

**ASSIGNED COUNSEL PLAN
FIRST DEPARTMENT
253 BROADWAY, 2nd FLOOR
NEW YORK, NY 10007**

Jacqueline P. Flug
Administrator

Luis A. Gonzalez
Presiding Justice

Dear Applicant:

Thank you for your interest in the Assigned Counsel Plan program. I have enclosed an Application, copy of the General Requirements for Certification and the Eligibility Requirements and rules for the various panels.

Please mail your completed application to:

**Jacqueline P. Flug
Assigned Counsel Plan Administrator
First Department
253 Broadway, Room 200
New York, NY 10007**

If you have any questions regarding the application or the requirements please contact me at (212)676-0061 or e-mail me at jflug@cityhall.nyc.gov.

Sincerely,

Jacqueline P. Flug
Assigned Counsel Plan Administrator
First Department

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APPLICATION PROCESS

The application process, which is regulated by the Central Screening Committee's By-Laws, is summarized below. If you have any questions, please call the Administrator's office at (212) 676-0061.

1. Complete the application by answering all questions and attaching any riders and other supporting documents that are required. Distribute the reference request forms to the individuals you list in answer to questions 28, 29, 30. Mail your completed application to:

Jacqueline P. Flug
Assigned Counsel Plan for the First Department
253 Broadway – Room 200
New York, New York 10007

2. Your application will be reviewed for completeness and satisfaction of the minimum requirements. Applications are not complete until all references are received. You can facilitate the application process by urging your references to respond promptly. If the application is facially deficient, it will be returned to you with instructions. Otherwise it will be referred to a Committee member.
3. The assigned Committee member will review your references, contact some of them, and arrange an interview with you. Usually this can be accomplished within two months.
4. After the interview, the Committee member will recommend an action to the Chair of the Central Screening Committee. You will receive a notice of the Screening Committee's determination by mail. If you are approved for one or more panels, the Appellate Division will be notified simultaneously.
5. If denied certification to the panel you may appeal the decision to the full Central Screening Committee and upon further denial you may appeal to the Presiding Judge of the First Department.
6. Once certified to the panel you will receive instructions on the assignment and billing process. All newly certified panel members must attend a training session concerning the billing process and use of the 18B Web system.
7. Panel membership is a privilege, not a right. Upon certification to the panel, an Attorney's conduct and performance is regulated by Article

18-B of the County Law, the Indigent Defendants Legal Panel Plan adopted by the Judicial Conference in 1966, the Rules and Regulations. You are urged to familiarize yourself with these documents. Please note that trial panel membership in more than one borough of New York City is not permitted. Several of the more noteworthy provisions of panel certification are attached.

RULES AND RESPONSIBILITIES FOR ATTORNEYS CERTIFIED TO THE ASSIGNED COUNSEL PANEL – FIRST DEPARTMENT

1. Payment

All panel members must use the online payment system 18B Web. Upon certification to the panel all members must attend a training class concerning the 18B Web system.

Upon completion of a case, a signed voucher must be submitted within 45 days to the judge presiding at the time of final disposition. Vouchers submitted to the 18B Web system after 45 days will be locked and require additional actions in order for members to receive payment.

2. Duration of Representation

Once assigned to a case, you remain the attorney of record for the duration of the case unless specifically relieved by the court. This means that even if a client returns on a warrant after an extended period of time, you remain the attorney of record. You are obligated to make every court appearance yourself unless you have submitted an affidavit of actual engagement conforming to the Court Rules. In rare circumstances, your partner or another panel member may appear on your behalf; however, they may not bill for that appearance.

On several occasions a client's criminal matter may result in a parole violation hearing. If this arises you are to contact the Administrator's office for possible assignment to the parole matter.

3. Services Other Than Counsel

The services of experts, investigators, interpreter, and others may be obtained by an *ex parte* application to the court. All experts must meet the Assigned Counsel Plan's eligibility requirements.

The Assigned Counsel Plan retains a roster of experts, investigators and interpreters which is available to all members. The Assigned Counsel Plan does not make any representations as to the quality of those on the roster but simply states that they have met the Plan's eligibility requirements. It is the responsibility of each attorney to assess the needs of their case and properly vet the experts they seek to retain.

4. Acceptance of Fees

You may not solicit or accept any fees paid by or on behalf of a client on account of your representation on an assigned case, either during or after the case has concluded. If during your representation information comes to your attention that the client or someone on his behalf is able to pay for all or part of the legal costs, you must inform the court. It is the court's responsibility to decide whether the client is entitled to further Panel representation. In no event may you be relieved as counsel and then accept a private retainer for the client.

If a client whom you represent as an 18-B attorney is subsequently arrested and charged with another offense and offers to retain you as a private counsel, you may not accept the case without approval from the court

5. Responsibilities

All panel members are required to maintain a local New York City telephone number and an office within the Bronx or Manhattan where they can interview clients and witnesses. Your office space must be accessible to your clients. It is your responsibility to make sure that your clients can meet with you in a private office space. Exceptions may be made for attorneys who are only certified to the Appellate Panel and have offices in near by counties.

Pursuant to the New York Lawyer's Code of Professional Responsibility, panel members are required to maintain files with contemporaneous time and billing records. Panel members must maintain all files and records from a case for a minimum period of seven years after the final disposition.

PANEL REQUIREMENTS *

MISDEMEANOR PANEL

Method A

1. Applicant must demonstrate actual court experience in at least ten criminal cases involving at least:
 - (a) Five negotiated pleas, dismissals, or other non-trial dispositions;
 - (b) Two litigated motions in which oral testimony was taken and a decision rendered, **or** two preliminary hearings in which oral testimony was taken and a decision rendered;
 - (c) One jury trial which proceeded to verdict;

2. Applicant must submit names and written references of each of the following:
 - (a) Two judges before whom applicant has conducted a preliminary hearing, a litigated motion or a trial;
 - (b) Two trial or hearing adversaries;
 - (c) Two co-counsels with whom applicant has handled criminal cases, or attorneys who are familiar with applicant's work through actual in-court observation (no cross-references permitted).

Method B

1. Appearance in court as co-counsel with an experienced criminal law practitioner on at least five criminal cases involving at least:
 - (a) Three negotiated pleas, dismissals, or other non-trial dispositions;
 - (b) One litigated motion in which oral testimony was taken and a decision rendered **or** one preliminary hearing in which oral testimony was taken and a decision rendered ;
 - (c) One jury trial which proceeded to verdict;

2. Applicant has taken or agrees to take within the next three months, an approved intensive course in criminal law, practice or procedure and;

3. Applicant must submit names and written references of each of the following::

* Panel requirements may be waived if, in the opinion of the Screening Committee, the applicant is otherwise qualified by reason of education, training and other substantial trial experience

- (a) The attorneys with whom the applicant appeared as co-counsel;
 - (b) One judge before whom applicant appeared as co-counsel;
 - (c) Instructor with whom applicant has taken approved course;
4. If applicant fails to take an approved course and submit recommendations within a three month period, he/she will be automatically removed from the Panel.

Method C

1. Applicant has taught criminal law and/or procedure course at an accredited law school, or participated as an instructor or panelist in approved seminars or lectures involving criminal law and procedure, or applicant was a law secretary to a judge of the Criminal Court, or Supreme Court (criminal term), or Appellate Court handling criminal matters;
2. Actual court experience in at least three criminal cases including at least:
 - i. Two negotiated pleas, dismissals or other non-trial dispositions;
 - ii. One litigated motion;
 - iii. One preliminary hearing; or
 - iv. One jury trial to verdict; and
3. Applicant must submit names and written references of each of the following:
 - (a) The judge before whom the applicant has conducted a preliminary hearing, litigated motion, or trial;
 - (b) One co-counsel with whom applicant has handled criminal cases, or attorneys who are familiar with the applicant's work through actual in-court observation (no cross-references permitted);
 - (c) Instructor with whom applicant has taken the approved course.

Method D

A former judge of Criminal Court, or a former Justice of the Supreme Court (criminal term) who has recently retired or voluntarily resigned from the bench.

FELONY PANEL

Method A

1. Actual court experience in at least thirty criminal cases involving at least:
 - (a) Fifteen negotiated pleas, dismissals or other non-trial dispositions, at least five of which occurred post-indictment;
 - (b) Five preliminary hearings in which oral testimony was taken and a decision rendered, **or** five litigated motions in which oral testimony was taken and a decision rendered;
 - (c) Two post-indictment jury trials which proceeded to verdict;
2. Actual court experience on at least ten criminal cases as sole attorney, or twenty non-criminal matters including at least five jury trials as sole attorney;
3. Applicant must submit names and written references from each of the following:
 - (a) One judge before whom the applicant appeared as co-counsel in a post-indictment jury trial;
 - (b) Three judges before whom the applicant has litigated motions or conducted trials;
 - (c) Three trial or hearing adversaries;
 - (d) Three co-counsels with whom applicant has handled criminal cases or attorneys who are familiar with applicant's work through actual in-court observation (no cross-references permitted).

Method B

A former judge of a Criminal Court, or a former Justice of the Supreme Court (criminal term) who has recently retired or voluntarily resigned from the bench who receives favorable recommendations from at least three attorneys who practiced before him or her.

HOMICIDE PANEL

Method A

1. Actual court experience in at least sixty criminal cases involving at least:
 - (a) Thirty negotiated pleas, dismissals, or other non-trial dispositions, at least ten of which occurred post-indictment;
 - (b) Ten preliminary hearings in which oral testimony was taken and a decision rendered, or fifteen litigated motions in which oral testimony was taken and a decision rendered, at least eight of which occurred post-indictment;
 - (c) Five post-indictment jury trials which proceeded to verdict as sole attorney and eight as co-counsel;
 - (d) Cross-examination, during trial of at least four of the following:

-police officers	-laboratory technicians
-under cover agents	-psychiatrists or psychologists
-ballistics experts	-fingerprint expert

2. Applicant must submit names and written references of each of the following:
 - (a) Five judges before whom applicant has conducted a litigated motion or a jury trial;
 - (b) Five trial adversaries;
 - (c) Five co-counsels with whom applicant has handled criminal cases or attorneys who are familiar with applicant's work through actual in-court observation (no cross-references permitted).

Method B

A former judge of a Criminal Court, or a former Justice of the Supreme Court (criminal term) who has recently retired or voluntarily resigned from the bench, who receives favorable recommendations from at least three attorneys who practiced before him or her.

APPELLATE PANEL

Applicants for certification to the appellate panel must have recent criminal law experience on either the trial or appellate level, be knowledgeable as to current criminal law and its constitutional requirements, and be able to perceive all relevant issues in a trial transcript. In addition, applicants must have knowledge and awareness of the legal issues that arise in criminal practice and to be able to skillfully enunciate the issues in a brief and support the points of law with thorough research, properly cited. Applicants must submit a sample of their writing, such as a brief, a memorandum of law, law review articles or other similar publications.

An attorney with good academic background, criminal law experience, the requisite writing and verbal skills, motivation and attitude should be able to skillfully handle appellate work. Therefore, the following minimum requirements must be met:

1. Actual experience in at least ten criminal cases, on either the trial or appellate level, during the past three years;
2. A writing sample consisting of a brief, law review article or similar publication;
3. Applicant must submit names and written references of each of the following:
 - (a) Three judges before whom applicant has handled criminal matters on either the trial or appellate level;
 - (b) Three trial or appellate adversaries;

RULES OF THE CENTRAL SCREENING COMMITTEE WRITING SAMPLES

The Central Screening Committee will not entertain the application of an attorney for a trial or appellate panel unless it is accompanied by **two** or more writing samples, including:

- (1) an affidavit, affirmation or complaint (without legal argument) demonstrating the attorney's ability to persuasively present moderately complex set of facts; and
- (2) a brief or memorandum of law demonstrating the attorney's ability to persuasively present moderately complex legal argument. A brief or memorandum of law which contains a complete statement of facts may suffice for both writing samples. The complexity and quality of the writings must be commensurate
- (3) If the attorney is currently a member of the panel and is seeking to upgrade his or her certification, the writing sample must include a brief or motion prepared for and actually submitted in an assigned case.

The Central Screening Committee will not entertain the application of an attorney for the Appellate Panel unless it is accompanied by the writing samples required by the Rules, as well as papers in opposition, any reply briefs, and the written decision of the opinion rendered by the court.

**ASSIGNED COUNSEL PLAN
FIRST DEPARTMENT
253 BROADWAY 2ND FLOOR
NEW YORK, NEW YORK 10007**

Re: _____
Applicant

Request for Evaluation
of Candidate Skills and
Qualifications for 18-B
Panel Membership

Dear _____:
(Name of evaluator)

The above attorney has applied for membership on one or more panels of the Assigned Counsel Plan, and listed your name as someone familiar with his/her abilities as a lawyer. We request that you kindly provide us with any pertinent information regarding the applicant's skills and experience, including a brief evaluation of the attorney's character and an indication of the circumstances under which you observed the applicant's performance. An evaluation form is attached for your convenience, although, if you prefer, a simple letter will do. Your response will remain confidential with the Central Screening Committee, and the applicant will not see your response.

Since we hope to complete this process expeditiously, I respectfully request that you send your evaluation directly to me as soon, as is reasonably possible. Any information received after the Committee has interviewed the applicant may not be considered.

Thank you in advance for your cooperation. If you have any questions please call me at 212-676-0061.

Very truly yours,

Jacqueline P. Flug
Administrator

If yes, please indicate the type of documents prepared by the applicant you have read.

- motion
 - omnibus
 - suppression
 - speedy trial
 - double jeopardy
 - Clayton/interest of justice
 - other _____
- memoranda of law
- pre-sentence memoranda
- appellate brief

If possible, please identify the case or cases on which the writing was submitted.

Based upon your knowledge , from all sources, how would you evaluate the applicant's qualifications for the following panels:

Misdemeanor Panel

- highly competent
- competent
- marginally competent
- not competent
- unknown

Felony Panel

- highly competent
- competent
- marginally competent
- not competent
- unknown

Homicide Panel

- highly competent
- competent
- marginally competent
- not competent
- unknown

Appellate Panel

- highly competent
- competent
- marginally competent
- not competent
- unknown

Please provide your candid opinion of the applicant's general skill and fitness to serve on the indigent defendant panel(s) for which he/she has applied.

JUDGES ONLY:

**In cases before you, did the applicant request any special charges? [] Yes [] No
If yes, was the request made in writing? [] Yes [] No**

Were any trial motions submitted in writing? [] Yes [] No

Any post-trial memos submitted? [] Yes [] No

Based upon your experience, how would you evaluate the quality of the applicant's written work?

- [] excellent [] very good [] average
[] fair [] poor

Based upon your observation of the applicant in court and your knowledge of his/her writing ability, please evaluate"

(a) ability to identify and articulate legal issues:

(b) thoroughness of preparation:

(c) sensitivity to the client's interest:

(d) overall performance as a trial advocate:

(e) Ability to argue/verbal and written persuasiveness:

Dated: _____

(Signature)

(Print Name)

**APPLICATION TO THE ASSIGNED COUNSEL PLAN
APPELLATE DIVISION, FIRST DEPARTMENT**

INITIAL **UPGRADING** **RE-ACTIVATION**

Name: _____

Home Address: _____

Phone Number: _____ **Cellular:** _____

Office Address: _____

Phone Number: _____ **Facsimile:** _____

E-mail: _____

Social Security or Tax I.D. Number: _____

Please direct correspondence about my application to:

Home **Office**

In which county do you wish to serve?

New York **Bronx**

Are you currently on any other First Department panel(s)? Yes _No _

If yes, please indicate:

To which panel(s) are you applying?

Misdemeanor **Felony** **Homicide** **Appellate**

If you are applying to, but are not certified to, the Felony panel, are you willing to serve on the Misdemeanor Panel? Yes ___ No ___

Law School: _____ **Date of Graduation:** _____

When and where were you admitted to the New York Bar?

Department _____ **Date:** _____

1. List all law positions held since graduation, including part-time employment and clerkships (provide name and address of immediate supervisor, employer or judge and dates of employment):

Employer: _____ **Position:** _____
Address: _____ **Dates:** _____
_____ **reason for**

Leaving: _____
Employer: _____ **Position:** _____
Address: _____ **Dates:** _____
_____ **reason for**

Leaving: _____
Employer: _____ **Position:** _____
Address: _____ **Dates:** _____
_____ **reason for**

Leaving: _____
Employer: _____ **Position:** _____
Address: _____ **Dates:** _____
_____ **reason for**

Leaving: _____
Employer: _____ **Position:** _____
Address: _____ **Dates:** _____
_____ **reason for**

Leaving: _____
Employer: _____ **Position:** _____
Address: _____ **Dates:** _____
_____ **reason for**

2. Present law position or title held (e.g., partner, associate, individual private practice, etc.): _____
3. General nature of current position (e.g., criminal – trial or appellate; civil litigation, corporate, etc): _____
4. How many criminal cases have you participated as sole or principal counsel? _____
5. Of those cases, how many were Felonies? _____ Misdemeanors? _____
6. Of those cases, how many resulted in the following:

	Felony	Misdemeanor
Negotiated Plea	_____	_____
Dismissals	_____	_____
Other non-trial dispositions	_____	_____
Jury trials that proceeded to verdict	_____	_____
Bench trials that proceeded to verdict	_____	_____
Litigated motions in which testimony was taken and a decision rendered	_____	_____
Preliminary hearings in which testimony was taken and a decision rendered	_____	_____

7. How many of each of the following types of witness have you examined during litigated motions or trials in criminal cases?

Ballistics Experts	_____	Police Officers	_____
FBI/DEA/ATF Agents	_____	Psychiatrists	_____
Chemist/ Lab Tech.	_____	Psychologists	_____
Fingerprint Experts	_____	Serologists	_____
Medical Examiners	_____	Undercover Agents	_____
Medical Experts	_____	DNA Expert	_____
Accident Reconstructions	_____	Other	_____

8. How many civil cases have you participated as sole or principal counsel? _____
9. Of those cases, how many resulted in:

jury trial that proceeded to verdict	_____	mid –trial settlement	_____
dismissal or other non –trial disposition	_____	pre-trial settlement	_____
10. How many appellate cases, criminal and civil, have you been involved in as sole or principal counsel?

Criminal	_____	Civil	_____
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11. Of those cases, in how many cases in each court listed below did you personally author the brief or argue the appeal?

	<u>Authored Brief</u>	<u>Argued Appeal</u>
Appellate Term	_____	_____
Appellate Division	_____	_____
N.Y. Court of Appeals	_____	_____
U.S. Court of Appeals	_____	_____
U.S. Supreme Court	_____	_____
Other: _____	_____	_____

12. Have you ever taken criminal cases on a pro bono basis? If so, state the number of cases and provide a brief description of each: _____

13. In law school did you complete a clinical, advocacy, trial practice or other lawyering skills training course? If so, please state:

Title of Course: _____

Name of Instructor: _____

Number of Credit Hours: _____

Description of Course and Skills:

14. Have you attended any continuing legal education course designed to teach trial skill, such as the National Institute of Trial Advocacy? () Yes () No If yes, provide

15. Have you completed the Criminal Law Procedure lecture series offered by the New York County Lawyers' Association? () Yes () No If yes, attach certificate of attendance.

16. Have you completed any other criminal trial techniques program? () Yes () No

17. Have you participated in any kind of co-counsel program? () Yes () No

18. Do you have any other relevant legal experience that you feel will be helpful in evaluating your competence to serve on the panels for which you have applied?
() Yes () No

If yes, state particulars. (Use separate sheet of paper if necessary)

19. Do you have any other training or skills, including foreign language proficiency, that you feel will be helpful in your ability to serve on the panel for which you have applied? _____

20. Indicate all Assigned Counsel Plan and other panels of which you are currently a member and the year you were approved for the panel.

	Year		Year
<input type="checkbox"/> CJA – Southern District	_____	<input type="checkbox"/> Misdemeanor	_____
<input type="checkbox"/> CJA – Eastern District	_____	<input type="checkbox"/> Homicide	_____
<input type="checkbox"/> 18B First Department	_____	<input type="checkbox"/> Felony	_____
<input type="checkbox"/> Appellate	_____	<input type="checkbox"/> 18B Second Department	_____
<input type="checkbox"/> Kings County	_____	<input type="checkbox"/> Queens County	_____
<input type="checkbox"/> Richmond County	_____	<input type="checkbox"/> Westchester County	_____
<input type="checkbox"/> Other _____	_____		

20. Have you ever been denied or refused certification or admission to any assigned counsel panel?

Yes No If yes, state particulars.

21. Have you ever been relieved from an assigned case? Yes No If yes, state particulars.

22. Have you ever been suspended, removed, dropped or asked to resign from any assigned counsel plan? Yes No if yes, state particulars.

23. Have you ever been held in contempt? Yes No

24. Have you ever been the subject of a complaint to a bar association or departmental grievance committee which resulted in your admonition, reprimand, or censure, you suspension from the practice of law, or your disbarment? If yes, state particulars.

25. Have you ever been convicted of a crime in this state, or in any jurisdiction of an offense which is committed in New York would constitute as a crime?

**26. Have you been fired or asked to resign from a job during the last ten (10) years?
[] Yes [] No If yes, state particulars.**

27. Are you currently, or have you been, within the last five (5) years under treatment by a physician, psychologist or therapist for any physical, mental, emotional illness or substance dependency or other disorder that might effect your performance as a litigator? [] Yes [] No If yes, state particulars.

28. List the names, address and telephone numbers of five (5) trial adversaries (if applying for felony or misdemeanor panel) or appellate adversaries (if applying for the appellate panel) within the last five (5) years.

29. List the names, address and telephone numbers of five (5) other attorneys familiar with your trial or appellate work through actual observation.

30. List the names, address and telephone numbers of five (5) judges before whom you have conducted a litigated motion or jury trial.

31. Regarding each of your five (5) most recent jury trials or, if fewer, bench trials or litigated motions, list the case name, indictment number, principal charge, adversary and judge presiding.

<u>Defendant</u>	<u>Ind.#</u>	<u>Charge</u>	<u>Adversary</u>	<u>Judge</u>

I herby affirm under penalty of perjury that the information by me on this application is corrected and complete to the best of my knowledge. I certify that I have read and am familiar with Article 18-B of the County Law, the Rules of the Appellate Division, First Department, and the New York and Bronx County Assigned Counsel Plan. I agree to abide by all rules and regulations now existing or from time to time promulgated by the Appellate Division, First Department and the Central Screening Committee relating to the conduct of attorneys on the Assigned Counsel Plan Panels.

By: _____

Dated: _____

Please complete the below Waiver and Release Form

WAIVER AND RELEASE
FIRST DEPARTMENT ASSIGNED COUNSEL PLAN

I, _____ am an applicant for membership on the Assigned Counsel Plan for the First Department and as a condition to appointment I consent to the Central Screening Committee and the Assigned Counsel Plan investigating my background.

I, therefore, authorize the release and disclosure of such information to the Screening Committee and the Assigned Counsel Plan, including, but not limited to, files and records maintained by former and current employers, by educational institutions, by government bodies, by professional associations, and by investigative, disciplinary or grievance bodies as may relate to me.

I hereby waive any privilege of confidentiality with respect to the release of any such information.

A photocopy of this authorization shall be considered as effective and valid as the original.

Sworn to before me this
_____ of _____ 20__

Notary

Signature

Print Name