

Plan of the Association of the Bar of the City of New York, Bronx County Bar Association, Brooklyn Bar Association, New York County Lawyers' Association, Queens County Bar Association and Richmond County Bar Association Adopted Pursuant to Article 18B of the County Law

Approved by the Judicial Conference of the State of New York, April 28, 1966

Pursuant to the provisions of Article 18-B of the County Law (Ch. 878 of the Laws of 1965, approved July 16, 1965), The Association of the Bar of the City of New York, Bronx County Bar Association, Brooklyn Bar Association, New York County Lawyers' Association, Queens County Bar Association and Richmond County Bar Association hereby propose the following Plan for the adequate representation of persons charged with a crime as defined in Section 722-a of the County Law, who are financially unable to obtain counsel, and for the furnishing of investigative, expert and other services as provided in Section 722-c thereof.

As provided in subparagraph (4) of Section 722 of the County Law this Plan combines representation by a private legal aid society and by private attorneys, the services of the latter being rotated (so far as practicable and feasible) and coordinated by the administrator.

The Legal Aid Society of the City of New York (Legal Aid Society) will be designated as the private legal aid society and the Association of the Bar of the City of New York and the five county Bar Associations within the City of New York will be designated as the bar associations which may prepare panels of attorneys to be rotated as above and coordinated by an administrator (Administrator) or administrators (Administrators).

I. The Legal Aid Society

Under this Plan, whenever a determination has been made by a court that a defendant is entitled to representation under Article 18-B of the County Law, the court shall designate and appoint the Attorney-in-Charge of the Criminal Courts Branch of the Legal Aid Society as the attorney of record for the defendant in all cases, unless:

- 1) the court deems the assignment of other counsel to be required in the interest of justice because of either a conflict of interest or any other good cause, in which event the court shall appoint counsel to be designated by the appropriate Administrator from the appropriate panel as hereinafter provided; or
- 2) the defendant in the case is charged with a crime punishable by death or life imprisonment, in which event application shall

forthwith be made in the Supreme Court for the assignment of counsel, and in any such case the Supreme Court may, in its discretion name, assign and appoint one or more of the attorneys listed in the panel of trial attorneys available for service in the Supreme Court in the County.

II Panel of Attorneys

Each bar association shall prepare and certify to the appropriate Administrator not later than June 30, 1996, a list of attorneys who are admitted to practice in the State of New York and who, in the opinion of the bar association, which shall consider their experience in criminal practice, are competent to give adequate representation to defendants under Article 18-B of the County Law. Such list shall include each attorney's name and address and telephone number, and shall be supplemented by a compilation consisting of a copy of the application, on the form attached hereto as Exhibit A, of each attorney listed.

1. Each attorney whose name is listed shall be designated by the bar association as available for service in either Supreme Court or the Criminal Court or both; but his name shall not be listed at all unless he is designated as available for service in that court or both courts, as the case may be, in which in his application, as above mentioned, he has expressed his willingness to serve.
2. In the event that an attorney is not designated as available for the service he has expressed his willingness to render and accordingly his name is not listed, both the fact that he has made application and the contents of such application shall be kept and deemed in all respects private and confidential and shall not be disclosed except upon the written request of the applicant.
3. It shall not be regarded as an obligation of an attorney to express willingness to serve in the Supreme Court, even though he is fully qualified and competent to serve should he prefer to restrict its service as assigned counsel to cases in the Criminal Court; nor shall it be regarded an obligation of any attorney to serve as assigned counsel in the Criminal Court should he prefer to restrict his service to the Supreme Court, provided, however that an application for designation for service only in the Supreme Court must be deemed to include a consent to serve in the Criminal Court to the extent of representing a defendant at arraignment and at hearings to determine whether such defendant should be held for action by the Grand Jury, when such a defendant is charged with a felony for which an indictment may be found and returned in the Supreme Court.
4. No attorney shall be designated by a bar association as available for service as trial counsel in the Supreme Court unless he shall have been at the Bar for a minimum of seven years and shall have had substantial experience in the trial of criminal cases, provided, however that in exceptional circumstances when

in the opinion of a bar association an attorney is especially well qualified by reason of demonstrated ability and experience the bar association may waive the requirement of the minimum of seven years at the Bar. In addition to or instead of designation of availability as trial counsel, an attorney may be designated as available for service on appeals in criminal cases.

5. Additions to and deletions from the panel or panels of attorneys, prepared as provided in Article III hereof may be made from time to time by the bar association which submitted the original list and in accordance with the same principles observed by the bar association initially certifying the list of attorneys to the Administrator or Administrators. In addition, the appropriate Appellate Division may at any time make additions to or deletions from any bar association panel.
6. In order to permit all members of the bar in the City of New York to render service in their capacity as officers of the courts and in keeping with the high traditions of the legal profession, each bar association shall, in addition to recruiting the services of its own members, endeavor to enlist the services of any lawyer not a member of any of the County or City bar associations who is qualified to render service under Article 18-B of the County Law.

III. The Administrator or Administrators

1. In their discretion the Appellate Divisions of the First and Second Judicial Departments shall together appoint one Administrator for both Departments, or they each shall appoint an Administrator for their respective Departments. His or their salaries and administrative expenses, including salaries of assistants and clerical personnel to be appointed as required, shall be paid by The City of New York.
2. Upon receipt of the lists of attorneys certified by the bar associations pursuant to Article II hereof, the Administrator or Administrators shall prepare two panels of trial attorneys for each county from the lists provided by the bar associations, one panel for Supreme Court cases and one panel for Criminal Court cases. No attorney may be placed on the panels of more than one county. The Administrator or Administrators shall similarly prepare panels for appeals to the Appellate Terms and Appellate Divisions, First and Second Departments. No attorney may be placed on the appellate panels of more than one Department, but an attorney may be on both the trial panels of a county and the appellate panels of a Department.
3. The Administrator or Administrators shall prepare all panels in the following fashion: the names for each of the panels shall be drawn by lot and placed in the order drawn on a list, copies of which should then be available for distribution as provided by the appropriate Appellate Division. All assignments shall be rotated on each panel by the Administrator or

Administrators in accordance with the listing of the panel until an attorney is reached who is available for service. Whenever the Supreme Court has exercised its discretion to appoint an attorney or attorneys from the Supreme Court panel in a case involving a crime punishable by death or life imprisonment (as provided in Article I and paragraph A1 of Article IV hereof) and such attorney's name has not previously been reached in order on the list, such attorney shall thereafter be treated as if his name had been reached in regular rotational order. The Administrator or Administrators shall maintain adequate records which will demonstrate compliance with a rotational procedure.

IV Appointment of Counsel

A. Appointments from trial panels.

1. After a determination by the court that a defendant or prospective defendant is entitled to representation under Article 18-B of the County Law and that the Legal Aid Society shall not furnish counsel for any of the reasons set forth in Article I hereof, the court shall make an initial determination whether or not the case is such that the attorney to be appointed at that time should come from the Supreme Court panel or the Criminal Court panel, and shall so notify the appropriate Administrator. In the event that a case involves a crime punishable by death or life imprisonment, the Supreme Court may, in its discretion request the appropriate Administrator to designate for appointment, without regard for rotation, one or more attorneys named by the Court who are listed on the Supreme Court panel to the extent such procedure is permitted by law. In cases where the court determines that justice requires the immediate presence of counsel, and counsel from the panel is not immediately available, the court may appoint other counsel, who shall not be compensated under this Plan, to advise the defendant until counsel from the panel can be assigned.
2. The appropriate Administrator shall designate an attorney from the appropriate county panel in accordance with the procedures set forth in paragraph 3 of Article III hereof. All designations of counsel by such Administrator shall be promptly reported to the clerk of the appropriate court and such counsel must be assigned by the court.
3. In cases involving more than one defendant, one or more attorneys may be appointed, as herein provided, to represent all defendants, but where circumstances warrant, such as conflicting interests of respective defendants, separate counsel shall be appointed, as herein provided for each of the defendants or any one of them.
4. No defendant accepting representation under Article 18-B of the County Law shall be permitted to select his own counsel from the panel of attorneys.

5. Subject to paragraph B of this Article IV, whenever counsel has been appointed by the court such counsel shall continue to act for the defendant throughout the proceedings in the trial court and through appeal, unless or until he is relieved by the appellate court.

B. Duration and substitution of appointments.

1. As provided in Section 722 of the County Law, a defendant for whom counsel is appointed hereunder shall be represented at every stage of the proceedings, from his initial appearance before the judge or justice through appeal. If at any time after the appointment of counsel the court finds that the defendant is financially able to obtain counsel or to make partial payment for his representation, the court may terminate the appointment of counsel or it may direct that payment be made to the appointed private counsel or to the City of New York, as authorized by Section 722-d of the County Law. Such payments shall be strictly controlled by the court, to the end that payments to appointed private counsel shall not exceed the maximum permitted by the Section 722-b of the County Law.
2. The court may, in the interests of justice, substitute one appointed counsel from the panel for another, designated by the appropriate Administrator as herein provided, at any stage of the proceedings. Whenever an attorney who is not on the Supreme Court panel has been appointed by the Criminal Court to a case which results in an indictment, such attorney must withdraw from the case as soon as practicable and an attorney from the Supreme Court panel, whose name has been obtained and furnished by the appropriate Administrator as hereinabove provided, should be substituted by the Supreme Court. Whenever justice requires, however, the Supreme Court may appoint the original attorney to serve as co-counsel with the new attorney. In no event shall the total compensation to all appointed private counsel exceed the maximum permitted by Section 722-b of the County Law. Appointed counsel replaced by such substitution shall await the final disposition of the case before submitting his claim for compensation as prescribed hereinafter.
3. No counsel appointed hereunder shall seek or accept any fee for representing the defendant for whom he is appointed without approval of the court as hereinabove provided. If there should come to the knowledge of such counsel an information indicating that the defendant or someone on his behalf can make payment in whole or in part for legal services, it shall be his duty to report such information promptly to the court, so that appropriate action may be taken hereunder.

C. Appointments from appellate panels.

1. After the appellate court has made a determination that a defendant is entitled to representation under Article 18-B of the County Law and that the Legal

Aid Society should not furnish counsel for any of the reasons detailed in Article I hereof, the appointment should be made in the same manner as that prescribed in paragraph A of this Article IV. Counsel representing the defendant in the trial court shall, in appropriate cases and if a member of the appropriate panel, be appointed by the appellate court to continue on appeal. The appointment of counsel on appeal shall be made within a reasonable time after the notice of appeal is filed.

2. In appealed cases involving more than one defendant, one or more attorneys may be appointed to represent all appellants, but where circumstances warrant such as conflicting interests of respective appellants separate counsel shall be appointed for each of the appellant or any one of them.
3. The appellate court may, at any point in the appellate proceedings substitute one appointed counsel from the panel for another, designated by the appropriate Administrator as herein provided, in the same manner and under the same conditions as provided for in paragraph B of this Article IV.
4. No defendant accepting representation under Article 18-B of the County Law shall be permitted to select his own counsel from the panel of attorneys.

V. Services Other than Counsel

Counsel (whether or not appointed under this Plan), other than the Legal Aid Society for a defendant who is financially unable to obtain investigative, expert, or other services necessary to an adequate defense in his case may request such services in an ex parte proceeding before a court. If, after appropriate inquiry, the court shall find that the services are necessary and that the defendant is financially unable to obtain them, it shall authorize defendant's counsel to obtain such services. Any such proceedings incident to the aforesaid inquiry shall remain privileged and unavailable to the prosecution until the trial shall have been concluded. If the court should find that timely procurement of such services could not await prior authorization, it may, in the interests of justice, ratify such services after they have been obtained, if it shall find that the defendant is financially unable to pay for them.

VI. Payment of Counsel Fees and for Other Services

1. A private attorney appointed pursuant to this Plan shall be compensated upon the submission of his claim in accordance with the rules, regulations and forms promulgated by the Comptroller of the City of New York, and supported by a written statement in substantially the form attached hereto as Exhibit B, specifying the time expended, services rendered, expenses reasonably incurred and reimbursement or compensation applied for or received in the same case from any other source, while the case was pending in the court. Claims for expenses incurred for services under

Article V hereof shall be supported by a sworn statement in substantially the form attached hereto as Exhibit C. Expenses reasonably incurred are limited to out-of-pocket expenses and shall not include any allocations for general office overhead, such as rent, local telephone services or secretarial help. For representation on appeal, compensation and reimbursement shall be fixed by the appellate court. For all other representation, compensation and reimbursement shall be fixed by the court where judgment of conviction or acquittal or order of dismissal was entered. Unless good cause is shown, claims for attorney's fees, expenses and services shall be submitted to the court within 45 days after the court has finally disposed of the case.

2. Except as authorized or directed by the court, no appointed attorney furnishing representation under Article 18-B of the County Law shall seek or accept any payment or promise of payment from a defendant or on his behalf for his representation of said defendant or for reimbursement of any expenses incurred.
3. The clerk of the particular court shall forthwith forward all approved statements to the appropriate Administrator who shall then forward them to the Comptroller of the City of New York for payment, provided that an application which is approved in an amount in excess of the limits provided in Section 722-b of the County Law because of extraordinary circumstances, and in order to provide for compensation for protracted representation, shall be forwarded by the clerk of the Presiding Justice of the appropriate Appellate Division, for his approval, disapproval or modification prior to being forwarded to such Administrator.

VII. Forms

In the event that forms are prepared and furnished by the Comptroller of the City of New York, they shall be used, where applicable, in all proceedings under this Plan. Any revisions of said forms or any additional forms that may be prescribed by the Comptroller of the City of New York shall likewise be used, where applicable, in all proceedings under this Plan.

VIII Rules and Reports

The Appellate Divisions of the First and Second Judicial Departments may promulgate such rules with respect to this Plan as they may deem necessary and the Administrative Board of the Judicial Conference may require such records to be kept by the Administrator or Administrators as will reflect the operation of the Plan.