



MONROE COUNTY ASSIGNED COUNSEL PROGRAM

Program Guidelines

Overview

The Assigned Counsel Program and Plan is the result of a cooperative effort between Monroe County and the Monroe County Bar Association. Through the Assigned Counsel Program, private counsel represents indigent defendants in instances where the Monroe County Public Defender's Office has a conflict of interest and cannot represent the defendant. Assignment of counsel is now coordinated through the Monroe County Conflict Defender Office.

The Assigned Counsel Program insures legal representation and a fair trial to indigent defendants. The assigned counsels are private attorneys who qualify for panel membership and agree to accept such assignments.

The Conflict Defender works out of the Monroe County Department of Public Safety and is responsible for developing and executing the operational policies and procedures of the program. The Conflict Defender develops and issues regulations and guidelines to meet the plan goals. The Conflict Defender is responsible for the coordination, monitoring and evaluation of the Assigned Counsel Program. These activities include, but are not limited to the following:

- ◆ Hiring and supervision of staff attorneys as may hereafter be authorized by the County to represent eligible indigent defendants or other litigants in Monroe County Family Court, Rochester City Court, and in the appellate courts.
- ◆ Recruitment and Approval of Attorneys for Panel Membership;
- ◆ Development of Panel List and Rotation for Appointments;
- ◆ Design and Implement Orientation Program for Panel Attorneys;
- ◆ Develop and Maintain Cooperative Relationships with the Judiciary and Bar;
- ◆ Review and Approval of Attorney submitted Vouchers for Payment;
- ◆ Budget Development and Monitoring;
- ◆ Development and Implementation of Complaint Procedures;
- ◆ Cooperate with the Criminal Justice Section of the Bar Association in developing Continuing Education Opportunities;
- ◆ Develop and Maintain a Motion and Brief Bank;

- ◆ Prepare Statistical Reports; and
- ◆ Conduct Yearly Program Review.

The Conflict Defender receives guidance and supervision from the Director of Public Safety or his/her designate. The Conflict Defender works with the Bar Association Assigned Counsel Program Advisory Committee to implement the Program goals and mandates.

Program Guidelines

1. Attorney Qualifications - All Assigned Counsel Panel Attorneys must be admitted to the New York Bar and currently registered with the Office of Court Administration (OCA). All panel attorneys must meet the minimum criteria for panel membership as determined by the Assigned Counsel Advisory Committee of the Monroe County Bar Association.
2. CLE - All panel attorneys must meet the continuing Legal Education requirements of the Monroe County Bar Association.

Starting January 1, 1999 the following Continuing Legal Education requirements are in effect:

- ◆ Attorneys admitted five years or less must complete eighteen Continuing Legal Education hours every two years.
 - ◆ Attorneys admitted six to fifteen less must complete twelve Continuing Legal Education hours every two years.
 - ◆ Attorneys admitted more than fifteen years must complete six Continuing Legal Education hours every two years.
 - ◆ All Continuing Legal Education credits must be in the area of criminal or family law practice.
 - ◆ Attorneys will receive credit for any Continuing Legal Education participation recognized under the state-wide rules. Copies of the attendance certifications required by state rule must be filed with the Assigned Counsel Program before expiration of each attorney's biennial registration period. Attorneys may file the copies as received and the Assigned Counsel Program will maintain a file on behalf of the attorney. If the attorney wishes, copies of certificates beyond the required Assigned Counsel Program hours may be filed so that the attorney has backup copies of all Continuing Legal Education hours earned.
 - ◆ The Continuing Legal Education years will run concurrently with the attorney's biennial registration period.
3. Payment:
 - A. Voucher Regulations - Assigned counsel should refer to the Monroe County Assigned Counsel Program Voucher Regulations for answers to specific questions. All assigned counsel shall strictly follow the Voucher Regulations.

B. Voucher Submission - Assigned counsel should submit vouchers directly to the Conflict Defender at - **150 South Plymouth Avenue, 6th Floor, Rochester, New York 14614**. The Conflict Defender will review them before submission to the assigning judge.

After review and signature of the voucher, the judge will return the voucher to the Conflict Defender for final approval before submission to the Monroe County Controller's Office for payment.

Assigned counsel must submit vouchers within twenty business days (**four weeks**) of case completion.

C. Statutory Rates and Limits - County Law 722-b governs the applicable hourly rates and the maximum fee scale for assigned counsel as follows:

Rates

\$75/Hour Rate applies to:

- ◆ Felonies (except capital cases);
- ◆ Appeals (felonies, misdemeanors, violations);
- ◆ SORA hearings/appeals;
- ◆ Parole representation;
- ◆ Parole administrative appeals;
- ◆ Probation Violations (where underlying conviction is felony);
- ◆ Family Court representation; and
- ◆ CPL Article 440 motions (if counsel is assigned).

\$60 Rate applies to:

- ◆ Misdemeanors and lesser offenses where no felony is charged.
- ◆ Probation Violations (where underlying conviction is misdemeanor or lesser offense);

Limits

- ◆ For \$75 Rate Cases \$4,400.00
- ◆ For \$60 Rate Cases \$2,400.00

D. Fees More Than the Statutory Limit. -If requesting a fee of more than the statutory limit, a signed court order, a certification by the assigning judge and an attorney's affidavit outlining the extraordinary circumstances justifying payment of more than the statutory limit must accompany the voucher.

E. Partial Payment - The Assigned Counsel Program will not authorize partial payments or interim vouchers unless extraordinary circumstances exist. In such cases, *written* authorization from the assigning judge for partial payment must accompany the voucher. Final approval of the request for partial payment rests with the Conflict Defender.

F. Assigned Counsel cannot bill the County for work done by others.

G. Notice of Correction - The Conflict Defender will notify attorneys if there is an adjustment to their voucher in an amount more than \$50.00. Notice regarding adjustments of amounts less than \$50.00 may be given, but is not required.

4. 722-d Orders. - If the court assigns counsel to represent a client pursuant to section 722-d of the County Law, it is the assigned counsel's responsibility to prepare an order requiring the client to reimburse the County of Monroe for legal services rendered. The attorney must submit the *original* court order with the attorney's claim voucher. Additionally, the voucher or log sheet *must* contain the most recent mailing address of your client so the Assigned Counsel Program can try to collect the 722-d payments.

5. Experts - Before engaging an expert, assigned counsel must seek approval of the assigning judge and obtain a court order to that effect. The expert should submit the original court order with the voucher for payment.

6. Criminal Cases. - Assigned Counsel handling criminal matters must abide by Rule 1022.11(a) of the New York Code of Rules and Regulations. The Rule mandates that the attorney provide at the time of sentencing, written notice concerning a defendant's right to appeal.

7. Maximum Number of Assignments - According to the terms of the Assigned Counsel Plan, panel attorneys may accept assignments only up to a maximum number annually. The Conflict Defender will determine the maximum number of allowable annual assignments. The Assigned Counsel Program anticipates that the Conflict Defender will institute the maximum caseload guidelines during the 1991 calendar year. All Assigned Counsel Panel Attorneys agree to abide by the maximum annual caseload.

8. Stenographic Transcripts - The court stenographer receives payment for transcripts directly. *Prior* approval from the Conflict Defender is necessary to request daily copy or an expedited transcript.

Assigned Counsel should *never* include costs of a stenographic transcript in the attorney claim voucher.

9. Assigned Counsel Advisory Committee - The Assigned Counsel Advisory Committee of the Monroe County Bar Association develops minimum criteria for use by the Conflict Defender in determining attorney panel membership.

The Advisory Committee responds to requests from the Conflict Defender for information on recommendations.

10. Assigned Counsel Review Committee. The Assigned Counsel Review Committee has one member appointed by the Monroe County Bar Association, one member appointed by the Bench Bar Committee of the Bar Association, and one member appointed by the County of Monroe.

The Review Committee reviews any complaints referred by the Conflict Defender concerning assigned counsel panel attorneys and their vouchers. The Review Committee also presides at administrative hearings concerning rejections, removals, or suspensions of attorneys from assigned counsel panel membership.

Minimum Panel Requirements

Established by the Assigned Counsel Advisory Committee of the Monroe County Bar Association, August 1990.

Minimum Criteria for ALL Panel Attorneys:

1. Admission to practice in New York and current registration with the Office of Court Administration.
2. Must comply with the continuing legal education (CLE) requirements to be established by the Monroe County Bar Association.

Misdemeanor Panel:

Must have conducted one jury or bench trial, either civil or criminal, except minor traffic infractions, in which the court received testimony into evidence

or

assisted at such trial, *and in addition*, conducted at least one hearing involving live testimony in a court proceeding.

Family Court Panel:

Must have appeared in at least two (2) family court matters and handled them totally to conclusion

or

have conducted a hearing or trial in criminal court.

Additionally, for abuse, neglect, and termination proceedings, must have conducted one full hearing in family court.

D and E Felony Panel:

Must have conducted one jury trial, either criminal or civil, to verdict

or

conducted one bench trial, *and in addition*, participated in jury selection in either a criminal or civil case in which the jury was sworn

or

having been a member of the misdemeanor panel for one year, *and* having handled five cases on the misdemeanor panel to conclusion, *and in addition* having served as associate counsel on four felony trials under the terms of the Trial Mentor Program of the Assigned Counsel Program such participation having been certified by the trial mentor.

A, B, C, Felony Panel:

Must have conducted one *felony jury* trial to verdict

or

conducted a *felony bench trial, and in addition*, participated in jury selection in a *criminal* matter in which the jury was sworn

or

having been a member of the D and E felony panel for one year, *and* having handled five cases on the D and E felony panel to conclusion, *and in addition* having served as associate counsel on four felony trials under the terms of the Trial Mentor Program of the Assigned Counsel Program such participation having been certified by the trial mentor.

NOTE: You may appeal the Conflict Defender's denial of membership on any panel to the Assigned Counsel Program Review Committee. Send a letter to the Conflict Defender detailing the reasons you do qualify for the denied panel membership. If you wish, you may appear at the hearing. You will receive notice of the time and place of the hearing.

Voucher Regulations

A. TIME RECORDS

1. YOU MUST SUBMIT YOUR CLAIM FOR PAYMENT ON THE VOUCHER PROVIDED TO YOU AT THE TIME OF ASSIGNMENT TO THE CASE. NO OTHER VOUCHER WILL BE ACCEPTED. Assigned counsel must submit separate vouchers for each case assignment, not just each client. Thus, counsel must submit a separate voucher for each court in which counsel obtains any type of disposition. For example, if a "package deal" allows a client's plea in County Court to satisfy a City Court charge, the attorney would submit two vouchers. The first would note a plea in County Court and the second would show a dismissal or withdrawal of the charges in City Court.

2. Apportionment of Time - Counsel must apportion time spent representing a defendant on more than one set of charges in various courts among those courts. For instance, the attorney would properly apportion one phone conversation encompassing charges of the same defendant in both City and town court between the cases.

Also, counsel must apportion the time spent in court appearances on more than one matter or in representing more than one client among those matters or clients. The total time billed for all cases should equal the clock time *actually* spent in court on that date for assigned cases (see Matter of Stern, 90 AD2d 338 [1st Dept. 1982]).

3. Billing - Counsel must report billable time in hours and tenths of hours *only* rounded to the nearest tenth (.2 *not* .23 or .19). The Conflict Defender will disregard any fractional or hundredth entry.

4. Log Sheets - Case log sheets must be legible and must clearly designate in-court and out of court time with separate totals for each.

The Conflict Defender will return illegible vouchers and log sheets for revision and resubmission, thus delaying payment.

It is permissible to use your computer generated log sheets if you clearly designate in-court and out of court time. The log sheet should show separate totals for each category and the attorney must transfer the totals to the face sheet of the voucher.

If using your log sheets, the attorney should use either the chronological method with a clear distinction between in-court and out of court time *or* if showing in-court and out of court time in separate groupings, the voucher should first list the in-court time, followed by out of court time.

B. SUBMISSION OF VOUCHERS

1. Conflict Defender. - Assigned counsel should submit vouchers directly to the Conflict Defender, *before* approval by the assigning judge. Vouchers should be forwarded to:

**Conflict Defender
30 West Broad Street
Suite 306
Rochester, New York 14614**

After the review of the voucher, the Conflict Defender will send it to the assigning judge for signature. The judge will return the voucher to the Conflict Defender who will process payment through the Monroe County Controller's office.

2. Original Signature - Your *original* signature must appear on the face sheet of the voucher to receive payment from the Monroe County Controller. The Conflict Defender will return vouchers submitted with photocopied signatures for affixing of an original signature, thus delaying payment.

3. Submission Deadline - Assigned counsel should submit vouchers to the Conflict Defender within twenty business days (FOUR WEEKS) of the completion of a case (Plan, art. X).

4. Case Completion. - For criminal matters, the four week period begins to run from the date of sentencing, or from the date of dismissal (or date of granting of an ACD). The only exception to this is when the judge orders a *Bench Warrant*. In bench warrant cases, the Assigned Counsel Program deems the completion date to be four to eight weeks from the issuance of the warrant.

For Family Court matters, the four week period begins to run from the date of entry of a final order.

5. Monthly Calendar Logs. - According to the terms of the Monroe County Assigned Counsel Plan, the Conflict Defender may require assigned counsel to submit a monthly log of

time spent on all assigned cases within ten (10) days of the close of that calendar month (Plan, art X).

6. Partial Payments - Partial payments or interim vouchers are *not* permissible. Counsel should submit vouchers *only* at the completion of a matter. The only exception is where extraordinary circumstances are present (i.e., multiple homicides). In such cases, the court must notify the Conflict Defender in writing of circumstances that the attorney believes warrants payment of an interim voucher.

C. **DISPOSITION OF CASES**

7. Case Disposition - The face sheet of the voucher must be legible and should clearly show the final disposition of the matter. For a criminal conviction, counsel should list the charge with a statement whether the conviction resulted from plea or trial, and if by trial, whether by jury or bench trial (i.e., PG to CPSP5; NG after jury trial; petit larceny after B.T.).

For appellate assignments, the disposition should show affirmation, reversal or modification of the judgment.

In addition, assigned counsel must complete the three areas on the BACK of the voucher provided for each case. Counsel should check the boxes and fill in the blanks that most accurately reflect the state of facts for that case.

8. WGJ - It is unacceptable to submit a voucher for payment after waiver of a case to the Grand Jury. The disposition on the face sheet of the voucher should not read "Waived to Grand Jury" as this is not a final disposition. Assigned Counsel should follow through with a felony matter until case completion. The only exception is where the court relieves counsel of an assignment. In such cases, the voucher should so state and include the name of the new assigned attorney, if known.

9. BWO - When the judge orders a **Bench Warrant**, counsel should wait at least four to eight weeks after initially trying to contact the client before submitting a voucher. This should avoid duplication of services should counsel contact the client shortly after issuance of the Bench Warrant.

10. Withdrawal/Reassignment - When you must withdraw from a matter, the voucher should show that the judge relieved you from assignment and should name the new assigned attorney, if known.

D. **EXPENSES**

11. Travel Time - It is impermissible to bill the County for *mileage* for travel within Monroe County. It is permissible to bill *time* spent traveling to and from court as out of court time *only*. Assigned attorneys must apportion the time *actually* spent traveling among the various cases handled on that same trip.

12. Parking - The County will *not* reimburse assigned counsel for parking of vehicles for routine court appearances or jail visits unless extraordinary circumstances are present. In such cases, specify the circumstances and attach a receipt.

13. Photocopies - The Assigned Counsel Program reimburses for photocopies up to a *maximum* of .15 per page for necessary copies. Counsel must attach a receipt or statement showing the date, number and purpose of the copies. For voluminous copying, a court order for services should accompany any invoice. If you or your firm would normally absorb the costs of routine copying for retained clients, counsel should not bill the County for copies associated with the assigned counsel program.

Note that the American Bar Association Standards for Assigned Counsel Programs provide that routine expenses normally absorbed in the fee charged to a retained client, such as in-house photocopying, is not reimbursable under an assigned counsel plan.

14. Long Distance Phone Calls - If requesting reimbursement for long distance telephone calls, the attorney must attach a copy of the phone bill to the voucher. If the bill refers to multiple matters, the attorney should clearly identify the calls for which counsel seeks reimbursement.

15. Out-of-Pocket Expenses - Receipts must accompany your request for payment of any other out-of-pocket expenses (i.e., Federal Express, certified mail).

16. Overhead Expenses - Routine overhead expenses are not reimbursable under the Assigned Counsel Plan. It is *not* permissible to bill the County for preparation of your voucher as a retained client would not pay you for preparing the bill. The only cost associated with billing that is permissible is the time devoted to preparing the following: court orders for expert services, court orders for 722-d orders, and court orders, court certifications, and attorney affidavits for payment of compensation more than the statutory amount.

E. EXPERT SERVICES

17. Court Order - There is a statutory limit of \$300 for payments for expert services. For the Conflict Defender to authorize payment, a court order must accompany the voucher of the expert. It is assigned counsel's responsibility to obtain the court order for expert services *before* hiring the expert (i.e., paralegal, investigators, interpreters). After performance of the expert service, counsel should give the court order to the expert for submission with a Monroe County claim voucher.

A court order authorizing payment in the requested amount must accompany any request for payment of more than the \$300.00 statutory maximum.

18. Travel Arrangements - The Assigned Counsel Program will authorize payment for travel costs associated with an expert witness only in extraordinary circumstances. *Prior* court approval must accompany any request by assigned counsel for expert travel. Counsel must contact the Conflict Defender immediately so appropriate travel arrangements can be made through the County's travel agent.

F. VOUCHER FORMS

19. YOU MUST SUBMIT YOUR CLAIM FOR PAYMENT ON THE VOUCHER PROVIDED TO YOU AT THE TIME OF ASSIGNMENT TO THE CASE. NO OTHER VOUCHER WILL BE ACCEPTED.

20. For **ALL** assigned cases, ACP will send counsel a partially completed, pre-printed voucher **SPECIFICALLY** for the particular assigned case. Much of the pertinent information will already appear on the pre-printed voucher.
21. Assigned counsel must complete the DISPOSITION DATE, FINAL DISPOSITION, DISPOSITION JUDGE and the payment information on the front of the voucher.
22. Assigned counsel must check the applicable boxes in the 3 areas on the back of the pre-printed voucher. Assigned counsel must check the box and fill in the blanks that most accurately describes the situation in the case in each of the 3 areas.
23. ACP will send counsel the pre-printed voucher within 5 days of assignment. If counsel misplaces the pre-printed voucher sent to counsel, contact us and we will send a replacement. If a case is assigned and counsel **DOES NOT** receive a pre-printed voucher within 5 days, **COUNSEL SHOULD CONTACT US IMMEDIATELY.**
24. If the court relieves counsel during the assignment, we will send substituted counsel a new pre-printed voucher for that case number within 5 days of notification to ACP of the substitution of counsel. Assigned counsel should submit a claim for whatever work has been done to that point on the **ORIGINAL PRE-PRINTED VOUCHER**. Assigned counsel should not send the **ORIGINAL PRE-PRINTED VOUCHER** to substituted counsel with the rest of the file.
25. If counsel submits the pre-printed voucher following the appropriate waiting period after issuance of a bench warrant, ACP will issue a new, pre-printed voucher on execution of the warrant and the completion of the case. Assigned counsel should notify us of the re-opening of a case for any reason and request a new, pre-printed voucher.
26. If a court assigns counsel directly from the bench (as the Bar Sponsored Plan allows in unusual circumstances), counsel should contact ACP immediately. Sometimes when court is busy, the court clerks forget to report the bench assignments to us. Assigned counsel's contact will insure receipt of the proper voucher and speedier payment at the end of the case.
27. Mailing of the voucher to assigned counsel is confirmation of assignment to the case.
28. When submitting a voucher for a case where you prepared motions, memoranda or a brief, **YOU MUST SUBMIT A COPY OF THE DOCUMENT** with your voucher. Our office will not process vouchers submitted without such a copy until we receive the copy.