

# Pro Bono Panel Addresses Effective Assistance of Counsel in Plea Bargains

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As a member of the Advisory Group to the New York State-Federal Judicial Council, I was asked to organize a pro bono roundtable last spring to educate lawyers in the State about the impact of two U.S. Supreme Court decisions that essentially reaffirmed the notion that defendants are entitled to effective assistance of counsel at the plea stage. The Council is composed of judges appointed by the chief judges of the State of New York and the U.S. Court of Appeals for the Second Circuit and is assisted by the Advisory Group of judges and practitioners. The Council develops and sponsors pro bono Continuing Legal Education presentations to foster improved communication and cooperation among the federal and state court systems and to share knowledge and resources with New York State lawyers.

The Supreme Court decisions were issued simultaneously in March 2012 in *Lafler v. Cooper* and *Missouri v. Frye*. The Court held that defendants are entitled not only to the communication of plea offers but also to effective advice about the plea offer and the consequences of taking or not taking the plea. The Court noted that 97 percent of cases end in guilty pleas and that our criminal justice system has become “a system of pleas, not a system of trials.”

In light of this reaffirmation of a core principle of the Sixth Amendment, the Council thought that a program focusing on these cases and their outgrowth would be helpful to lawyers across the State.

To help develop the roundtable on the two Supreme Court decisions, I organized a committee of lawyers in

various practice areas and judges from state and federal courts across the State. The committee was composed of the Honorable Evelyn Braun\*, the Honorable Steven Gold\*, the Honorable Dora L. Irizarry, the Honorable Barry Kamins\*, the Honorable Raymond Lohier\*, the Honorable William Skretny, Steven Bender, Carrie H. Cohen\*, Peggy Cross-Goldenberg, Alan Gadlin, William Gibney, Joseph M. Guerra III\*, Kristine Hamann\*, Marianne Mariano, Marshall Miller, Alfred O'Connor, Lisa Peebles, Rod Personius\*, and Deirdre von Dornum. We had numerous conference calls addressing plea practices in different practice areas, whether new policies and procedures were being adopted in light of *Lafler* and *Frye*, and what issues the committee thought were important to address in the roundtable.

On April 8, 2013, we presented the roundtable in the Ceremonial Courtroom in the Eastern District of New York. I served as the moderator and the roundtable panel included the Honorable Dora L. Irizarry, the Honorable Barry Kamins, the Honorable Kathleen Hogan\*, Carrie H. Cohen, William Gibney, Joseph M. Guerra III, Kristine Hamann, Alfred O'Connor, Lisa Peebles, and Deirdre von Dornum.

We initially intended to simulcast the program to federal courthouses across New York, but were unable to do so because of sequestration budget cuts. Instead, we presented it live in the Eastern District and simulcast it to the Western District courthouse in Buffalo and via the Web to individuals around the State. More than 100 law-



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yers attended the live presentation, 12 attended in Buffalo, and 415 attended via the Web. The program was lively, and the ability to compare and contrast practices in state and federal court and the differences in practices between upstate and downstate were illuminating to all who participated and attended.

The Council decided that the program was so critical for the New York Bar that I have been asked to put on a CLE with the same participants next spring to explore the same issues as they have developed over the ensuing year. Panelists have enthusiastically agreed to participate again.

It is rewarding when you devote countless unpaid hours to help enhance and educate the Bar, especially about such a critical issue. Special thanks should be given to the technology personnel in the EDNY who helped us present what we hope will be the first of many programs utilizing the simulcast and Web-based technologies.