

Committee on Mandated Representation

Representation in Family Court
Proceedings CLE Program and
Presentation of the Denison Ray and
Promoting Excellence in Mandated
Representation Awards

Friday, June 9, 2017

New York State Bar Association
1 Elk Street, Albany, NY 12207





Message from the Chair of the Committee on Mandated Representation

Welcome to the New York State Bar Association's annual Continuing Legal Education program sponsored by the Committee on Mandated Representation (CMR). The mission of the CMR is to "make recommendations to the Executive Committee of the New York State Bar Association relevant to methods of providing mandated representation and undertaking other activities that will further the goal of ensuring quality mandated representation." The Committee's annual and free CLE programs are one example of its efforts to fulfill its mission. This year, recognizing that all too often family law takes a backseat to criminal defense in the world of public defense, the program is entirely devoted to enhancing the professionalism of family law practitioners.

A special thank you to CMR members Janet Fink, New York State Unified Court System Deputy Counsel on Family Court and Counsel to New York State Family Violence Task Force; Linda Gehron, President & CEO of Hiscock Legal Aid Society in Syracuse; and Susan Lindenauer, Co-Chair of the State Bar Association Task Force on Family Court and Chair of the 2,254-member Senior Lawyers Section, for coordinating today's presentation. I also wish to express our Committee's appreciation to State Bar staff members Kristen Wagner and Eunice Bencke for helping put together this year's program.

We are lucky to have leading professionals in the field of family law presenting on domestic violence, Article 10 proceedings, representing third parties and relatives, crossing borders (including Hague Convention applicability), and updates on the Uniform Child Custody Jurisdiction and Enforcement Act, Uniform Interstate Family Support Act, and Indian Child Welfare Act.

We thank our presenters for their time and commitment to improving our collective client representation. They include:

Amanda McHenry, Esq., Hiscock Legal Aid Society

Gary Solomon, Esq., Legal Aid Society Juvenile Rights Practice

Hon. Deborah Kaplan, Statewide Coordinating Judge for Family Violence Cases

Marguerite A. Smith, Esq.

Thomas Gordon, Family Court Magistrate

Audrey E. Stone, Esq., Chief Counsel to the Office of the Statewide Coordinating Judge for Family Violence Cases

Jeremy Morley, Esq.

Angela Burton, Esq., New York State Office of Indigent Legal Services

Adele Fine, Esq., Assistant Public Defender, Monroe County

Linda Gehron, Esq., President & CEO, Hiscock Legal Aid Society

Janet Fink, Esq., New York State Unified Court System Deputy Counsel on Family Court

Nancy Farrell, Esq., Hiscock Legal Aid Society

The CMR also takes this opportunity to recognize colleagues who have made significant contributions to enhancing the quality of mandated representation. With thanks to our Awards Selection Subcommittee members, Chair Malvina Nathanson, Norman Effman, Klaus Eppler, and Majer Gold, during the luncheon recess we will hold a brief awards presentation ceremony.

There are two categories of awards that will be presented:

Named in memory of Denison Ray, a career legal activist, who led legal services programs in New York and other states, the Denison Ray Award recognizes defense attorneys or organizations which exemplify the highest level of professionalism in providing zealous representation to indigent clients.

Recipients of this year's Denison Ray Awards are Monroe County Public Defender Tim Donaher, Nancy Farrell and Amanda McHenry of Syracuse's Hiscock Legal Aid Society Family Court Program, and Peter Wolk of New York County Defender Services.

Instituted in 2007, the Promoting Excellence in Mandated Representation Award recognizes an individual attorney and/or organization who has "demonstrated consistent adherence to the highest professional standards in providing mandated representation," has "engaged in innovative efforts to improve the overall quality of mandated representation," or has "promoted steps by the legislature, executive branch or judiciary to ensure the provision of high quality mandated representation."

Recipients of this year's Promoting Excellence in Mandated Representation awards are New York State Senator John DeFrancisco and Assemblymember Patricia Fahy for their joint efforts in supporting criminal justice reform and specifically, advancing the Justice Equality Act, a funding bill to guarantee that the improvements and benefits to the five counties which were parties to the Hurrell-Harring lawsuit settlement, would be expanded to the other 57 counties in New York State. Ultimately, following Governor Cuomo's veto, the Governor incorporated much of the Justice Equality Act into his 2017 budget.

Also, receiving Promoting Excellence in Mandated Representation awards will be the New York State Office of Indigent Legal Services, and Thomas Klein and Antoinette Costanza of the New York City Legal Aid Society.

The distinguished recipients of these awards were selected because they have personally provided, or facilitated, the highest level of quality representation to indigent clients. Each honoree is truly deserving of this special recognition. Congratulations to the 2017 award recipients!

Recognizing the vital role that on-going training plays in the consistently high quality of mandated legal services, it is only fitting that we combine training with recognition of those devoted to enhancing quality representation. The CMR is dedicated to offering attorneys who work in this often under-paid and under-appreciated arena on-going opportunities to acquire, develop, and enhance their skills. The Committee launched its first free continuing legal education seminar in 2007. The Committee is confident that you will find the training stimulating, enlightening and full of practical guidance which will enhance your effectiveness as a mandated attorney advocate.

Sincerely,



Andrew Kossover

2017 DENISON RAY AWARD



Timothy P. Donaher, Esq.
Monroe County Public Defender

Nominator

Drew R. DuBrin, Esq.,
Special Assistant Public Defender (Appeals)
John T. Bradley, Esq., Special Assistant Public
Defender
Jill Paperno, Esq., First Assistant Public
Defender
Brian Shiffrin, Esq., Easton, Thompson,
Kasperek, Shiffrin LLP

Tim Donaher is a 1993 graduate of the University of Buffalo Law School (J.D.). From 1994 to 2000, Donaher was in private practice handling both criminal and civil cases. In 2000, Donaher started his career as an assistant public defender as an appellate attorney in the Monroe County Public Defender's Office. During his eight years as an assistant public defender, he argued numerous cases in front of the New York's Appellate Division, Fourth Department and the New York Court of Appeals.

In February 2008, Donaher was appointed the Monroe County Public Defender, where he oversees an office of seventy-one (71) attorneys who provide indigent representation in the criminal, family, and appellate courts of Monroe County. In 2016, the Public Defender's Office represented over 22,000 clients.

As Public Defender, Donaher has overseen numerous initiatives designed to improve the Office, the representation provided to clients, and improve Office resources. These included the creation of new training programs for Office staff; obtaining accreditation as a continuing legal education provider; providing hundreds of CLE programs (free-of-charge) to the legal community; expanding the counsel at first appearance program (CAFA) to provide counsel at all arraignments in Monroe County, 24-hours-per-day, seven-days-per-week; increasing recognition to local attorneys by developing awards to recognize quality representation in criminal and family law; as well as other initiatives designed to improve office morale.

In 2014, working with other chief defenders across the State, Donaher helped create the Chief Defenders Association of New York (CDANY), and served as its first President from October of 2014 until December of 2015. CDANY advocates for chief defenders, their staff, and clients and works to improve the justice system.

Donaher is also a member of the Office of Court Administration's Committee on Criminal Jury Instructions; the Office of Court Administration's Task Force on E-filing in the Criminal Courts, and the New York State Bar Association's Task Force on Criminal Discovery.

2017 DENISON RAY AWARD



Nancy J. Farrell, Esq.
Supervising Attorney,
Family Court Program
Frank H. Hiscock Legal Aid Society



Amanda M. McHenry, Esq.
Assistant Supervisor,
Family Court Program
Frank H. Hiscock Legal Aid Society

Nominator

Linda Gehron, Esq., President & CEO, Hiscock Legal Aid Society

Nancy and Amanda have worked closely with Linda Gehron at Hiscock Legal Aid Society to create a practice of representation from the very start of an Article 10 case. Initially, we designated two individuals in our office to run the court calendar a couple of times a day to see if any first appearances showed up on the calendar for a neglect or abuse case. If they did, we would go and find out if there was a planned removal. If one of the respondents was there, and there was no conflict, we would offer our services to them right then and there. Eventually the Court started working with us and now sends us email notification of a removal hearing. In some cases the judges even call our office directly looking for an attorney to come over for a 1027 hearing. This provides the client with a sense of comfort, knowing someone in the court room is working for them rather than against them as it so often seems. We are often able to negotiate placement with a friend or family member, increased visitation if the children are removed, or orders of protection that allow the children to stay in the home. When she is available we bring Jean Shirley, our client advocate, to a removal hearing. She is instrumental in calming our clients in a way we are not able to as we prepare for the hearing or negotiations. Jean assists us in identifying their needs and getting them engaged in services quickly. She is also well connected in the community and is able to quickly find resources for our clients. Prior to this practice, respondents were almost always unrepresented at a 1027 hearing in Onondaga County. Unrepresented respondents have at times made statements that harmed their case in the short and long term. We have developed strong, trusting relationships with our clients because of this practice, which has contributed to our efforts to provide holistic representation.

2017 DENISON RAY AWARD



Peter Wolk, Esq.

New York County Defender Services

Nominator

Stanislao German, Esq., Executive
Director, NY County Defender Services

Peter Wolk graduated from Northeastern University School of Law in 1978. After a four year stint at Bedford Stuyvesant Community Legal Services, he joined the Criminal Defense Division of the Legal Aid Society in Brooklyn, where he worked as a staff attorney from 1983 to 1988. Peter then viewed the criminal justice system from the perch of the judiciary, as the Court Attorney for the Hon. Leonard P. Rienza in Kings Supreme. Thereafter, he continued to fight for poor people as Special Assistant Attorney General in the Office of the Special Prosecutor, focusing exclusively on corporate and white-collar Medicaid fraud cases. In 1994, Peter re-united with former Legal Aid colleagues to form Schuman Abramson Morak & Wolk. The firm specialized in criminal defense, representing clients in state and federal court, on charges ranging from murder to robbery to public corruption. While in private practice, Peter was a member of the 18B Homicide Panel in Brooklyn. In 2004, Peter returned to his true professional passion - being a public defender - when he joined New York County Defender Services. For the past 13 years, he has been a senior staff attorney and most recently, a member of the Special Litigation Unit. He has played an active role in mentoring many of the younger attorneys at NYCDS and finds this to be one of the most rewarding aspects of the job, along with fighting for the rights of his clients.

For the past 25 years, Peter has been a regular faculty member at Cardozo Law School's Intensive Trial Advocacy Program. And in 2017, Peter was chosen to serve as a representative of the defense bar on the newly formed OCA Statewide Task Force on Orders of Protection.

Peter's passion for criminal justice issues has played a major role in his screenwriting career. Peter co-wrote the HBO movie *Criminal Justice*, which continues to be used for training new public defenders throughout the country, as it encapsulates the incredibly complex and emotional underpinnings of the criminal justice system and the lives of the public defenders fighting for justice within it. He also co-wrote three movies for Showtime based on the award-winning TV drama, *The Defenders*. Most recently, Peter wrote five episodes of the Emmy Award-winning TV show *Monk*, including "Mr. Monk Gets Jury Duty."

2017 PROMOTING EXCELLENCE IN MANDATED REPRESENTATION AWARD



Antoinette Costanzo, Esq. and Thomas Klein, Esq.
Legal Aid Society

Nominator

Jill Paperno, Esq., First Assistant Public Defender

Antoinette has been a staff attorney at the Legal Aid Society for 25 years. As a public defender she has had an active trial practice. Antoinette also trains on trial skills at various public defender organizations, including the Legal Aid Society, the New York State Defender Association, the Bronx Defenders, and the Neighborhood Defender Service of Harlem.

Thomas Klein has been a lawyer at the Legal Aid Society for 35 years. As a public defender he handles a large felony caseload. Thomas has been a trial attorney, a Supervisor, a Director of Litigation, Co-head of the Manhattan trial office, an Senior homicide attorney, all at the Legal Aid Society. He also trains on trial skills at various public defender organizations, including the Legal Aid society, the New York State Defender Association, the Bronx Defenders, and the Neighborhood Defender Service of Harlem.

2017 PROMOTING EXCELLENCE IN MANDATED REPRESENTATION AWARD



NYS Office of Indigent Legal Services

Nominator

Norman Effman, Esq., Wyoming County Public Defender

On March 11, 2015 the October 2014 settlement of the Hurrell-Harring case ("HH") was approved by the Court and went into effect. On April 1 state funding was provided for ILS to create a Hurrell-Harring Implementation Unit. On June 23 Patricia Warth, Esq. was named as Chief Implementation Attorney to lead the Unit, effective as of August 3. In August, the Brooklyn Study (Indigent Defense Reforms in Brooklyn, New York) demonstrated reduction of caseloads and improvements in representation in one NYC borough due to state-funded caseload relief. On November 12 ILS filed its Final Plans for implementing Counsel at Arraignment and Quality Improvement Initiatives in the five HH counties, pursuant to sections III and V of the HH settlement. On December 1 ILS Standards for Parental Representation in State Intervention Matters became effective.

On April 1, 2016 the State budget included \$10.4 million for caseload relief to help the five HH counties reach the ILSB standard of 367 weighted cases; and millions for counsel at arraignment and quality improvement initiatives in those counties. On April 4 ILS issued its Criteria and Procedures for Determining Assigned Counsel Eligibility, pursuant to section VI of the HH Settlement. On June 17 the NY Senate and Assembly passed the Public Defense Mandate Relief Act (PDMRA), also known as the Justice Equality Act (JEA), by unanimous votes. The Act would expand HH reforms statewide at the state's expense, and would provide full state reimbursement for local cost of providing mandated representation. On July 6 ILS announced the creation of six Regional Immigration Assistance Centers, providing comprehensive statewide immigration consequences training and advice to providers of mandated representation. On November 11 the five HH counties met the Settlement's deadline to have programs in place for full arraignment coverage. On November 29 Governor Cuomo signed into law Chapter 492, authorizing the creation of Centralized Arraignment Parts to facilitate the appearance of counsel at arraignment. On December 8 ILS delivered its caseload/workload standards to the parties, pursuant to section IV (B) of the HH Settlement Agreement. On December 31 Governor Cuomo vetoed the PDMRA/JEA, and instead proposed statewide, state-funded expansion of Hurrell-Harring reforms in his January 2017 Executive Budget proposal.

On January 6, 2017 ILS issued its second Counsel at First Appearance (CAFA) Request for Proposals. Fifty- two counties were eligible to apply (CAFA was already in effect in NYC and the five HH counties). Thirty-seven counties were to apply by the February 24 deadline. On January 1, the executive budget proposal included \$23.8 million for HH settlement costs in the five counties, including \$19 million for implementation of the new caseload limits established by ILS. The proposal also authorized ILS to submit plans for extension of the HH caseload limits, counsel at arraignment and quality improvements statewide by December 1, 2017; and funds a new Statewide Implementation Unit for that purpose. In March the Assembly and Senate budget proposals concurred word for word with Governor's proposal, but deleted the provision for DOB approval of the ILS plans. ILS issued an RFP for the first-ever Model Upstate Parental Representation Office. Proposals were due by May 12, 2017. On April 9 the Governor and Legislature agreed on a state budget that includes statutory authority for ILS to develop and implement plans to extend HH reforms (counsel at arraignment, caseload relief and quality improvement initiatives) statewide. Plans are due by December 1, 2017. Full implementation, fully state funded, is due by April 1, 2023. On April 11 the position of Statewide Chief Implementation Attorney was advertised. Interviews were scheduled for May. Selection is anticipated early in June. On May 2 a Statewide Reform kickoff meeting was held at the State Bar Center where remarks on behalf of Governor Andrew Cuomo were delivered by First Assistant Counsel Sandi Toll. On May 8 the Sixth Amendment Center Report issued: "New York Caseload Standards Announced and Their Importance to Statewide Reform Explained." On May 10 there was public issuance of the December 8, 2016 caseload standards report: A Determination of Caseload Standards pursuant to § IV of the Hurrell-Harring v. The State of New York Settlement." On May 12, proposals in response to Model Parental Representation Office were submitted by ten counties.

2017 PROMOTING EXCELLENCE IN MANDATED REPRESENTATION AWARD



Assemblymember Patricia Fahy and Senator John DeFrancisco

Nominator

Malvina Nathanson, Esq.

Patricia Fahy serves the people of Albany, Bethlehem, Guilderland and New Scotland as the Assemblymember for the 109th assembly district. Previously, Pat served as the Associate Commissioner of Intergovernmental Affairs at the NYS Department of Labor. Before moving to Albany, she served as the Executive Director of the Chicago Workforce Board. She spent nine years in Washington D.C., including service in the Clinton Administration as the Associate Director for Employment and Training in the Congressional Affairs Office of the U.S. Department of Labor under Secretary Robert Reich. She is also a former elected member of the Albany School Board. As a legislator, her top priorities are education, economic development, the environment, public transit and jobs.

Assemblymember Fahy sponsored Indigent Legal Services Reform, sometimes called the "Justice Equality Act," alongside Senator John DeFrancisco. The bill, which was designed to shift the burden of indigent legal services from the counties to the state, was passed unanimously by both houses of the legislature in 2016. When the bill was ultimately given a midnight veto on the last day of 2016, she made it a priority to include the full implementation of *Gideon v. Wainwright* in the adopted budget, ending the county-to-county patchwork system of justice in New York State.

Senator John A. DeFrancisco is the New York State Senate Deputy Majority Leader. He was first elected to the State Senate in 1992. Senator DeFrancisco represents the 50th Senate District, which covers most of Onondaga County and parts of Cayuga County, including the City of Auburn.

In July of 2015, Senator DeFrancisco was named Deputy Majority Leader of the Senate. He previously served as Chairman of the Senate Finance Committee, as well as Chairman of the Senate Judiciary Committee.

Throughout his service in the State Legislature, Senator DeFrancisco has worked with his Senate colleagues on legislation to help reduce crime, lower taxes, create jobs, increase transparency, and hold the line on state spending. He has been the sponsor of several bills that deal with the legal system, including legislation that would require the state to reimburse counties and cities for providing indigent legal services. Though the bill passed the State Legislature, it was vetoed earlier this year by the Governor. Senator DeFrancisco also is the current sponsor of a bill that would establish a state commission on prosecutorial conduct.

Prior to his time in the Senate, Senator DeFrancisco served 11 years on the Syracuse Common Council. He also was a former president of the Syracuse City School District Board of Education. A lifetime resident of Syracuse, Senator DeFrancisco attended Christian Brothers Academy, graduated from Syracuse University's College of Engineering, and then received his Juris Doctor degree from Duke University in 1971. He and his wife, Linda, have three grown children and eight grandchildren.

Past Award Recipients

Denison Ray Award

2015

Gregory A. Kilburn

2013

*Appeals Bureau
Major Gold*

2011

Jerome K. Frost

2008

Andre A. Vitale

2006

Mark J. Caruso

2004

Alfred O'Connor

2001

*Robert E. Massi
Richard W. Rich*

2000

*Drew R. DuBrin
Michele Fox*

1998

*Raymond A. Kelly, Jr.
Timothy B. Rountree*

1997

*John H. Ciulla, Jr.
Susan Hofkin Salomon*

1995

*Thomas N. N. Angell
Allen Farbman*

1994

*Alexander Lesyk
Howard A. Pincus*

Promoting Excellence in Mandated Representation Award

2015

*Joanne Marci, Esq.
Center For Family Representation
The Justice First Project of the Center for Appellate Litigation*

2013

*New York State Defenders Association
New York Civil Liberties Union Foundation
Schulte Roth & Zabel LLP*

2011

*Office of the Appellate Defender
Charles F. O'Brien*

2009

*Joseph S. Damelio
Lawyers for Children, Inc.
The Family Court Project of Southern Tier Legal Services*

2007

The Bronx Defenders



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