/HR & Grants Specialist 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/

On all cases, you should ask the client if they were born in the United States. If not, you will need the assistance of WNYRIAC. Do not rely upon the client's assertion of their status; sometimes they are mistaken. If they were not born in the United States, then contact WNYRIAC and take it from there.

The WNYRIAC is funded by the New York State Office of Indigent Legal Services to assist mandated representatives in their representation of accused individuals who were not born in the United States or noncitizens who are 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 accused individuals who were not born in the United States 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 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@labbuffalo.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, Motions Library, Transcript Bank. Important Commonly Used Attorney Forms, Monographs drafted by the Hon. Tim Franczyk, J.C.C. (ret.) and our Deputies, 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 Court 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. Sentencing Calculator.net

The Erie County Assigned Counsel Program has engaged the services of Terence Davidson and his outstanding sentencing calculator, SentencingCalculator.net. The program will be extraordinarily useful in calculating complex sentences so that both you and your clients can be sure of potential exposure based on a host of specific circumstances. Logins and passwords for those who do not have them can be obtained by contacting sentencingcalculator@gmail.com

m. 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 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 the Supervising Investigator through the DD7 Notes portal or via e-mail.

n. 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 the Deputy for Litigation and Appellate Support.

o. Motions Bank and Transcripts Bank. ACP maintains a large library of motions and transcripts that are searchable by keyword. These are kept behind our password protected firewall and are accessed using your website login credentials.

p. 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.

To utilize these items, please adhere to the following procedure:

- When an item of equipment is needed, please alert the Chief Investigator or ACP's Technology Specialist 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.

q. Incarcerated Client Electronic Discovery Project

ACP has developed a program to allow your incarcerated clients to review electronic discovery such as body camera footage, audio files and documents in a secure environment without your presence. If you have a client who would benefit from this service, please send a request to investigators@assigned.org and one of our Litigation Support Specialists will assist you. Please note, this program is currently only available at the Erie County Holding Center (downtown Buffalo.)

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. Attorneys can arrange for direct deposit of their voucher payments following approval by the Program, the judge, and at the date accorded for that voucher payment. https://www.assigned.org/attorney-resources-direct-deposit/

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. Even cases closed at arraignment MUST have a CRFS to be submitted for billing.

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 ($10,000 effective 4/1/23) 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 and that the excess was due to "exceptional circumstances." 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. Billing must be noted in six (6) minute increments (.1).

k. Please note that not every task is worth ".1" hours. .1 is six (6) actual minutes of work. You should work as close as possible to six (6) minutes before billing for six (6) minutes. (For example. You send a text message to a client to remind them of a court date. The text took 30 seconds to write. This should not be billed as ".1" hours. You should wait until you have performed an additional 5 minutes of work, either on that task or an amalgamation of others, to bill ".1"). Your vouchered time should note the specific task the time is attributable to in DD7.

l. Only work you personally accomplish may be billed. Billing for activities performed on cases personally assigned to you by support staff, interns, associates or other assigned counsel is not permitted. Additionally, you should not seek to have another attorney cover substantive appearances, other than simply adjournments, on cases assigned personally to you from the ACP.

m. 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 (except for the Erie County Holding Center in downtown Buffalo.)
- 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 reasonable 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.

n. 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.

o. Vouchers must be completed and submitted in all cases where payment is requested. Vouchers should be submitted within thirty (30) days of case completion. Any voucher submitted more than thirty (30) days 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 such a voucher.

p. Any voucher submitted more than six (6) months following completion of a matter to disposition shall be deemed abandoned and shall not be paid.

q. 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.

r. Double billing is never allowed. For example, if counsel spends an (1) hour 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 one (1) hour, no matter how it breaks down between each client's case.

s. Please note that ACP pays attorneys for legal work, not clerical work. Letters to open or close files, or attorney contact letters are limited to .1 hours billed unless an explanation is provided as to why these tasks took longer than .1 hours.

t. **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 Executive Director/Chief Defender 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 a 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 them 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 on their 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 a 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 in effect and updated as of October 18, 2024, and may be further 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

LAST AMENDED 10/18/24 - MMP