

By Legislators Boyce and Terp

Intro. No. \_\_\_\_\_

RESOLUTION NO. \_\_\_\_ OF 2020

**REAPPOINTMENT OF TIMOTHY P. DONAHER AS PUBLIC DEFENDER**

BE IT RESOLVED BY THE LEGISLATURE OF THE COUNTY OF MONROE, as follows:

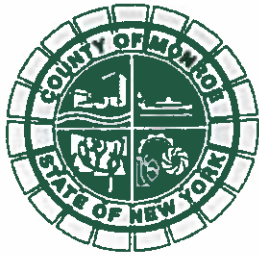
Section 1. In accordance with the provisions of Section C7-5 of the Monroe County Charter, Timothy P. Donaher is hereby reappointed as Public Defender, for a two-year term beginning January 1, 2020 and expiring December 31, 2021.

Section 2. This resolution shall take effect in accordance with Section C2-7 of the Monroe County Charter.

Matter of Urgency  
File No. 20-0003

ADOPTION: Date: \_\_\_\_\_

Vote: \_\_\_\_\_



*Monroe County Legislature*  
*Office of the President*

**DR. JOE CARBONE**  
PRESIDENT

January 8, 2020

To The Honorable  
Monroe County Legislature  
407 County Office Building  
Rochester, New York 14614

Subject: Reappointment of the Public Defender

Honorable Legislators:

I, Dr. Joseph Carbone, President of the Monroe County Legislature, do hereby submit to your Honorable Body for your confirmation the reappointment of Timothy P. Donaher as Public Defender, pursuant to Section C7-5 of the Monroe County Charter.

Mr. Donaher resides at 30 Pennicott Circle, Penfield, New York 14526 and has served the people of Monroe County as Public Defender since January 2008. Attached is the Office of the Public Defender 2019 Annual Report and his resume.

The specific legislative action required is to appoint Mr. Timothy P. Donaher as Public Defender, for a two-year term beginning January 1, 2020 and expiring December 31, 2021.

This resolution will have no fiscal impact on Monroe County's Budget.

Sincerely,

Dr. Joseph Carbone  
Monroe County Legislature  
President

OFFICIAL FILE COPY	
No.	200003
Not to be removed from the Office of the Legislature of Monroe County	
Committee Assignment	
URGENT	-L

By Legislators \_\_\_\_\_ and \_\_\_\_\_

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File No. 20-\_\_\_\_\_

ADOPTION: Date: \_\_\_\_\_

Vote: \_\_\_\_\_

## **TIMOTHY P. DONAHER**

30 Pennicott Circle  
Penfield, New York 14526

### **BUSINESS ADDRESS:**

Monroe County Public Defender's Office  
10 N. Fitzhugh Street  
Rochester, New York 14614  
Phone: (585) 753-4531 (work)  
(585) 704-5893 (cell)

### **PERSONAL DATA:**

Age: 51  
Date of Birth: September 5, 1968  
Place of Birth: Pittsburgh, Pennsylvania

### **EDUCATIONAL BACKGROUND:**

SUNY Buffalo School of Law  
309 O'Brian Hall Buffalo, NY 14260-1100  
Received Juris Doctor Degree, 1993  
Admitted NYS Bar, 1994

SUNY Binghamton  
PO Box 6000 Binghamton, NY 13902-6000  
*Double Degree Program*

Harpur College:	Bachelor of Arts Degree in English Literature, 1990
School of Management:	Bachelor of Science Degree in Accounting, 1990

### **LEGAL EXPERIENCE:**

February 2008 to  
Present

MONROE COUNTY PUBLIC DEFENDER  
10 N. Fitzhugh Street, Rochester, New York 14614

Responsible for supervising an Office of 73 attorneys and 25 support staff, which provides legal services to indigent individuals. Oversee a budget of approximately \$10.5 million.

February 2000 to  
February 2008

MONROE COUNTY PUBLIC DEFENDER'S OFFICE  
Assistant Public Defender, Appeals Bureau

Responsible for perfecting appeals of felony convictions and Family Court matters to the Appellate Division, Fourth Department and the New York Court of Appeals, as well as misdemeanor appeals to the Monroe County Court, and parole denial appeals. Duties include reviewing trial records, researching relevant legal issues, filing motions, preparing briefs and records and orally arguing cases before the Appellate Division and the Court of Appeals. Perfected over 175 appeals to the Appellate Division, Fourth Department and New York Court of Appeals.

January 1996 to  
January 2000: DOYLE & DONAHER, Times Square Building, Suite 625,  
Rochester, New York 14614

Founder and Partner of law firm established in 1996 concentrating in civil litigation, criminal defense, and general corporate work. Represented clients in a variety of litigation, including personal injury, breach of contract, criminal defense, real estate, and professional discipline.

July 1994 to  
January 1996: LAW OFFICES OF DANIEL J. DOYLE, 1150 University Avenue  
Rochester, New York 14610

#### MEMBERSHIPS:

##### CHIEF DEFENDERS ASSOCIATION OF NEW YORK

Co-Founder and President, 2014-2015

Director, 2015 to present

##### OFFICE OF INDIGENT LEGAL SERVICES, CHIEF DEFENDER ADVISORY BOARD

Member

##### OFFICE OF COURT ADMINISTRATION COMMITTEE ON CRIMINAL JURY INSTRUCTIONS

Member, 2012 to 2018

##### UNITE ROCHESTER – JUSTICE COMMITTEE

Member

##### OFFICE OF COURT ADMINISTRATION ADVISORY COMMITTEE ON E-FILING IN CRIMINAL ACTIONS AND PROCEEDINGS

Member

##### NEW YORK STATE BAR ASSOCIATION TASK FORCE ON CRIMINAL DISCOVERY

Member

##### 7<sup>TH</sup> JUDICIAL DISTRICT ADMINISTRATIVE JUDGE'S PLANNING TASK FORCE

Member

MONROE COMMUNITY COLLEGE  
Paralegal Advisory Committee  
Law & Criminal Justice Department Advisory Committee

ROCHESTER-MONROE ANTI-POVERTY INITIATIVE  
Policy Working Group, Member

CENTER FOR EMPLOYMENT OPPORTUNITIES  
Advisory Committee

NEW YORK CARE COORDINATION PROGRAM  
Board Member

AWARDS:

New York State Bar Association 2017 Denison Ray Award  
Chief Defenders Association of New York 2016 President's Award

RELATED EXPERIENCE:

SUNY AT BROCKPORT, 350 New Campus Drive, Brockport, New York 14420  
Adjunct Lecturer, Department of Political Science and International Studies  
Spring, 2001 through Fall, 2011. Taught courses in constitutional law, the court system, and the death penalty.

KEUKA COLLEGE, Keuka Park, New York 14478  
Adjunct Professor, Division of Business & Management.  
Fall, 1998 through Spring, 1999. Taught courses in business law.

MONROE COUNTY BOARD OF ETHICS  
Board member, Appointed 2007  
Resigned August, 2008

NEW YORK STATE ASSOCIATION OF PRETRIAL SERVICE AGENCIES  
Keynote Speaker, "*New Initiatives, New Legislation: New Opportunities*", October 29, 2017

COUNTY ATTORNEYS' ASSOCIATION OF THE STATE OF NEW YORK  
Seminar Lecturer, "*Indigent Defense Options for New York Counties*", April 30, 2013

NEW YORK STATE ASSOCIATION OF CRIMINAL DEFENSE LAWYERS  
Seminar Lecturer, "*Ignition Interlock Devices: Perils, Pitfalls....and Opportunities*", June 25, 2011

NEW YORK STATE DEFENDERS ASSOCIATION  
Seminar Lecturer, "*Ignition Interlock Devices*", November 12, 2010

MONROE COUNTY BAR ASSOCIATION

Seminar Lecturer, "*Fourth Annual Criminal Justice Forum: Ethics*", February 12, 2010

Seminar Lecturer: "*Current Development in Ethics for Criminal Practitioners*", February 12, 2015

APPELLATE DIVISION, FOURTH DEPARTMENT

Assigned Counsel Family Court Appeals Mandatory Eligibility Training

Seminar Lecturer, November 17, 2007

*"Substantive and Procedural Issues on Appeal--Part II: Child Support, Paternity, Family Offenses, Custody/Visitation/Adoption"*

JUDICIAL PROCESS COMMISSION, 121 N. Fitzhugh Street, Rochester, New York 14614

Lecturer, August 10, 2006

*"Collateral Employment Consequences of a Criminal Conviction"*

DISCOVERY-HUTHER DOYLE, 360 East Avenue, Rochester, New York 14604

Lecturer, October 12, 2005

*"Collateral Employment Consequences of a Criminal Conviction"*

UNITY HEALTH SYSTEMS, ATEP PROGRAM, 845 West Main Street, Rochester, New York 14611

Lecturer, August 30, 2005

*"Collateral Employment Consequences of a Criminal Conviction"*

ARTICLES & PUBLICATIONS:

*"Trial by Reason and Not Surprise"*, Timothy P. Donaher and Andrew Correia, *Atticus*, Winter 2011

PROFESSIONAL ASSOCIATIONS:

National Association of Criminal Defense Lawyers

National Legal Aid & Defender Association

National Association for Public Defense

New York State Bar Association

Chief Defenders Association of New York (President, 2014-2015)

New York State Defenders Association

Monroe County Bar Association

Great Rochester Association of Women Attorneys

*References Available Upon Request*



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**OFFICE OF THE PUBLIC DEFENDER**

**ANNUAL REPORT**

**2019**

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## INTRODUCTION

2019 was a year of new initiatives and planning for change in the Monroe County Public Defender's Office. We continued to provide excellent representation to indigent clients in the criminal, family, and appellate courts in Monroe County, but also began planning for the significant criminal justice reform that will occur post-January 1<sup>st</sup> in New York State<sup>1</sup>. Additionally, we began implementing new initiatives funded by the influx of New York State grant money received under the *Hurrell-Harring* legislation outlined below.

Our staff continued to work very hard in representing their clients and providing excellent representation. Their hard work led to excellent results for our clients. For example, in 2019 the attorneys in the Office prevailed in 80% of the felony trials conducted by staff (a complete acquittal, top count acquittal, or trial order of dismissal granted). The Office obtained total acquittals in 40% of the felony trials conducted in 2019.

In 2019, the Office continued its efforts in examining how to improve the representation we provide our clients. In anticipation of the post-January 1<sup>st</sup> criminal justice reform, we prepared comprehensive trainings materials and conducted numerous continuing legal education seminars throughout upstate New York to train the defense community. We also completed several initiatives that began in 2018, and began several new initiatives, all designed to improve the quality of services we provide, and assist the criminal defense bar in providing quality representation to criminal defendants in the Greater Rochester Area.

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<sup>1</sup> Beginning January 1, 2020 new criminal justice legislation will implement bail reform, criminal discovery reform,

In Part I of this Report, the Office's efforts to improve client representation, increase contact with the community that we serve, continue our efforts to recruit highly qualified attorneys to be assistant public defenders, and increase office diversity, is discussed. In Part II of this Report, the Office, its staffing, and caseloads will be outlined. Part III of this Report will discuss Office recognition, community involvement and support; and Part IV will discuss future plans for the Office.

### PART I: OFFICE INITIATIVES

#### A. Introduction

The strength of this Office is in the enormously talented and committed people who work here. They are truly an asset to our community. It is through their efforts that the following improvements and initiatives were undertaken and accomplished in 2019.

#### B. New State Aid- *Hurrell-Harring* Grant

In 2019 Monroe County received a \$38,233,512 five-year grant to improve indigent defense. This funding is being provided pursuant to New York State legislation passed in 2017 requiring the Office of Indigent Legal Services to assess each county's indigent, criminal legal services needs in three areas: (1) caseload reduction to comply with new caseloads caps; (2) providing counsel at first appearance; and (3) improving the quality of indigent defense. This legislation was the result of a class action settlement colloquially known as "*Hurrell-Harring*".

Statewide it is anticipated that the cost of these improvements will be approximately \$250 million by 2023. Each year since the 2018-2019 NYS fiscal year, it

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and speedy trial reform.

is anticipated that the New York State Legislature will appropriate increasing funds to reimburse the counties for these expenses. \$50 million was appropriated in FY 2018-2019, and \$100 million was appropriated in NYS FY 2019-2020. It is anticipated \$150 million will be appropriated in NYS FY 2020-2021, \$200 million in NYS FY 2021-2022, and \$250 million in NYS FY 2022-2023. This known colloquially as the “*Hurrell-Harring*” grant funding.

Over the five year period, it is anticipated that Monroe County will receive \$2,548,900 in FY 2018-2019; \$5,097,801 in FY 2019-2020; \$7,646,702 in FY 2020-2021; \$10,195,603 in FY 2021-2022; and \$12,744,504 in FY 2022-2023. This funding will be allocated to the Public Defender’s Office, the Monroe County Conflict Defender’s Office, and the Monroe County Assigned Counsel Plan to improve indigent criminal defense.

The Monroe County Legislature accepted this grant on August 13, 2019.

C. Felony Caseload Reduction Initiative

Under the State legislation reference above, the Office of Indigent Legal Services was charged with the responsibility of issuing new caseload caps that will become mandatory (if funding is provided by the State) in 2023.<sup>2</sup>

These caseload caps are:

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<sup>2</sup> The Indigent Legal Services Office’s report may be found here: <https://www.ils.ny.gov/files/Hurrell-Harring/Caseload%20Reduction/Caseload%20Standards%20Report%20Final%20120816.pdf>

<b>Case Type</b>	<b>Maximum Annual Assignments</b>	<b>Minimum Average Hours</b>
<b>Violent Felonies<sup>45</sup></b>	<b>50</b>	<b>37.5</b>
<b>Non-Violent Felonies</b>	<b>100</b>	<b>18.8</b>
<b>Misdemeanors and Violations</b>	<b>300</b>	<b>6.3</b>
<b>Post-Disposition (including Probation Revocation)</b>	<b>200</b>	<b>9.4</b>
<b>Parole Revocation</b>	<b>200</b>	<b>9.4</b>
<b>Appeals of Verdicts</b>	<b>12</b>	<b>156.3</b>
<b>Appeals of Guilty Pleas</b>	<b>35</b>	<b>53.6</b>

Beginning July 1<sup>st</sup> of 2019, the Monroe County Public Defender's Office implemented its "Felony Caseload Reduction Initiative" to begin the process of complying with these caseloads caps by 2023. Using a portion of the "*Hurrell-Harring*" grant funding available in the first year of funding, the Public Defender's Office sent approximately 650 felony cases to the Monroe County Assigned Counsel Panel for assignment to experienced program attorneys. This significantly reduced the unacceptably high caseloads in the felony bureau of the Office. Prior to this program, felony attorneys in the Office carried a caseload of approximately 200 non-violent felony cases per year or 85 violent felony cases per year. After the implementation of the program, felony caseloads have been reduced significantly and are close to the recommended caseloads listed above.

This has resulted in significant improvement in the quality of representation afforded clients charged with felony offenses. This Program will continue in 2020.

**D. Next Court Date Reminder Program**

In order to assist clients in their obligation to attend court proceedings, the Public Defender's Office implemented a "Next Court Date Reminder Program" in late 2019. Partnering with the New York State Defenders Association (the developer of the

case management system used by the Office) the Public Defender's Office developed an automated text messaging/email reminder system for next court dates, office meetings, and other important client meetings. Our case management system, PDCMS, was modified to send these messages automatically.

Studies have established that an effective court reminder program can reduce failure to appear rates significantly. Effective reminder programs employ multiple reminders in advance of a defendant's next court appearance. The Public Defender's Office's court reminder program sends three texts or emails in advance of each court appearance to remind clients about their upcoming court appearance.

Under a contract with the PreTrial Services Corporation of the Monroe County Bar Association ("PreTrial"), staff from PreTrial work in the Public Defender's Office to obtain and enter the relevant data about clients' next court dates.

The program was implemented in late fall of 2019 and we are now sending text reminders to every client in superior court, Rochester City Court, and six courts in the towns and villages of Monroe County. We will be adding additional courts in early 2020.

The modification to our case management system allowing next court date reminders is now available to any New York indigent defense office that uses PDCMS free-of-charge (67 New York offices use PDCMS).

#### E. Failure to Appear Program

Unfortunately clients do not always make their court appearances. Despite a common belief that this occurs intentionally as the result of a desire to avoid prosecution, the reality is that clients miss court for a variety of reasons unrelated to

an intent to avoid prosecution. For instance, clients often have transportation issues (there are courts in Monroe County that are not on a bus line) or child care issues that prevent them from making a scheduled court appearance.

Recognizing this reality, the New York State Legislature passed legislation (effective January 1, 2020) that requires courts to wait 48 hours before issuing a “bench warrant” to allow the defendant time to appear.

To assist clients in avoiding a bench warrant, and appearing in court, the Public Defender’s Office created a Failure to Appear Program. The staff from PreTrial who oversee the Next Court Date Reminder Program also staff the Failure to Appear Program. When an attorney notifies the staff that a client has missed a court appearance, the staff immediately attempts to contact the client to inform the client of what they need to do to avoid the issuance of a bench warrant (each court has different policies in place).

Coupled with the Next Court Date Reminder Program, we believe that this Program will significantly reduce “failure to appears” in Monroe County.

F. Raise the Age Implementation

On October 1, 2018 “Raise the Age” legislation was implemented state-wide. The legislation became effective for 16-year-olds on that date. On October 1, 2019 it became effective for 17-year-olds. This legislation is designed to divert youth charged with misdemeanors from criminal court prosecution to family court, and the majority of youth charged with felony offenses from criminal court to family court.

As the Raise the Age legislation created a new court part, designated “Youth Part”, the Office was required to assign an experienced felony attorney to this rotation.

It is our goal to vigorously advocate for our clients in Youth Part to maximize the number of clients whose cases are removed to family court.

G. Hiring Committee

Ensuring that each new hire exemplifies the qualities that make an excellent public defender is the responsibility of the hiring committee. Chaired by Special Assistant Public Defender John Bradley, the committee members in 2019 (Special Assistant Public Defender Drew DuBrin, Special Assistant Public Defender Josh Stubbe, 1st Assistant Public Defender Jill Paperno, Assistant Public Defender Katherine Higgins, and Assistant Public Defender Nicole Morris) screened all applicants for open attorney positions, conducted all initial interviews with prospective applicants, and recommended to the Public Defender the top three applicants for each open position in the criminal court bureaus.

Based upon their excellent work this past year, the Office hired six attorneys who were well-qualified for the position of assistant public defender and who exhibited a commitment to public defense. All of the new hires possessed excellent academic credentials and a dedication to public interest law.

H. Continuing Legal Education (CLE) Committee, Training and Skills Programs

(1.) CLE Programming

In order to effectively represent our clients, our attorneys must be provided frequent and regular trainings on changes in the law, and how to improve their trial skills. To accomplish the necessary training for staff, the Office conducts numerous Continuing Legal Education (CLE) programs and training programs. It is the responsibility of the CLE Committee to organize continuing legal education programs

for staff attorneys and the legal community. In 2019 it was chaired by Special Assistant Public Defender Julie Cianca.

Additionally, in order to train staff on the new criminal justice legislation that will be effective on January 1, 2020, the Office organized numerous CLE programs to inform the defense community of the upcoming changes to the criminal justice system.

The Monroe County Public Defender's Office is an accredited CLE provider. The Office strives to provide staff attorneys and attorneys in the legal community high-quality CLE programs at no cost. In 2019 the Office sponsored **forty-three** (43) programs for the attorneys in the Office, and the private defense bar.

Hundreds of attorneys from upstate New York attended the Office's CLE programs. All of the above programs were **provided at no cost to the attendees**.

Attorneys in the Office are often asked to present at various CLE programs throughout New York State. In 2019, Office attorneys presented at CLEs sponsored by the Chief Defenders Association of New York, the Greater Rochester Association for Women Attorneys, the New York State Defenders Association, and the New York State Association of Criminal Defense Lawyers.

Office staff presented CLE programs on the new criminal justice legislation throughout upstate New York, including programs in Buffalo, Canandaigua, Albany, Utica, Ithaca, Syracuse, and Rochester.

Because of the work of this committee, and the attorneys in this Office who donated their time and effort speaking at CLEs, the legal community received valuable instruction in criminal and family law. As a result of the numerous high-quality CLE programs presented by the Office over the last several years, the Office was awarded



the Monroe County Bar Association's Raymond J. Pauley Award in 2016. The Pauley Award recognizes an attorney or organization that has made "exceptional contributions to the furtherance of legal education."

(2.) Recorded Training Programs

As a result of the increased State funding to public defender offices statewide, offices throughout New York State are adding new assistant public defenders. Recognizing that our Office has some of the most experienced public defenders in New York, the Office developed a series of recorded training programs to educate new attorneys on the basics of representing clients accused of various misdemeanor offenses in local courts. These programs were designed to educate new attorneys on the elements of the offense, common defects in accusatory instruments, and strategies in handling the particular type of case. The video programs are between 45 minutes and 90 minutes, and each program includes the video presentation, PowerPoint, and additional handouts.

Sixteen programs were created and sent to every public defense office in New York State. The Office received positive feedback from numerous public defense offices that found the training videos helpful.

(3.) Office Training

In late 2017, 1<sup>st</sup> Assistant Public Defender Jill Paperno assumed the responsibilities of Training Director. In 2019, Ms. Paperno organized an intensive two day trainer on cross-examination techniques.

On May 16 and 17, 2019, Tom Klein and Annie Costanzo, extremely experienced homicide and violent felony attorneys from Legal Aid in New York City, presented a

two day workshop for approximately 25 Town and City Court attorneys on cross-examination techniques and law. The workshop included legal discussion, demonstrations of cross-examination methods by Mr. Klein and Ms. Costanzo, and participation in role playing cross-examinations by the attendees. The program was extremely well received by participants, who look forward to each opportunity they have to learn from these two brilliant defenders.

(4.) Diversity, Implicit Bias, and Cultural Competency Training

Effective public defenders must be aware of the impact implicit bias has on their practice (both personally, and in the court system). Additionally, all professionals in our diverse community should have training in cultural competency. In order to accomplish this in the Public Defender's Office, in 2019 we partnered with the Center for Dispute Settlement to provide training to all new attorney staff.

The Center for Dispute Settlement's Cultural Competency/Implicit Bias curriculum reflects current innovative and evidence-based mind research that exposes the unconscious nature of bias and its effects on our thinking, decisions and actions. The highly interactive curriculum frames the positive and negative attributes of bias and explores how if left unchecked, implicit bias can lead to implicit stereotyping, which can lead to explicit bias and ultimate harm in our personal and professional relationships. Curriculum content incorporates small group learning activities and discussions, which promotes relationship building, teamwork and heightened awareness of cultural differences.

The training has been very well received by attendees.

Additionally, Office staff attended diversity CLE programs offered by the

Monroe County Bar Association and sponsored an implicit bias CLE program for Office staff.

I. Internship Committee and Program

In 2019, the Office continued our internship program. In addition to placing college students as interns, the Office continued to place law students, and in select cases, high school students. In 2019, the Office hosted over 20 student interns (from law schools, local colleges, and high schools) throughout the year. All of the student interns obtained valuable experience working in a large law office, and gained additional insight into the criminal justice system.

In 2019, the Office continued its "externship program" with the participating law schools. Student externs receive course credit toward their degree requirements, while also learning valuable knowledge about our criminal justice system. Additionally, the student externs assist attorneys in the Office by conducting legal research, drafting motions, and other forms of legal assistance.

College and high school interns are offered the opportunity to observe the criminal justice system from a unique perspective, and they gain valuable experience as well. Working with their attorney-supervisors, interns review client files, assist staff during court proceedings, and observe a variety of court proceedings. Our interns also assist the Office, as we ask each intern to volunteer a few hours per week performing office work, such as filing and copying. We receive very positive reviews from the students who intern in the Office, and have successfully placed students from SUNY Brockport, SUNY Geneseo, the University of Rochester, Nazareth College, and the Rochester City School District.

## PART II: OFFICE ORGANIZATION

### A. Creation of Office and its Jurisdiction

In a 1963 landmark decision, the Supreme Court of the United States ruled that all indigent defendants had the right to be represented by counsel in criminal proceedings. In order to comply with the Supreme Court ruling, Article 18-B of the County Law of the State of New York was adopted by the State Legislature in 1965. This law required the various counties throughout the State to adopt a plan for the representation of indigent defendants. In compliance with the state mandate, on May 23, 1968, by virtue of Resolution No. 250 of 1968, the Monroe County Legislature adopted Local Law No. 5 of 1968, thus creating the Office of the MONROE COUNTY PUBLIC DEFENDER.

By law, the Public Defender is required to "represent, without charge, at the request of the defendant, or by order of the court with the consent of the defendant, each indigent defendant who is charged with a crime...in the county...in which such public defender serves."

The Monroe County Public Defender's Office represents individuals in the courts within Monroe County, including the City of Rochester and the towns and villages within the geographical boundaries of the County. This area has a population of approximately 750,000 people.

The office handles cases in:

- A. Town and Village Justice Courts
- B. Rochester City Court (including Rochester Drug Treatment Court)

- C. County Court (including Mental Health Court, Veterans Court, and Judicial Diversion Program Court)
- D. Supreme Court
- E. Family Court
- F. Appellate Division, Fourth Department
- G. Court of Appeals
- H. United States Supreme Court (when required)

The Public Defender represents the indigent accused at every stage of the criminal proceeding from the arraignment through final disposition, including, when appropriate, appeals from adverse judgments and decisions.

Our goal is to provide to the indigent who are accused of a crime, or who are entitled to representation in family court, truly competent legal representation which exceeds that which they would expect to obtain from privately retained counsel. An individual's constitutional rights must be protected regardless of his or her financial circumstances.

**B. Staff**

During 2019, our staff included 74 attorneys, 1 confidential assistant, 6 investigators, 8 investigative assistants, 9 full-time secretaries and 1 receptionist, who is bilingual. The attorneys are precluded from engaging in private practice.

Assistant public defenders are assigned to work in the Town Court Bureau, the City Court Bureau, the Superior Court Bureau (Non-Violent Felony Section and the Violent Felony Section), the Family Court Bureau, or the Appeals Bureau.

The Office staff takes great pride in the quality of the work they provide to our

clients. Their work results in high-quality representation that advances justice in our community. As an example, in 2019 the Office conducted 109 trials (felony or misdemeanor/violation) to completion. Of those, we obtained favorable dispositions (Complete Acquittals, Top Count Acquittals and Trial Orders of Dismissal) in 50% of the trials. Of the 109 trials conducted by the Office, only 12 clients were convicted of the top counts.

C. City Court Bureau

The Rochester City Court has a heavier caseload than any other Criminal Court in Monroe County. All felonies, misdemeanors and violations of the law committed within the geographical boundaries of the City of Rochester are handled by City Court. A City Court judge has preliminary jurisdiction over all felonies and complete jurisdiction over misdemeanors and violations.

The responsibilities of the Assistant Public Defender assigned to City Court include gathering information to assist the court in determining a defendant's eligibility for representation, appearing at arraignment, making bail applications, participating in pre-trial conferences, investigating and preparing a defense to the charges, preparation and argument of various types of motions, pre-trial hearings, preliminary hearings, trials, social service agency referrals, and sentencing.

In 2019, all of these responsibilities were carried out by a total of 14 Assistant Public Defenders and one Special Assistant Public Defender who supervised the City Court Section (while also handling a violent felony caseload). The attorneys share the enumerated responsibilities on a rotating basis.

In 2019, this Office was called upon to represent clients in approximately 6,000

cases in the City Court of Rochester. That means, on average, each Assistant Public Defender would have been assigned to approximately 428 cases during the course of the year. Although this number is significantly lower than in past years due to increased staffing being allocated to this Bureau, that number of case assignments is significantly higher than the recommended maximum caseload as established by the Office of Indigent Legal Services.

D. Town Court Bureau

The office is required to represent persons accused of crimes in the various town and villages throughout the County. In 2019 the Office had 14 assistant public defenders (overseen by two Special Assistant Public Defenders) assigned to cover the Town and Village Justice Courts within the 21 towns and villages of Monroe County.<sup>3</sup>

The newly hired Assistant Public Defenders are traditionally assigned to the Town Courts. The Town Courts have heavy case loads, erratic court hours and varying local court procedures. The assignment of two Special Assistant Public Defenders (who also carry a violent felony caseload) to supervise the section enables us to provide our new attorneys with the appropriate training and orientation to the local justice court process and essential supervision so as to ensure quality representation for our clients.

In 2019, approximately 6,000 clients were assigned to our justice court staff of 14 full-time attorneys. Therefore, each of the newly hired attorneys in the section was assigned to an average of approximately 428 cases. Additionally, each staff attorney in the Town Court Bureau is required to staff one 12 hour arraignment shift (8:00 a.m. to

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<sup>3</sup> Although there are 21 Town and Villages in Monroe County with a justice court, almost all of those courts have at least two judges. The attorneys in the Town Court section must handle 49 separate courts in the 21 Towns and Villages in Monroe County.

8:00 p.m.) each week under the CAFA Program. The Town Court Section also has the added responsibility of representing individuals whose cases have been transferred to Rochester Drug Treatment Court, Monroe County Mental Health Court, the Integrated Domestic Violence Court, or Monroe County Veterans Court.

E. Parole Representation Unit

In 2019, the Office created a new Parole Representation Unit to enhance the representation we provide to clients who are charged with violating the terms of their parole. These clients often have unique challenges, such as drug addiction issues, and face the possibility of having their parole revoked and returning to prison. Due to the increase in the number of parole violations in Monroe County since 2014,<sup>4</sup> the Office dedicated a full time attorney and a full time supervisor to this Unit. In 2019, those two attorneys represented 1,170 clients charged with violating their parole.

F. Superior Court Bureau

In 2019, the Superior Court Bureau (divided into the non-violent felony section and the violent felony section) was staffed with the full time equivalent of 22 attorneys, including the 1st Assistant Public Defender, the 2nd Assistant Public Defender, and three Special Assistant Public Defenders (some senior staff have reduced caseloads due to supervisory responsibilities).

The attorneys in the Bureau handled felony cases, the most serious charges against the indigent accused. The attorneys appeared in all courts, including: Supreme Court, County Court, City Court and Town/Justice Courts. The Bureau handled violent and nonviolent felony offenses.

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<sup>4</sup> In 2014 the Office represented 806 persons charged with violating their parole.



The attorneys in this Bureau handled all aspects of the criminal process, including local court preliminary hearings, local court pleas and sentencing; superior court pleas and sentencing, hearings, motions, and trials. In addition, these attorneys handle probation violation proceedings, parole cases (preliminary hearings, final hearings, and administrative appeals), habeas corpus proceedings, and mental health proceedings under the Criminal Procedure Law.

While our present staffing level does not permit us to provide vertical representation in all felony cases, we do provide this type of representation in violent felony offender and repeat offender cases. Vertical representation was also provided in all homicide cases and to select clients charged with other serious felonies, such as class A and B drug offenses.

This Office remains committed to providing vertical representation whenever possible since it provides the indigent accused the most effective representation possible. Our goal is to provide vertical representation to all those accused of a felony offense. It is anticipated that due to the increased *Hurrell-Harring* funding and its resultant lowered caseloads, the Public Defender's Office will move to vertical representation in all felony cases in early 2020.

In 2019, we were assigned to approximately 4,096 felony cases. This was a decrease of approximately 124 cases over 2018.<sup>5</sup> Due to the Felony Caseload Reduction Initiative discussed above, felony caseloads for attorneys in the Public Defender's Office approximate the ILS caseload maximums.

F. Family Court Bureau

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<sup>5</sup> This represents a decrease of 225 cases since 2017.

The role of the Public Defender's Office in Family Court has continually grown. The State Legislature has consistently expanded the right to counsel for indigent persons involved in the Family Court process to include more cases where counsel is required.<sup>6</sup> The State has also passed legislation requiring more court appearances in certain types of family court actions, which requires our family court attorneys to devote a significant amount of time to appearing in court.

In 2019, our Family Court staff was comprised of one Special Assistant Public Defender and ten Assistant Public Defenders. Each attorney is assigned to the "intake part" on a rotating basis and is responsible for handling the cases assigned to our office through completion.

In 2019, this office was assigned to represent approximately 3,073 new family law cases. To put this caseload into a historical perspective, in 1987, there were 5 attorneys in our Family Court section who were assigned to represent 865 clients. That 1987 caseload was within 10% of management guidelines which suggest that a maximum caseload of approximately 150 cases be assigned to each attorney per year. Currently our 11 Family Court attorneys are each required to provide representation to significantly greater number of clients each year. Last year, each family court attorney was asked to represent over 279 cases per year.

This number is far above the recommended caseload for family court attorneys.

The goal of our office is to try and maintain the family unit whenever possible and to assist clients to negotiate the network of court-ordered services and providers,

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<sup>6</sup> The Public Defender's jurisdiction in Family Court is specifically set forth in § 262 of the Family Court Act, which includes representing indigent respondents in child abuse, child neglect, permanent termination of parental rights, family offense, custody, paternity/support and support violation cases.

thereby holding the state to its statutorily mandated obligation "to help the family with services [in order] to prevent its breakup."

G. Appeals Bureau

A person who is aggrieved by the final determination of a court has the constitutional right to at least one appeal. The Public Defender's Office is assigned by the Appellate Division or the appropriate appellate court to handle such proceedings. The Public Defender is assigned to appeal not only cases of our clients, but also for those defendants who want to appeal, but have exhausted their funds and who, after it is determined by the Court, cannot afford to retain private attorneys for purpose of an appeal.

The preparation and argument of appeals are specialties within the field of criminal law. Proper appellate practice requires not only a strong background in law, but also strong writing skills and the ability to orally argue the law before an appellate court. The appellate attorney must first familiarize himself with what went on in the court below and then must research the law pertaining to the issues that have been discovered. The appeals attorneys argue cases before the Monroe County Court, Appellate Division (Fourth Department), Court of Appeals and the United States Supreme Court (when required).

In 2019, our authorized appeal staff consisted of the Special Assistant Public Defender in-charge of the section and six Assistant Public Defenders.

The attorneys in the Appeals Bureau of the Monroe County Public Defender are primarily responsible for representing persons appealing felony convictions, and perfecting family court appeals.

Finally, the Bureau has continued to assist in the research, analysis and presentation of trial court cases. This work is instrumental in ensuring that our attorneys are able to provide the best possible representation for our clients. This work occurs on a variety of levels. Pretrial motions and written requests for jury charge in felony cases are regularly reviewed and edited by attorneys from this Bureau. Additionally, Bureau attorneys research numerous evidentiary issues, sometimes preparing memoranda or motions for trial attorneys. Bureau attorneys have also assisted trial attorneys on collateral issues that sometimes arise.

In 2019, the seven attorneys in our Appeals Bureau closed approximately 151 cases.

#### H. Investigation Bureau

During 2019, the Monroe County Public Defender's Office employed six full-time investigators, one of whom is the Chief Investigator in charge of the section.

The statistics for 2019 are as follows:

INVESTIGATIVE SECTION ANNUAL STATISTICS	CRIMINAL TRIAL PARTS	FAMILY COURT/ APPEALS	TOTAL
INVESTIGATION/ INTERVIEWS	3,242	365	3,607
SUBPOENAS	313	170	483
LOCATE/NOTIFY	123	14	137

MISCELLANEOUS (TRANSLATIONS, PHOTOS, MEASURE MENTS, ETC.)	662	51	713
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In 2019, almost 5,000 criminal and family court investigation requests were handled by our investigative staff. The work performed by our investigative staff is reflected in our ability to successfully resolve cases for our clients either by disposition or trial.

### PART III: OFFICE RECOGNITION, COMMUNITY INVOLVEMENT AND SUPPORT

#### A. The Jeffrey A. Jacobs Award

In 2010, the Office established an annual award in the memory of former Special Assistant Public Defender Jeffrey A. Jacobs. Jeff Jacobs was a truly outstanding attorney and person. His commitment to justice for the indigent was unparalleled in our community. Jeff was a fierce advocate, and was justifiably proud of his trying over 100 felony cases. Many of those cases were difficult, complex cases requiring Jeff to become familiar with novel scientific theories, and develop effective trial strategies.

Jeff was also a role model for younger assistant public defenders. He generously gave his time to assist younger attorneys on their cases and provide encouragement as they handled difficult cases. His dedication to his clients, perseverance despite the circumstances, and commitment to a fair justice system were a source of inspiration for defense attorneys throughout our community.

Jeff tragically passed away in November of 2006 after a courageous eight-month battle with brain cancer.

The Jacobs Award recognizes a criminal defense attorney from the greater Monroe County area who exemplifies the above qualities, and who has performed truly outstanding trial work in the preceding year. The award winner is chosen according to the following criteria: (a) the complexity of the cases tried, which may include the effective use of experts, and/or litigating complex forensic or scientific issues; and/or (b) fearless advocacy exhibited on behalf of the client; and/ or (c) creativity demonstrated in the presentation of the defense.

In 2019, the Office continued its recognition of a local attorney who exemplified Jeff's commitment to excellent defense of the indigent with the awarding of the 2019 Jeffrey A. Jacobs Award to Jessica Naclerio, Esq. (The Foti Law Firm) and D. Scott Young, Esq. (Ashcroft, Franklin & Young).

**B. Award for Excellence in Indigent Adult Representation in Family Court**

The important work of family court is too often overlooked by the legal profession. Despite dealing with complicated and often emotionally charged issues that profoundly affect families, from custody and visitation cases to termination of parental rights cases, family court is not always recognized for the quality of justice it strives to provide to its litigants.

The attorneys who represent indigent adults in family court work tirelessly to preserve one of the most important human relationships – that between parent and child. Their dedication deserves to be recognized by the legal community. To address this, the Monroe County Public Defender's Office created an award in 2014 to recognize excellence in indigent adult representation in Monroe County Family Court.

The award recognizes an attorney who practices in Monroe County Family Court

and who, in the previous two years, displayed exceptional dedication to his or her indigent, adult clients, excellent advocacy skills, and superior knowledge of the law. The attorney must have represented one or more indigent adult clients in a custody/visitation, child support, abuse or neglect, or termination of parental rights case. The award is also open to appellate attorneys who represent adult, indigent appellants or respondents in New York State appellate courts and who, in the previous two years displayed exceptional dedication to his or her clients, excellent advocacy skills, and superior knowledge of the law in an appeal from a custody/visitation, child support, abuse or neglect, or termination of parental rights case.

In 2019, the recipient of the award was Anthony Leavy, Esq.

#### PART IV: THE FUTURE OF THE OFFICE

As we look ahead to 2020, the Office plans to continue its efforts to improve our representation to our clients, improve our discourse with the community we serve, and enhance the diversity of our staff. The initiatives outlined above will continue, and we will also continue looking at how technology may improve Office operations and efficiency.

With anticipated increased *Hurrell-Harring* funding the Office hopes to add staffing in all areas of the Office, implement a program to assess clients harm reduction needs, and begin developing a sentencing mitigation unit.

#### PART V: CONCLUSION

Each and every member of the Public Defender's Office is proud of the amount of work done in the past year, but each individual takes a great deal more pride in the quality of the services we provide. We continue to stress respect for the judicial process

and absolute integrity in the handling of all cases assigned to this Office.

It is important to note that the success this Office has achieved is due in part to the support given to us by the Monroe County Legislature and the County Administration. Both the Legislature and the Administration take seriously the obligation of government to ensure justice for all. We would like to take this opportunity to express our thanks for that support, and we look forward to their support in the future.

In conclusion, I would like to note that this Office's excellent reputation is the result of the dedication, commitment, and talent of the attorneys and the support staff. I am enormously proud of their efforts and the results they achieve for our clients.

Respectfully submitted for  
The Public Defender's Office



TIMOTHY P. DONAHER  
Monroe County Public Defender



# COURT ACTIVITY SUMMARY 2019

## NEW CLIENTS.....24,590

FELONY..... 2,758

FELONY (Drug A and B).. 320

FELONY (VFO)..... 1,005

HOMICIDE ..... 13

MISDEMEANOR.....10,182

VIOLATION..... 2,288  
(City and Justice)

PROBATION VIOLATION.... 288  
(Superior)

PROBATION VIOLATION.... 521  
(City and Towns)

APPEALS..... 215

FAMILY COURT..... 5,674

PAROLE..... 1,170

FUGITIVES..... 81

SORA..... 75

## PLEAS AS CHARGED.....1,109

FELONY..... 225

MISDEMEANOR..... 799

VIOLATION..... 85

## PLEAS TO LESSER

FELONIES..... 966

To Lesser Felony..... 113

To Misdemeanor..... 883

## PLEAS TO LESSER (Con't)

MISDEMEANORS.....2,893

To Lesser Misd..... 111

To Violation..... 2,782

## CLOSED CASES: [OTHER]:

A.C.D..... 2,565

PRIVATE ATTY..... 784

ASSIGNED COUNSEL..... 5,203

W/D D.A, DIS'D ON MOTION..... 4,160

## TRIALS.....113

FELONY..... 35

MISDEMEANOR..... 53

VIOLATION..... 25

## FINDING AFTER TRIAL\*

GUILTY AS CHARGED  
(or to part of indict.  
when highest court)..... 12

GUILTY TO LESSER  
(or to part of indict.  
when lesser court)..... 28

NOT GUILTY..... 36

TRIAL ORDER OF DISMISSAL..... 17

MISTRIAL..... 1

\* does not include pleas taken during  
trial or cases where PD relieved before  
sentencing

PUBLIC DEFENDER STAFF  
(as of 12/31/19)

Administration

Donaher, T.	Public Defender
Tronolone, T.	Conf. Asst. to the Public Defender
Anthony, J.	Secretary to Special Counsel
(Vacant)	Executive Secretary
Rivera, N.	Receptionist-Bilingual

Superior Court

Paperno, J.	1st Asst. Pub. Def.
Teifke, E.	2nd Asst. Pub. Def.
Cianca, J.	Special Assistant
Doran, M.	Special Assistant
Scalia, D.	Special Assistant
Cook, K.	Secretary
Beaty, G.	Secretary
Bahr, R.	Sr. Asst. Pub. Def.
Brach, K.	Asst. Pub. Def.
Caputo, J.	Sr. Asst. Pub. Def.
Clark, M.	Sr. Asst. Pub. Def.
Grippe, J.	Asst. Pub. Def.
Haselbauer, K.	Sr. Asst. Pub. Def.
Higgins, K.	Asst. Pub. Def.
Infantino, M.	Asst. Pub. Def.
Murante, A.	Asst. Pub. Def.
Myers, G.	Sr. Asst. Pub. Def.
Opalinski, K.	Asst. Pub. Def.
Rosmus, E.	Sr. Asst. Pub. Def.
Roth, C.	Asst. Pub. Def.
Santacroce, F.	Asst. Pub. Def.
Tischler, S.	Sr. Asst. Pub. Def.
Winward, T.	Asst. Pub. Def.

Appeals

DuBrin, D.	Special Assistant
DeMonte, J.C.	Secretary
Davis, T.	Sr. Asst. Pub. Def.
Hobbs, J.	Asst. Pub. Def.
Juergens, D.	Asst. Pub. Def.
Nelson, B.	Asst. Pub. Def.
Somes, J.	Sr. Asst. Pub. Def.
Symes, H.	Asst. Pub. Def.

### City Court

Bradley, J.	Special Assistant
Fish-Krasz, J.	Secretary
Graim, M.	Secretary
Sands, K.	Invest. Asst.
Behrndt, D.	Invest. Asst.
Short, E.	Invest. Asst.
Bahl, V.	Asst. Pub. Def.
Cummings, B.	Asst. Pub. Def.
Doran, J.	Asst. Pub. Def.
Ejimadu, C.	Asst. Pub. Def.
Hellwig, B.	Asst. Pub. Def.
McCarthy, M.	Asst. Pub. Def.
Mills-Lexvold, C.	Asst. Pub. Def.
Park, D.	Asst. Pub. Def.
Spangler, T.	Asst. Pub. Def.
Williams, R.	Asst. Pub. Def.
(Vacant)	Asst. Pub. Def.
(Vacant)	Asst. Pub. Def.
(Vacant)	Asst. Pub. Def.

### Justice Court

Stubbe, J.	Special Assistant
Riley, E.	Special Assistant
Loughridge, P.	Secretary
Smith, B.	Secretary
Vargas, J.	Invest. Asst.
Hagan, T.	Invest. Asst.
Adam, J.	Asst. Pub. Def.
Baker, C.	Asst. Pub. Def.
Gross, R.	Asst. Pub. Def.
Harned, L.	Asst. Pub. Def.
Knott, N.	Asst. Pub. Def.
Kuttner, J.	Asst. Pub. Def.
Martinez, J.	Asst. Pub. Def.
Mathias, J.	Asst. Pub. Def.
McClary, C.	Asst. Pub. Def.
Phengsiaroun, A.	Asst. Pub. Def.
Spong, A.	Asst. Pub. Def.
Sullivan, T.	Asst. Pub. Def.
Weir, W.	Asst. Pub. Def.
Zielinski, A.	Asst. Pub. Def.

### Family Court

Fine, A.	Special Assistant
Arguinizoni, A.	Secretary
Hutton, A.	Paralegal
Enright, C.	Paralegal (Job Share)
Menard, T.	Paralegal (Job Share)
Scrivens, M.	Paralegal
Altman, J.	Asst. Pub. Def.
Bruce, L.	Asst. Pub. Def.
Darby, A.	Asst. Pub. Def.
Erturk, E.	Asst. Pub. Def.
Menard, J.	Asst. Pub. Def.
Rizzari, K.	Asst. Pub. Def.
Sartori, S.	Asst. Pub. Def.
Turner, R.	Asst. Pub. Def.
Wirley, B.	Asst. Pub. Def.
Wright, J.	Asst. Pub. Def.

### Parole

Griffin, J.	Special Assistant
Phillips, M.	Asst. Pub. Def.

### Investigations

Morse, L.	Chief Investigator
Camacho, M.	Spec. Urban Inv.
Dowda, L.	Spec. Urban Inv.
Gordon, L.	Spec. Urban Inv.
Pagan, G.	Spec. Urban Inv.
Zimmer, L.	Spec. Urban Inv.