



**THE MONROE COUNTY BAR ASSOCIATION
SPONSORED PLAN FOR
CONFLICT ASSIGNMENTS**

Monroe County



Bar Association

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**THE MONROE COUNTY BAR ASSOCIATION SPONSORED PLAN
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ARTICLE I. Definitions

1. Bar: The term "Bar" shall mean the Monroe County Bar Association.
2. County: The term "County" shall mean the County of Monroe.
3. Eligible: The term "eligible" shall mean only those defendants or other litigants who meet the Monroe County Public Defender's income eligibility standards and who are litigants in those classes of cases for which the Public Defender's Office, by law, is required to provide representation.
4. Conflict Assignment: The term "conflict" assignment shall mean a court proceeding wherein the defendant or other litigant is eligible for Public Defender services, but where a conflict of interest would occur if the Public Defender represented the defendant.

ARTICLE II. Plan Objectives

The objectives of this conflict assignments plan are to provide quality representation to eligible indigent defendants or other litigants in those cases where the Public Defender has a conflict of interest; to provide a coordinated and centralized assignment system for conflict cases arising in the courts specified in Article IV herein; to provide a more equitable distribution of conflict assignments among lawyers; to attract more lawyers willing to handle conflict assignments; to maintain uniform and proper billing practices; to ensure cost accountability of services; and to provide increased efficiency for the courts by making qualified attorneys more readily available to handle conflict cases.

ARTICLE III. Duration of the Plan

Subject to annual legislative appropriations, the terms of this plan shall remain in full force and effect unless terminated by either the County, the Bar or the Chief Administrator of the Courts. The Bar, the Chief Administrator of the Courts, or the County may terminate the plan at any time upon one hundred eighty (180) days written notice to the others. Upon receipt or initiation of a termination notice, the Administrator shall notify all judges of the program termination. In the event of plan termination, the assignment of Public Defender conflict cases will revert to whatever method of assignment is required by applicable law at the time of

termination. This plan may not be amended unless mutually agreed to by the Bar, the County, and the Chief Administrator of the Courts.

ARTICLE IV. Scope of Plan

This plan applies to all eligible Public Defender conflict assignments arising in the Town, City, County, Family, Surrogate and Supreme Courts in Monroe County, and in the appellate courts.

ARTICLE V. Administrator

A. APPOINTMENT OF ADMINISTRATOR, LEGAL AND CLERICAL STAFF

1. The County agrees to appoint a full-time Administrator to administer conflict assignments in accordance with the terms of this plan and applicable law. The Administrator may also handle conflict cases on appeal. The Administrator shall report to the County's Director of Public Safety. The Administrator shall be compensated at the same pay group as a special assistant district attorney or special assistant public defender. The Administrator shall not be allowed to engage in the private practice of law.
2. The Administrator shall be appointed by the County Executive from a list of three names provided to the County Executive by the Monroe County Bar Association, subject to applicable civil service requirements and confirmation by the Legislature. The Administrator shall be subject to reconfirmation every two years. The Legislature shall act upon the Administrator's reconfirmation by the end of February of each even numbered year. The current Administrator shall remain as Administrator until February 2005. Thereafter, the County Executive shall appoint the Administrator pursuant to this section. The County Executive shall have the right to remove the Administrator in accordance with applicable law.
3. The Administrator shall hire staff attorneys as authorized by the County to represent eligible indigent defendants or other litigants in Monroe County Family Court, Rochester City Court and in the appellate courts, to effectuate the goal of providing quality defense services to eligible defendants and other litigants and ensuring the cost accountability of services. The County shall authorize no fewer than seven staff attorneys. Pursuant to Article II, §C2-6, paragraph C, subparagraph (6) of the Monroe County Charter the staff attorneys shall be compensated at the same pay group as assistant public defenders performing

similar work in the Public Defenders Office. The staff attorneys shall not be allowed to engage in the private practice of law.

4. The Administrator shall also hire clerical staff as authorized by the County to provide appropriate support services to the Administrator and other employees of the office.

B. QUALIFICATIONS OF ADMINISTRATOR

1. The Administrator shall be an attorney duly licensed to practice law in the State of New York and admitted to practice in all courts within the scope of the plan.
2. The Administrator must have at least three years experience in criminal or family law.
3. The Administrator must have an ability to work with judges, criminal lawyers, court administrators, other persons within the criminal justice system, and county officials.
4. The Administrator must have an ability to effectively manage staff attorneys and other employees of the office.

C. POWERS AND DUTIES OF ADMINISTRATOR

The Administrator shall have the following powers and duties:

1. Compile and maintain a list of panel attorneys who indicate a willingness to accept conflict assignments. Review attorney applications and determine whether an attorney meets the criteria for panel participation.
2. Select attorneys for conflict assignment, in accordance with Article VIII herein, on a rotating basis, for assignment by judges, except where such conflict assignment is assigned to a staff attorney as provided in Article V.
3. Maintain a record of all attorneys assigned directly by judges to represent conflict defendants and other litigants.
4. In conjunction with the Bar, recruit panel attorneys willing to accept conflict assignments.
5. Formulate guidelines relative to the maximum recommended number of conflict cases to be assigned to individual panel attorneys.
6. Provide periodic reports to judges regarding the number of outstanding assignments to each individual panel attorney and advise judges when an attorney has reached the maximum recommended number of conflict assignments.

7. Subject to appropriate County approval, develop and execute operational policy and control of the program. The Administrator shall have the authority, subject to appropriate County approval, to issue written regulations that he or she deems necessary to effectuate the plan goals set forth in Article II herein or that may be necessary to effectuate applicable laws, rules and regulations. The Administrator shall also prepare, subject to necessary county approval, the program budget.
8. Design and implement an orientation program for panel attorneys.
9. Develop and implement a complaint procedure that ensures that all complaints regarding attorney performance on pending cases are immediately forwarded to the assigning judge for resolution in connection with the pending case, and, where appropriate, forwarded to the Review Committee established pursuant to Article XI hereof. The Administrator shall also maintain a record of all complaints regarding attorney performance. The Review Committee shall have the authority to purge meritless complaints from the Administrator's records.
10. In accordance with Article VII herein, design and develop an attorney program application, and ensure that all attorneys execute such program application as a condition of accepting an assignment.
11. Maintain a record of all attorney acceptance[s] and rejection[s] of assignments.
12. In accordance with Article X, review attorney vouchers prior to submission to assigning judge for payment order and make appropriate recommendations to the assigning judge regarding payment.
13. Develop and implement regulations for attorney billings in accordance with applicable laws and the terms of this plan.
14. Maintain a motion and brief bank that may be accessed by all panel attorneys, indexed and kept current.
15. Maintain such statistics and make such reports as may be required by the County Executive or County Legislature.
16. Institute a yearly review process of the plan for the purposes of determining if the plan objectives are being met and for the purpose of determining if any changes are needed and recommending such changes. The Administrator shall seek the comments and recommendations of

representatives of the Bar, the County, the Judiciary, panel attorneys, and any other individuals or entities the Administrator deems appropriate.

17. Determine which classes of crimes or types of cases for which an attorney may be recommended for assignment. In making his or her decision, the Administrator shall utilize the criteria established by the Bar. Each panel attorney and all judges shall be notified of the Administrator's decision. If an attorney objects to the Administrator's decision, the Administrator shall ask the Review Committee (as hereinafter defined in Article XI) to make the final decision. The Administrator and the attorney shall have the right to be heard before the Review Committee.
18. When necessary or appropriate, obtain information regarding a conflict assignment defendant's or other litigant's eligibility for public defender services for the purpose of making eligibility recommendations.
19. Hire and supervise staff attorneys as may hereafter be authorized by the County to represent eligible indigent defendants or other litigants in Monroe County Family Court, Rochester City Court, and in the appellate courts.
20. Perform any other functions or duties that may be necessary to accomplish the objectives set forth in Article II herein, or that may be necessary to effectuate applicable laws, rules and regulations.

ARTICLE VI. Bar Association Duties

- A. Recruitment of Attorneys: The Bar, in conjunction with the Administrator, will assist in the recruitment of private lawyers willing to accept conflict assignments.
- B. Continuing Legal Education: The Bar will recommend continuing legal education standards for panel attorneys to meet. The Bar will also conduct at least one continuing legal education course a year.
- C. Criteria for Attorney Selection: The Bar will recommend criteria to be utilized in selection of panel attorneys for assignment. The Bar will also recommend minimum criteria for panel membership.
- D. Maintain an Assigned Counsel Advisory Committee: The Bar will maintain an assigned counsel advisory committee. The advisory committee shall meet at least quarterly to ensure that the objectives set forth in Article II of this plan are met. The advisory committee shall respond to requests from the Administrator for information or for recommendations.

ARTICLE VII. Panel Assignment Attorneys

- A. All panel attorneys must meet the minimum qualifications for panel membership as recommended by the Bar. Additionally, as a condition to being eligible to accept conflict assignments, each attorney must execute an application which contains the following information:
1. Attorney name and firm name.
 2. Attorney address and phone number.
 3. Date of admission to practice.
 4. Social Security number or Tax ID number.
 5. The number of years in practice.
 6. The percentage of work devoted to criminal practice or to practice before Surrogate and Family Court.
 7. The number of misdemeanor trials conducted by the applicant, and the approximate dates of such trials.
 8. The number of felony trials conducted by the applicant and the approximate dates of such trials.
 9. Other relevant experience in the courts before which assignment is sought.
 10. Any specialized criminal training.
 11. Any specialized training for Family Court or Surrogate Court matters.
 12. Upon review of the application, the Administrator may request such additional information and substantiation for the applicant as the Administrator determines may be needed to effectuate the plan objectives set forth in Section II herein or to effectuate any applicable laws, rules or regulations.
- B. In his or her application, the panel attorney shall agree to the following terms and conditions of panel participation.
1. The attorney will comply with the terms of the plan, all regulations promulgated by the Administrator, and all applicable law and regulations.
 2. The attorney agrees to immediately notify the trial judge and the Administrator if at any time the attorney believes he or she is unable to adequately or effectively represent his or her assigned client.
 3. The attorney recognizes that his or her selection for each particular case is subject to the approval of the assigning judge and that he or she may be rejected by the assigning judge.

4. Subject to the appeal procedure set forth in Article XI herein, the attorney agrees to comply with the determination of the Administrator regarding the level of case for which the attorney will be contacted to handle.
5. The attorney initially found not qualified to handle more serious felonies or more complex or serious cases in Family Court or Surrogate Court will have the responsibility to provide the Administrator with new information bearing on the attorney's qualifications to handle more serious cases if such attorney subsequently gains qualifying experience and desires to handle such cases.
6. The attorney will submit his or her voucher for final payment to the Administrator prior to submission to the assigning judge. The attorney will agree to the re-opening of a court order authorizing payment for previously submitted vouchers where subsequent vouchers submitted by the attorney provide reasonable cause for the Administrator to believe a billing error occurred in a previously paid voucher.

ARTICLE VIII. Assignment Procedure

A. ASSIGNMENT PROCEDURE IN CITY, COUNTY, FAMILY COURT, SURROGATES COURT AND SUPREME COURTS WHERE THE PANEL ATTORNEY IS RECOMMENDED TO THE JUDGE BY THE ADMINISTRATOR.

Upon a request for an attorney by a judge, the Administrator will, as soon as possible, provide the name of an attorney to the judge in accordance with the procedures set forth in this plan. The assigning judge shall have the final authority to determine whether the attorney is qualified to handle the assigned matter and shall have the final authority to actually make the assignment except where such assignment is made to a staff attorney as provided herein.

The Administrator shall meet periodically with the various assigning judges to establish a procedure to be used in carrying out the above paragraph. In particular, the Administrator will meet with the Part I Judge of the Rochester City Court prior to that Judge taking Part I for a particular term to establish an assignment procedure in accordance with the above paragraph that will accommodate the caseload in the Rochester City Court and eliminate the need for the City Court Judge to have daily contact with the Administrator.

The Administrator shall maintain the following lists of attorneys: (a) Those qualified to handle, A, B, C, felonies; (b) those qualified to handle D, E felonies; and (c) those qualified to handle misdemeanors; (d) those qualified to handle Family Court matters; and (e) those qualified to handle Surrogate Court matters.

The Administrator shall first assign conflict cases to a staff attorney. If any staff attorney has a conflict of interest precluding representation, the Administrator shall then assign, subject to the referring judge's approval, conflict cases to panel attorneys in sequence, considering the following factors as well as systematic rotation of panelist's names: matching of case classification with attorney skill level, potential conflicts of interest, geographic preference where administratively feasible, and the number of assignments already made to an attorney. The names of panelists passed by for good cause should remain at the top of the list for the next available assignment. The Administrator should manage files so as to avoid excessive assigned caseloads. The Administrator shall not assign any additional cases to attorneys who have reached the maximum number of recommended conflict assignments.

B. ASSIGNMENT PROCEDURE FOR DEFENDANTS OR OTHER LITIGANTS WHERE THE JUDGE HAS THE OPTION TO MAKE A DIRECT ASSIGNMENT IN COURT.

For exceptional cases, and for cases where a defendant is incarcerated at the time of arraignment, except where such case is assigned to a staff attorney, the judge shall have the option to make a direct assignment of counsel from amongst those who are listed as panel members on a list supplied to the judge by the Administrator provided that the judge shall notify the Administrator as soon as practical of the assignment. The assigning judge shall make every best effort to avoid assigning any such case to an attorney who has already exceeded the recommended maximum number of assigned conflict cases as such number is formulated, from time to time, by the Administrator. Upon receipt of a notice from a judge of an in court assignment, the Administrator shall record the assignment on the panel attorney's record and the assignment shall be treated by the Administrator for wheel rotation purposes, as though the assignment was made by the Administrator.

C. ASSIGNMENT PROCEDURE FOR THE TOWN COURTS WHERE THE DEFENDANT IS ARRAIGNED AND IN CUSTODY.

This section shall govern those cases where a defendant has been arraigned in a Town Court without a lawyer and then placed in custody. The Public Defender shall review the Monroe County Jail's daily log and interview all new pre-trial detainees for the purpose of ascertaining if they need representation. Where a pre-trial detainee is eligible for Public Defender services, but there is a conflict of interest, the Public Defender shall immediately advise the Administrator that the pre-trial detainee is in need of an attorney.

The Administrator shall promptly recommend a lawyer to the judge before whom the pre-trial detainee's case will be heard. In selecting an attorney, the Administrator shall use the procedures set forth in Article VIII A and D herein.

D. ADMINISTRATOR TO MAINTAIN RECORD OF ASSIGNMENTS

The Administrator shall maintain a record of assignments to each staff attorney and referrals for each panel attorney. The Administrator shall note on each panel attorney's record the date the proposed assignment was made to the panel attorney, whether it was a direct assignment made by a judge and, if the assignment was recommended by the Administrator, whether the attorney accepted or rejected the assignment. When the attorney accepts the assignment and is approved by the judge, the Administrator shall note the date of acceptance, the defendant's or other litigant's name, and the charge against the defendant, or the type of case, for which representation is needed, and the referring judge on the attorney's record. Where the attorney was rejected by a judge for a particular case, the Administrator shall note the rejection.

ARTICLE IX. Compensation for Panel Attorney Services

- A. The amount of compensation paid to panel attorneys, including reimbursement for support services authorized pursuant to Section 722-C of the County Law, shall be determined by the assigning judge in accordance with Article 18B of the County Law, and other applicable laws, rules and regulations.
- B. The Administrator shall have the authority to promulgate additional payment regulations in accordance with the requirements of applicable law or the requirements of the County's independent auditors or the State Comptroller or any similar body or entity having such jurisdiction over the County. The Administrator shall have the right to implement any other payment regulations in accordance with the terms of this plan upon the prior review and approval of the Review Committee. The Administrator, however, shall not have the right to alter the statutory rate for attorney services.

ARTICLE X. Payment Procedures

After an attorney has completed an assignment, the attorney shall within 20 business days complete and forward to the Administrator a voucher, in a form determined by the Administrator, setting forth the services rendered, including the support services authorized by Section 722-C of the County Law, the amount of time spent on each service, the total amount of all time spent, and any other information required by the Administrator. The attorney shall forward his or her voucher to the Administrator prior to submission of the voucher by the Administrator to the assigning judge.

The Administrator shall review the panel attorney's voucher for accuracy, to ensure there are no irregular charges, and to ensure all time charged is in accordance with applicable billings

guidelines, laws, rules, regulations and policies. It shall be the assigning judge's responsibility to review the attorney's voucher for reasonableness and to consider the Administrator's recommendation.

If the Administrator has a question regarding a panel attorney's voucher, he or she shall contact the attorney and attempt to resolve the problem. If the attorney and the Administrator resolve the problem, the Administrator shall forward the voucher to the assigning judge along with the Administrator's written recommendation regarding payment.

If the attorney and the Administrator cannot resolve the problem, then the Administrator shall forward the voucher to the judge along with a written statement from the Administrator setting forth the Administrator's objections to payment of the voucher. The Administrator shall send a copy of his or her written statement of objections to the attorney. The judge shall afford the attorney an opportunity to respond to the Administrator's objections. The assigning judge shall make the final determination regarding the panel attorney's compensation, subject to any applicable appeal rights of the attorney or the Administrator.

ARTICLE XI. Complaints Procedure; Removal Of Panel Attorneys; Disputes Regarding Qualifications Of Panel Attorneys; Rejections Of Attorneys For Panel Membership

A. Complaints Procedure

The Administrator shall maintain a record of all complaints received with respect to attorneys who are members of the panel and with respect to cases then pending, and immediately forward the same to the assigning judge for resolution. The assigning judge shall advise the Administrator of the disposition of each such complaint received and in those instances in which the Administrator determines that cause may exist warranting further consideration, the administrator shall promptly refer any complaint to the Review Committee consisting of one member to be designated by the Bar Association, one member to be designated by the Bench Bar Committee of the Bar Association, and one member to be designated by the County. The Review Committee shall have the authority to purge meritless complaints from the Administrator's records.

B. Removal or Suspension of Attorneys from Panel Membership.

1. The Review Committee shall have the right, upon just cause, to remove or suspend attorneys from panel membership. Just cause for removal or suspension from panel membership shall be as follows:
 - a. Failure to adequately represent his or her client.
 - b. Failure to comply with applicable professional standards.

- c. Failure to comply with the terms and conditions of the plan or other applicable laws, rules and regulations governing conflict assignments or representation of criminal defendants or other litigants.
 - d. Repeated billing improprieties.
 - e. Failure to accept any assignments.
 - f. Any other conduct by the attorney that would result in the frustration of this plan's objectives as set forth in Section II.
 - 2. The Review Committee shall have the discretion to suspend an attorney from the panel membership for a period not to exceed six months. At the end of the suspension period, the Review Committee shall have the right to impose reasonable conditions on the attorney's reinstatement to the panel.
 - 3. Upon removal or suspension of an attorney from panel membership, the Administrator shall immediately notify all judges that the attorney is no longer eligible for conflict assignments.
- C. Refusal to Grant an Attorney Panel Membership: The Review Committee shall have the right to refuse to grant an attorney membership on the panel for any of the following reasons:
 - 1. Refusal of the panel attorney to agree to the terms and conditions of the plan or to agree to applicable laws, rules or regulations.
 - 2. A previous finding by the Review Committee, after a hearing, that there was just cause for removal of the attorney from the panel, unless the Review Committee should unanimously recommend such reinstatement to the Administrator.
 - 3. Failure of the attorney to meet the criteria established for handling conflict assignments.
 - 4. Any other conduct by the attorney that would result in the frustration of the plan's objectives as set forth in Section II herein.
- D. No attorney shall be rejected as a member of the panel or removed or suspended from the panel except after an administrative hearing before the Review Committee provided, however, that the Administrator shall have the right to temporarily suspend an attorney from panel membership prior to, but pending a hearing of the Review Committee where the Administrator reasonably determines

that the plan's objectives would be seriously compromised by allowing an attorney to continue as a panel member pending such hearing. The decision of the Review Committee shall be in writing. The attorney shall be required to give the Administrator written notice of his or her defense. At the hearing, the attorney and the Administrator shall have the right to present witnesses and to be represented by counsel.

ARTICLE XII. Effective Date

The terms of this plan shall go into effect immediately, provided, however, the procedures set forth in Articles VIII, IX, X and XI of the plan shall not go into effect, in each court, until the Administrator notifies, in writing, each judge in each court that the plan is ready to be implemented.

Dated: 4/14/03

Name: *John D. Doyle*
John D. Doyle
Monroe County Executive



Dated: 4/14/03

Name: *Eugene T. Clifford*
Eugene T. Clifford
President, Monroe County Bar Association

Dated: 4.14.03

Name: *Mary Corbitt*
Mary Corbitt
Executive Director, Monroe County Bar Association

Dated: _____

Name: _____
Hon. Jonathan Lippman
Chief Administrative Judge
State of New York Unified Court System

State of New York)
County of Monroe) ss.:

On the 14th day of April, 2003, before me, the subscriber, personally came JOHN D. DOYLE, Monroe County Executive, who being by me duly sworn, did depose and say that he resides in the County of Monroe, State of New York; that he is the Monroe County Executive, the municipal corporation described in and which executed the within agreement; that he signed his name to the foregoing agreement by virtue of the authority vested in him by the laws of the State of New York and the local laws of the County of Monroe.

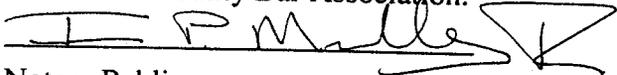
J. P. Mulley, Jr.
Notary Public

JAMES P. MULLEY, JR.
Notary Public, State of New York
Monroe County
Commission Expires ~~December 31, 19~~
2/12/2007

State of New York)

County of Monroe) ss.:

On the 14th day of April, 2003, before me, the subscriber, personally came EUGENE T. CLIFFORD, who being by me duly sworn, did depose and say that he resides in the County of Monroe, State of New York; that he is the President of the Monroe County Bar Association, a party described in and which executed the within agreement; that he signed his name to the foregoing agreement in his capacity as President of the Monroe County Bar Association.


Notary Public

JAMES P. MULLEY, JR.
Notary Public, State of New York
Monroe County
Commission Expires ~~December 31, 19~~
2/12/2007

State of New York)

County of Monroe) ss.:

On the 14th day of April, 2003, before me, the subscriber, personally came MARY CORBITT, who being by me duly sworn, did depose and say that she resides in the County of Monroe, State of New York; that she is the Executive Director of the Monroe County Bar Association, a party described in and which executed the within agreement; that she signed her name to the foregoing agreement in her capacity as Executive Director of the Monroe County Bar Association.


Notary Public

JAMES P. MULLEY, JR.
Notary Public, State of New York
Monroe County
Commission Expires ~~December 31, 19~~
2/12/2007

State of New York)

County of _____) ss.:

On the ___ day of April 2003, before me, the subscriber, personally came, HON. JONATHAN LIPPMAN, Chief Administrative Judge, who being by me duly sworn, did depose and say that he resides in the County of _____, State of New York that he is the Chief Administrative Judge of the State of New York Unified Court System, a party described in and which executed the within agreement; that he signed his name to the foregoing agreement in his capacity as Chief Administrative Judge of the State of New York Unified Court System.

Notary Public

State of New York



Jonathan Lippman
Chief Administrative Judge

RECEIVED
2003 MAY -5 AM 10:21

25 Beaver Street
New York, N.Y. 10004
(212) 428-2100

April 29, 2003

Hon. Jack Doyle
County Executive
110 County Office Building
39 West Main Street
Rochester, New York 14614

Dear County Executive Doyle:

I have received your proposed amendments to the Monroe County Bar Association Sponsored Plan for Conflict Assignments, which you submitted to me on April 14, 2003 for approval pursuant to section 722(3) of the County Law.

The amended Plan is hereby approved.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jonathan Lippman".

cc: Hon. Thomas Van Strydonck