



Monroe County Legislature
Office of the President

ANTHONY J. DANIELE
PRESIDENT

November 13, 2017

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

Re: Reappointment of the Public Defender

Honorable Legislators:

I, Anthony J. Daniele, 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, NY 14526 and has served the people of Monroe County as the Public Defender since January 2008. Attached is the Office of the Public Defender 2016 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, 2018 and expiring December 31, 2019.

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

Sincerely,

Anthony J. Daniele
Monroe County Legislature
President

OFFICIAL FILE COPY
No. <u>170292</u>
Not to be removed from the Office of the Legislature Of Monroe County
Committee Assignment
PUBLIC SAFETY -L

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: 49
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 72 attorneys and 25 support staff, which provides legal services to indigent individuals. Oversee a budget of approximately \$8.8 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
President, 2014-2015

OFFICE OF COURT ADMINISTRATION COMMITTEE ON CRIMINAL JURY INSTRUCTIONS
Member, 2012 to present

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

7TH JUDICIAL DISTRICT ADMINISTRATIVE JUDGE'S PLANNING TASK FORCE
Member

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

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
Boardmember, 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



OFFICE OF THE PUBLIC DEFENDER

ANNUAL REPORT

2016

INTRODUCTION

In 2016, the Monroe County Public Defender's Office continued to provide excellent representation to indigent clients in the criminal, family, and appellate courts in Monroe County. Although caseloads in all bureaus of the Office remained higher than historical norms, and the severe financial pressures faced by Monroe County prohibited the dedication of additional local resources, the staff of the Office persevered and enhanced the services provided to clients.

Despite the challenges we faced, due to the extraordinary dedication of the attorneys and support staff, we were able to continue to provide excellent representation to our clients. The attorneys in the Office continued to work significant, unpaid overtime to ensure that we continue to provide excellent representation to our clients. The support staff also expended considerable effort in assisting the attorneys in dealing with the heavy caseload.

But the hard work expended by staff led to excellent results for our clients. For example, in 2016 the attorneys in the Office prevailed in 54 percent of the felony trials conducted by staff (a complete acquittal, top count acquittal, or trial order of dismissal granted).

In 2016, the Office continued its efforts in examining how to improve the representation we provide our clients. We also completed several initiatives began in 2015, 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.

In Part I of this Report, the Office's efforts to improve client representation,

increase contact with the community that we serve, and 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 Monroe County government and our community. It is through their efforts that the following improvements and initiatives were undertaken and accomplished in 2016.

B. Expanded Counsel at First Appearance Program

In 2008, the United States Supreme Court held that the right to counsel attaches at the first appearance before a magistrate where the defendant is advised of the charges and pre-trial detention conditions are determined. (*Rothgery v. Gillespie County, Texas*, 554 US 191 [2008].) In 2010, the New York Court of Appeals, citing *Rothgery*, held that the arraignment in a “local court”, such as the town and village courts of Monroe County, was a proceeding requiring the presence of counsel if desired by the defendant. (*Hurrell-Harring et al v State of New York*, 15 NY3d 8 [2010].) Historically, counsel has not been provided to indigent defendants who were arraigned in the town and village justice courts in New York State.

In May of 2011, Chief Judge Jonathan Lippman called upon New York State indigent defense providers to resolve the problem of lack of counsel at a defendant’s

first appearance in a local court. In August of 2013, to assist indigent defense providers in providing this service, the Office of Indigent Legal Services awarded 25 counties three-year grants (in varying amounts). The Monroe County Public Defender's Office was awarded a three-year grant totaling \$724,218 to begin providing indigent defendants with an attorney at arraignments in the town and village courts of Monroe County.

In February of 2014, the Office implemented the first phase of the Counsel at First Appearance Program (CAFA). Under the first phase of the Program, two staff attorneys were on-call to attend local court arraignments, seven-days-per-week from 8:00 a.m. to 8:00 p.m. Additionally, staff attorneys began attending each town and village court's arraignment dockets (there are 49 individual town and village justices in Monroe County, each with a separate court docket). During the first phase of the program, the Monroe County Public Defender's Office attended over 5,560 arraignments in the town and village courts. This required a significant commitment of staff time in order to provide this service. Indeed, staff attorneys provided over 8,400 hours of "on-call" arraignment coverage in order to provide this service.

On June 1, 2015, the Monroe County Public Defender's Office expanded the CAFA Program to include arraignments that occur between the hours of 8:00 p.m. and 8:00 a.m., seven-days-per-week. As a result, the Monroe County Public Defender's Office became a "24-hour operation" requiring one or more staff persons to be available "on-call" 24-hours-per day, seven-days-per-week. As a result, the Office is now providing almost 15,000 hours of "on-call" arraignment coverage in the town and village courts of Monroe County.

Since the beginning of the program in 2014, attorneys from the Monroe County Public Defender's Office have appeared at over 18,000 arraignments in the local courts of Monroe County.¹ Furthermore, Monroe County was the first large county outside of New York City to provide counsel at first appearance for all indigent defendants who are arraigned in a local court.

The benefits to our clients, and the greater community, as a result of the staff's dedication to the Program are significant. Fewer clients are being remanded to custody (which results in less costs in the Monroe County Jail), and in some cases charges are being dismissed at arraignment. This has undoubtedly reduced the collateral costs of criminal convictions in our community (such as a loss of employment due to incarceration, or the need for family members to seek emergency assistance due to a provider or caregiver being incarcerated).

C. Criminal Appeals *Pro Bono* Program, and the Appellate *Pro Bono* Program

In 2014, the Appeals Bureau developed the Appellate *Pro Bono* Program by establishing *pro bono* relationships with several law firms. In 2016, the following firms handled cases for the Office: Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC (Washington, D.C. Office); Harter Secrest & Emery LLP (Rochester Office); Harris Beach PLLC (Rochester Office); Sullivan & Cromwell (NYC Office); Nixon Peabody LLP (Rochester Office); Orrick, Herrington, and Suttcliffe LLP (Washington DC Office);

¹ In 2016, the Monroe County Public Defender's Office appeared for the following number of arraignments in the town and village courts under the CAFA Program:

Drug offense: 50

Violent Felony Offense: 226

Non-Violent Felony Offense: 1,007

Misdemeanor: 4,668

Violation: 637

Phillips Lytle LLP (Buffalo and Rochester Offices); New York State Bar Association Pro Bono Appeals Program/Rural Law Center; and the National Constitution Center/Yale Law School (PhD students in Law). These firms are also to be commended for their commitment to *pro bono* service.

As a result, since 2014, thirty (30) cases have been handled by *pro bono* attorneys. In addition to providing these clients with excellent representation and results, the efforts of these firms have saved county taxpayers approximately \$120,000.

D. Hiring Committee

The responsibility of the hiring committee is to ensure that each new hire exemplifies the qualities that make an excellent public defender. Chaired by Special Assistant Public Defender John Bradley, the committee members in 2016 (Special Assistant Public Defender Drew DuBrin, Special Assistant Public Defender Josh Stubbe, First Assistant Public Defender Jill Paperno, Assistant Public Defender Jessica Naclerio, and Assistant Public Defender Danielle Ponder) 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.

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. Importantly, the new hires further expanded the diversity of our staff.

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

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 2016, it was chaired by First Assistant Public Defender Jill Paperno.

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 2016, the Office sponsored the following CLE programs for the attorneys in the Office, and the private defense bar:

January 8, 2016	Grand Jury Practice
January 22, 2016	The Preliminary Hearing in the Era of the Panic-Indictment
January 27, 2016	Ethical Issues in Witness Preparation and Testimony
February 5, 2016	Defending a Violation of Probation
February 12, 2016	DWI Basics
February 19, 2016	Handling a SORA Classification Hearing
February 26, 2016	The Nuts and Bolts of Handling Petit Larcenies
March 11, 2016	The Nuts and Bolts of Handling CPCS7 Cases
March 18, 2016	Subpoena Practice (Monroe County)
March 25, 2016	The Nuts and Bolts of Handling CC2 Cases
March 25, 2016	30.30 Issues (Ontario County)
March 31, 2016	Ethical Issues in Conflict Determinations
April 1, 2016	30.30 Issues (Monroe County)
April 1, 2016	Defending Against the DRE and Toxicology for the Defense Practitioner
April 8, 2016	The Nuts and Bolts of Handling Assault 3rd Cases
April 14, 2016	Effective Courtroom Advocacy and Conduct
April 15, 2016	The Kids Are All Right: Defending Children Charged in Grown-Up Courts
April 22, 2016	The Nuts and Bolts of Handling EWOC Cases

April 29, 2016	The Nuts and Bolts of Preliminary Hearings
May 6, 2016	The Nuts and Bolts of Handling CM4 Cases
May 12, 2016	FAQs About Determinate and Indeterminate Sentencing
May 20, 2016	Defending a Complex Vehicular Homicide Case
June 17, 2016	Bail Reform (Monroe County)
June 24, 2016	Intermediate Town Court Trainer: Probable Cause Issues
July 8, 2016	Part II of Intermediate Town Court Trainer: Payton Violations & Car Stops/Searches
July 15, 2016	Subpoena Practice (Ontario County)
July 22, 2016	Bail Reform (Ontario County)
July 29, 2016	Part I of Office Trial Program: Pre-Trial Development
August 19, 2016	Part II of Office Trial Trainer: Jury Selection
August 27-30, 2016	Intermediate Trial Skills Program
September 9, 2016	The Nuts and Bolts of Handling VOP Cases
September 16, 2016	Issues that Arise During Jury Deliberations
September 23, 2016	Fingerprint Evidence
September 30, 2016	The Asylum and Involuntary Hospitalization: Vanishing Parts of Continuum of Care
October 14, 2016	The Nuts and Bolts of Handling an Aggravated Harassment Case
October 21, 2016	Post-Conviction Advocacy for Survivors of Trafficking
October 28, 2016	The Use and Abuse of the CJI at Trial
December 9, 2016	The Nuts and Bolts of Handling AUO2 and Reckless Driving Cases

Hundreds of attorneys from upstate New York attended the above 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 2016, Office attorneys presented at CLEs sponsored by the Monroe County Bar Association, the New York State Defenders Association, and the New York State Association of Criminal Defense Lawyers.

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".



Additionally, in 2016 Training Director Andre Vitale continued the New Attorney Training Program, which is a three phase training regimen for new attorneys. The first phase is the New Attorney Orientation lasting several days. It is given to attorneys when they start their careers with the Office and provides basic instruction in courtroom skills, legal knowledge, and the importance of client-centered representation. After several months, these attorneys go through a Three-Day Intermediate program, with a focus on more advanced legal and skills training. The New Attorney program culminates after they have been with the Office for approximately one year, when they go through a Five-Day Trial Trainer, which allows new lawyers to develop a Theory of Defense for a simulated case problem, as well as receive both instruction on and the opportunity to practice new skills in each phase of a

criminal trial. In the months between each phase, the attorneys receive legal instruction and skills training in shorter programs every few weeks.

All the training programs the Office conducted included experienced presenters both from the Monroe County and Federal Public Defender's Offices, as well as private lawyers from Rochester, Syracuse, and Buffalo. Attendees were exposed to a wide array of talent from a number of different areas. Every training program also followed a new format. Instead of only offering attendees straight lectures, attendees were provided both legal instruction as well as the opportunity to break into small groups so each lawyer in attendance could practice the new skills they learned in a mock trial setting. In addition, the Office introduced joint trainers in which forensic experts presented alongside experienced lawyers, so that attendees not only received instruction in the particular forensic discipline but also into how to apply that knowledge in the defense of their clients. The Office had great success this year in the development of new, effective, and inspiring training programs. Programs which will not only benefit the Office in terms of the development and enhancement legal skills of its own lawyers but also in raising the level of indigent defense around the area.

F. Internship Committee and Program

In 2016, 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 2016, the Office hosted over 30 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 2016, the Office continued its "externship program" with participating law schools. Student externs receive course credit towards 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.

Senior Assistant Public Defender Sonya Zoghlin, with the assistance of Senior Assistant Public Defender Don Scalia, took over the responsibilities of placing law students as interns/externs in the Public Defender's Office. Law students who are interested in criminal defense volunteer their time learning about the criminal justice system, and gain valuable experience in criminal law, and trial practice. Additionally, they assist staff attorneys in the preparation of motions, briefs, memorandums of law, and research.

In addition to the internship programs offered to local college students throughout the year, the Office continued the program to include select high school students in 2016. Kelly Sands, our internship coordinator, works very hard to provide our interns a challenging, positive experience as they work in the criminal justice community. Ms. Sands works with Ms. Zoghlin to place interns with our paralegal bureau, our investigators sections, or individual staff attorneys.

Based upon her experience and dedication, Ms. Sands was appointed to the Monroe Community College's Paralegal Advisory Board in 2016.

College and high school interns are offered the opportunity to observe the criminal justice system from a unique perspective, and they gain valuable experience. 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 poor 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 2016, our staff included 71 attorneys, 1 confidential assistant, 5 investigators, 8 investigative assistants, 9 full-time secretaries and 2 receptionists,

both of whom are 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 2016 the Office conducted 122 trials (felony or misdemeanor/violation) to completion. Of those, we obtained favorable dispositions (Complete Acquittals, Top Count Acquittals and Trial Orders of Dismissal) in 86 cases (or 72 percent of the time).** In only 33 of the trials was a client convicted as charged (there were three mistrials).

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. The City Court Section also has the added responsibility of representing individuals who were charged with violations of their parole, and 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.

In 2016, all of these responsibilities were carried out by a total of 14 Assistant Public Defenders and two Special Assistant Public Defenders who supervised the City Court Section (while also handling a violent felony caseload). The attorneys share the enumerated responsibilities on a rotating basis.

In 2016, this Office was called upon to represent clients in approximately 8,000 cases in the City Court of Rochester. That means, on average, each Assistant Public Defender would have been assigned to approximately 571 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 National Legal Aid and Defender's Association.

D. Town Court Bureau

The office is required to represent persons accused of crimes in the various town and villages throughout the County. In 2016, the Office had thirteen 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.²

² 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.

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 2016, approximately 7,000 clients were assigned to our justice court staff of 13 full-time attorneys. In addition, the attorneys in this section were assigned to represent more than 931 parolees who were charged with violating the conditions of their parole release. Therefore, each of the newly hired attorneys in the section was assigned to an average of approximately 610 cases. Additionally, each staff attorney in the Town Court Bureau is required to staff one 12-hour arraignment shift (8:00 a.m. to 8:00 p.m.) each week under the CAFA Program.

E. Superior Court Bureau

In 2016, 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 First Assistant Public Defender, the Second 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.

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 violation of probation 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.

In 2016, we were assigned to approximately 4,073 felony cases. The felony caseload per attorney ratio is approximately 185 new cases per attorney. That represents a current felony assignment rate which is above national standards for caseload maximums.

F. Family Court Bureau

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.³ 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 2016, our Family Court staff was comprised of one Special Assistant Public Defender and nine Assistant Public Defenders (with the addition of a new family court judge in Monroe County in January of 2016, the Office added an additional staff attorney assigned to this Bureau). 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 2016, this office was assigned to represent approximately 2,350 new clients. To put this caseload into a historical perspective, in 1987, there were five attorneys in our Family Court section who were assigned to represent 865 clients. That 1987 caseload was within 10 percent of management guidelines which suggests that a maximum caseload of approximately 150 cases be assigned to each attorney per year. Currently, our 10 Family Court attorneys are each required to provide representation to a significantly greater number of clients each year. Last year, each family court attorney was asked to represent over 235 clients 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 thereby holding the state to its statutorily mandated obligation "to help the family

³ 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.

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 which 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 2016, 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. Bureau attorneys have also assisted trial attorneys on collateral issues that sometimes arise.

In 2016, the seven attorneys in our Appeals Bureau closed approximately 186 cases.

H. Investigation Bureau

During 2016, the Monroe County Public Defender's Office employed five full-time investigators, one of whom is the Chief Investigator in charge of the section.

The statistics for 2016 are as follows:

INVESTIGATIVE SECTION ANNUAL STATISTICS	CRIMINAL TRIAL PARTS	FAMILY COURT/ APPEALS	TOTAL
INVESTIGATION/ INTERVIEWS	3920	729	4649
SUBPOENAS	473	314	787
LOCATE/NOTIFY	82	22	104

MISCELLANEOUS (TRANSLATIONS, PHOTOS, MEASURE MENTS, ETC.)	696	156	852
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In 2016, more than 6,390 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 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 2016, 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 2016 Jeffrey A. Jacobs Award to Joseph Damelio. (Attached is a Daily Record article, dated October 21, 2016 about the award.)

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 2016, the recipient of the award was Senior Assistant Public Defender Timothy Davis.

C. Service of Justice Award

A fair criminal justice system requires the dedication of individuals and organizations beyond attorneys, judges, and police agencies. There are countless organizations and professionals who work hard to promote justice in our community. These individuals and organizations are often not recognized for the important work that they do.

In 2014, the Monroe County Public Defender's Office created the Service of Justice Award in order to recognize those individuals, or organizations, that promote justice in our community. In 2016, the Office awarded recently retired Monroe County Conflict Defender Charles Noce with the Service of Justice Award.

D. Defense Community Dinner

On October 29, 2016 the Office hosted the 7th Annual Defense Community

Dinner at the Rochester Institute of Technology's University Gallery. Over 100 attorneys, judges, and family members attended and celebrated the excellent work done in our local community by our criminal defense and family law practitioners.

We were honored that County Executive Cheryl Dinolfo attended and helped present the evening's awards, as well as presented proclamations honoring the award winners.

The Office was also honored to have as the keynote speaker Dr. Heather Ann Thompson, author of *BLOOD IN THE WATER: The Attica Prison Uprising of 1971 and its Legacy*. The book is now a National Book Award Finalist and was one of the New York Times Most Notable Books of 2016.

Dr. Thompson is a native Detroiter currently on faculty of the University of Michigan in Ann Arbor.

To recover this story, Thompson immersed herself in legal, state, federal, prison, and personal records related to the Attica uprising and its aftermath (some never-before-seen) located in archives, governmental institutions, and various individual collections around the country and the world. With these varied and rich resources she recaptured the full, dramatic, gripping, multi-faceted, and complex story that was Attica.

Dr. Thompson provided insightful and moving remarks about the uprising and the role public defenders played in addressing the injustices that occurred.

In addition to Dr. Thompson's keynote address, the highlight of the evening was the awarding of the 2016 Jeffrey A. Jacobs Award, the 2016 Award for Excellence in Indigent Adult Representation in Family Court, and the 2016 Service of Justice Award.

PART IV: THE FUTURE OF THE OFFICE

2017 will be a challenging year for the Office. New eligibility criteria, which will greatly expand the number of potential clients, are scheduled to go into effect on April 1st (without any increase in State aid). As a result, it is anticipated that caseloads will increase, and that there will be increasing pressure on the Office to provide excellent representation to our clients, while maintaining costs. As such, the Office will continue its efforts at improving efficiencies in each Bureau, ever mindful that our number one priority is our clients. We are confident that given the enormously talented and committed staff at this Office we will meet those challenges.

As we look ahead to 2017, 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.

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

A handwritten signature in blue ink, appearing to read 'Timothy P. Donaher', is written over the typed name and title.

TIMOTHY P. DONAHER
Monroe County Public Defender

COURT ACTIVITY SUMMARY 2016

NEW CLIENTS.....26,968

FELONY..... 2,553

FELONY (Drug A and B).. 404

FELONY (VFO)..... 1,087

HOMICIDE29

MISDEMEANOR.....11,198

VIOLATION..... 3,317
(City and Justice)

PROBATION VIOLATION.... 383
(Superior)

PROBATION VIOLATION.... 619
(City and Towns)

APPEALS..... 176

FAMILY COURT..... 6,121

PAROLE..... 931

FUGITIVES..... 94

SORA..... 56

PLEAS AS CHARGED.....1,985

FELONY..... 420

MISDEMEANOR..... 1,292

VIOLATION..... 273

PLEAS TO LESSER

FELONIES..... 1,028

To Lesser Felony..... 133

To Misdemeanor..... 895

PLEAS TO LESSER (Con't)

MISDEMEANORS.....3,058

To Lesser Misd..... 362

To Violation..... 2,696

CLOSED CASES: [OTHER]:

A.C.D..... 2,726

PRIVATE ATTY..... 894

ASSIGNED COUNSEL..... 5,049

W/D D.A, DIS'D ON MOTION..... 4,776

TRIALS.....123

FELONY..... 63

MISDEMEANOR.....41

VIOLATION..... 19

FINDING AFTER TRIAL*

GUILTY AS CHARGED
(or to part of indict.
when highest court)..... 33

GUILTY TO LESSER
(or to part of indict.
when lesser court)..... 16

NOT GUILTY..... 48

TRIAL ORDER OF DISMISSAL..... 22

MISTRIAL..... 3

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

PUBLIC DEFENDER STAFF
(as of 1/10/17)

Administration

Donaher, T.	Public Defender
Paperno, J.	1 st Asst. Pub. Def.
Tronolone, T.	Conf. Asst. to the Public Defender
Duerr, C.	Exec. Secretary to the Public Defender
Arguinizoni, A.	Receptionist-Bilingual
Rivera, N.	Receptionist-Bilingual

Superior Court

Appeals

Teifke, E.	2 nd Asst. Pub. Def.	DuBrin, D.	Special Assistant
Cianca, J.	Special Assistant	Fish-Krasz.	Secretary
Doran, M.	Special Assistant	DeMonte, J.C.	Secretary
Vitale, A.	Special Assistant	Davis, T.	Sr. Asst. Pub. Def.
Cook, K.	Secretary	Duguay, K.	Asst. Pub. Def.
Bahr, R.	Asst. Pub. Def.	Hobbs, J.	Asst. Pub. Def.
Brach, K.	Asst. Pub. Def.	Juergens, D.	Asst. Pub. Def.
Caputo, J.	Asst. Pub. Def.	Somes, J.	Sr. Asst. Pub. Def.
Clark, M.	Sr. Asst. Pub. Def.	Yoon, J.	Asst. Pub. Def.
Griffin, J.	Sr. Asst. Pub. Def.		
Haselbauer, K.	Asst. Pub. Def.		
Higgins, K.	Asst. Pub. Def.		
Myers, G.	Asst. Pub. Def.		
Naclerio, J.	Asst. Pub. Def.		
Rosmus, E.	Asst. Pub. Def.		
Santacroce, F.	Asst. Pub. Def.		
Scalia, D.	Sr. Asst. Pub. Def.		
Stare, S.	Asst. Pub. Def.		
Winward, T.	Sr. Asst. Pub. Def.		
Zoghlin, S.	Sr. Asst. Pub. Def.		
(Vacant)	Asst. Pub. Def.		

City Court

Bradley, J.	Special Assistant
Lopez, M.	Special Assistant
(Vacant)	Secretary
Loughridge, P.	Secretary
Graim, M.	Secretary
Sands, K.	Invest. Asst.
Behrndt, D.	Invest. Asst.
Faraco, A.	Asst. Pub. Def.
Grippe, J.	Asst. Pub. Def.
Harris, N.	Asst. Pub. Def.
Hiatt, T.	Asst. Pub. Def.
Infantino, M.	Asst. Pub. Def.
Murante, A.	Asst. Pub. Def.
Oplainski, K.	Asst. Pub. Def.
Ponder, D.	Asst. Pub. Def.
Poray, S.	Asst. Pub. Def.
Roth, C.	Asst. Pub. Def.
Sanger, E.	Asst. Pub. Def.
Schnader, J.	Asst. Pub. Def.
Syme, H.	Asst. Pub. Def.
(Vacant)	Asst. Pub. Def.

Justice Court

Stubbe, J.	Special Assistant
Riley, E.	Special Assistant
Lamb, P.	Secretary
Vargas, J.	Invest. Asst.
Claiborne, K.	Invest. Asst.
Bahl, V.	Asst. Pub. Def.
Cummings, B.	Asst. Pub. Def.
Doran, J.	Asst. Pub. Def.
Ejimadu, C.	Asst. Pub. Def.
Harned, L.	Asst. Pub. Def.
Hellwig, B.	Asst. Pub. Def.
Kelly, C.	Asst. Pub. Def.
Larose, R.	Asst. Pub. Def.
Lee, L.	Asst. Pub. Def.
McCarthy, M.	Asst. Pub. Def.
Meabon, P.	Asst. Pub. Def.
Spangler, T.	Asst. Pub. Def.
Taha, Y.	Asst. Pub. Def.
(Vacant)	Asst. Pub. Def.
(Vacant)	Asst. Pub. Def.

Family Court

Fine, A.	Special Assistant
Despaw, L.	Secretary
Hutton, A.	Paralegal
Enright, C.	Paralegal (Job Share)
Etshman, T.	Paralegal (Job Share)
Scrivens, M.	Paralegal
Altman, J.	Asst. Pub. Def.
Belton, O.	Asst. Pub. Def.
Buitrago, M.	Asst. Pub. Def.
Darby, A.	Asst. Pub. Def.
Erturk, E.	Asst. Pub. Def.
Lugbill, R.	Asst. Pub. Def.
Sartori, S.	Asst. Pub. Def.
Turner, R.	Asst. Pub. Def.
Wirley, B.	Asst. Pub. Def.

Investigations

DuMont T.	Chief Investigator
Camacho, M.	Spec. Urban Inv.
Johnson, J.	Spec. Urban Inv.
Pagan, G.	Spec. Urban Inv.
Morse, L.	Spec. Urban Inv.

Three Monroe County defense lawyers to be honored

Attica book author will deliver keynote speech

By: Bennett Loudon October 21, 2016



Charles Noce

Three veteran local defense attorneys will be honored Saturday, Oct. 29, at the 2016 Defense Community Dinner to be held at Rochester Institute of Technology.

The keynote speaker will be Heather Ann Thompson, author of "Blood in the Water: The Attica Prison Uprising of 1971 and Its Legacy," a National Book Award finalist.

The deadline to register for the event, presented by the Monroe County Public Defender's Office, in conjunction with the New York State Defenders Association, is noon today.

And Charles T. Noce, who recently retired as Monroe County Public Defender, will be presented the Service of Justice Award.

Noce was admitted to the Bar in 1974 and worked in the Monroe County Public Defender Office for 3 1/2 years at the start of his career. He then spent 35 years in private practice before becoming the Conflict Defender.

Jeff Jacobs Award

Joseph S. Damello will receive the Jeff Jacobs Award, which is named for an attorney who worked in the Monroe County Public Defender's Office for more than 20 years and died of brain cancer in 2006.



Joseph Damello

Damello was selected for his work on two particular homicide cases he handled earlier this year. He represented Johnny Blackshell Jr., who was convicted of three counts of first-degree murder for a shooting outside the Boys & Girls Club on Genesee Street in August 2015.

In the other case, Damello represented Darren Bridges, who was charged with both first- and second-degree manslaughter and second-degree assault in connection with an incident at the Monroe County Jail. Bridges was ultimately convicted of second-degree assault.

"In each case he had to deal with complex legal, medical and scientific issues, as well as effectively deal with cooperating prosecution witnesses with long criminal records," said Jill Paperno, First Assistant Monroe County Public Defender.

The selection committee was impressed with Damello's skill in his cross examination of forensic pathologists, trauma surgeons, crime-lab DNA analysts, medical personnel and others.

"He engages in this extensive preparation for cases, but he manages to draw out from experts, and from the scientific experts, information in a way that lay jurors understand it," Paperno said.

Damello said that's what he tries to accomplish in every case — "break it down to the lowest common denominator, something that the juries can understand and try to keep it as much in lay terms as possible."

He said the Jeff Jacobs Award is one "that really means something to the practicing attorneys because those of us who practiced with Jeff knew the type of lawyer that he was and the standards that he set for himself and set for the people in his office."

In 2009, Damello received the Monroe County Bar Association's Charles F. Crimi Award, which recognizes dedication to providing legal services to the poor in the community.

In the same year he received the New York State Bar Association's Outstanding Achievements in Promoting

Standards of Excellence in Mandated Representation.

Indigent adult representation

Assistant Monroe County Public Defender Timothy Davis will be presented the award for Excellence in Indigent Adult Representation in Family Court.



"Tim Davis was assigned to my court for some time and he's an outstanding attorney and advocate for his clients," said Monroe County Family Court Judge Joan S. Kohout, who nominated Davis.

"Family law requires many different skills for lawyers. Not only do you need to know the law, of course, but you need to have a sensitivity to the dynamics of the family and the needs of your client — their social needs and personal needs, and emotional needs — and Tim did a superb job in balancing all of those skills in his advocacy for individuals in my court," she

said.

Davis has been a lawyer for 22 years, but worked in Family Court only for the past three years. He has worked in just about every bureau in the Public Defender's Office — town and city courts, violent and non-violent felonies, criminal trial work, the Appeals Bureau, Family Court — and, as of about a week ago, he's now back in the Appeals Bureau.

"Family Court was some of the hardest, but also the most rewarding work I've done in those 22 years," he said.

The shortcomings of the community's social services system are reflected in the cases that wind up in Family Court, he said.

Davis said there is not enough help for people in need to find safe and affordable housing, drug and alcohol treatment when needed and mental health services.

"When people realize they have an issue and need help it's often months before they can see someone," he said.

And when those issues can't be addressed it threatens the future of families and the lives of children, he said.

"It's heartbreaking and very challenging for a lawyer to try and help people put the pieces back together," Davis said.

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