STATE OF NEW YORK

5856

2017-2018 Regular Sessions

IN ASSEMBLY

February 16, 2017

Introduced by M. of A. WALKER -- read once and referred to the Committee on Judiciary

AN ACT to amend the county law, the real property actions and proceedings law, the vehicle and traffic law, the state finance law and the judiciary law, in relation to enacting the "NY Civil Gideon Act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "New York Civil Gideon act".

§ 2. The county law is amended by adding a new article 18-C to read as follows:

ARTICLE 18-C

REPRESENTATION OF PERSONS IN CIVIL MATTERS

Section 723. Legislative findings.
723-a. Civil right to counsel commission.
723-b. Lead agency for civil right to counsel.
723-c. Assigned counsel for civil matters review panel.
723-d. Compensation and reimbursement.

§ 723. Legislative findings. The legislature hereby finds and declares as follows:

1. Every year, at least eighty percent of the civil legal needs of low income New Yorkers go unmet.

2. These legal needs often concern matters pertaining to the essentials of life including shelter, food, employment, health, and family sustainability.

3. The lack of available civil legal assistance undermines comprehensive assistance for crime victims.

4. The lack of civil legal services to resolve a family's legal problems often disrupts the children and young adults' education, frequently with a permanent impact.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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5. The lack of civil legal services can worsen chronic health problems often increasing the cost of medical care.

6. The lack of civil legal services can result in homelessness not only affecting the individual families but also destabilizing entire neighborhoods.

7. In light of these trying economic times, the need for civil legal services has increased beyond individuals below the federal poverty guidelines to homeowners and other middle income New Yorkers that provide the foundation for New York's economy.

8. The substantial number of unrepresented litigants in civil legal matters adversely impacts the quality of justice for all parties in the courts of New York state, increases the amount of litigation, and undermines the rule of law.

9. It has been found that when a society is unable to meet their basic human needs it is in an ongoing state of emergency.

10. The unmet need for civil legal assistance in the state is profoundly impacting vulnerable New Yorkers and costing taxpayers millions of dollars by increasing homelessness, failing to prevent domestic violence, and increasing poverty.

11. In order to address this emergency, this legislature finds that a right to counsel in certain civil matters is imperative.

§ 723-a. Civil right to counsel commission. 1. There is hereby established the civil right to counsel commission. The commission shall be composed of eleven members.

2. a. The members of the commission shall be appointed as follows:

(i) one member shall be appointed by the governor and shall be an attorney with expertise in civil legal services;

(ii) one member shall be appointed by the temporary president of the senate;

(iii) one member shall be appointed by the speaker of the assembly;

(iv) one member shall be appointed by the minority leader of the assembly;

(v) one member shall be appointed by the minority leader of the senate;

(vi) two members shall be appointed by the chief judge of the court of appeals;

(vii) one member shall be appointed by the association of counties;

(viii) one member shall be appointed by the mayor of the city of New York and shall be an attorney who has provided civil legal services for at least five years;

(ix) one member shall be appointed by the governor, from a list of no more than two nominees submitted by the chief administrator of the courts, each of whom shall be a judge or justice, or retired judge or justice, who was elected to the supreme, county or family court, or appointed to the criminal court or family court in the city of New York, and has substantial experience presiding as such a judge or justice in trial matters before such court; and

(x) one member shall be appointed by the New York state bar association.

b. All members of the commission shall be residents of the state of New York.

c. The members of the commission shall serve terms of four years. All members shall serve until their successors are appointed. Vacancies on the commission shall be filled for the remainder of the term in the manner provided for by the original appointment.

d. The members of the commission shall receive no compensation for their services, but shall be allowed their actual and necessary expenses incurred in the performance of their duties.

e. Notwithstanding any inconsistent provisions of law, no officer or employee of the state or any civil division thereof shall be deemed to have forfeited or shall forfeit his or her office or employment by reason of his or her acceptance of membership on the commission.

f. The commission shall meet at least once per year.

g. A majority of the members of the commission shall constitute a quorum.

h. The chief judge of the court of appeals, or his or her designee, shall serve as a non-voting ex-officio member of the commission.

i. Appointment to the commission shall be filed by the chief judge of the court of appeals, who shall convene the first meeting of the commission following the filing of the majority of appointments. At the initial meeting the members shall elect officers.

3. The commission shall submit to the governor, temporary president of the senate, speaker of the assembly and the chief judge of the court of appeals an annual report on or before the anniversary date of the commission's first meeting. Such report shall contain all pertinent data for the prior twelve months on the operation of the commission including the number of assigned counsel in each county, the number of cases assigned, the number of cases resolved, recommendations for additional attorneys, if necessary, the cost of operation and financial assistance to localities. Such report shall also include the proposed budget for the succeeding twelve months including funds for financial assistance to localities.

§ 723-b. Lead agency for civil right to counsel. 1. Representation for persons in civil matters shall be a partnership between the courts and all qualified legal services providers, bar associations and private organizations.

2. The legal services providers shall serve as the lead agency for case assessment and direction under this article and furthermore shall:

a. be the central point of contact for receipt of referrals for legal representation;

b. make determinations of eligibility based on uniform criteria;

c. be responsible for providing representation to the clients or referring the matter to one of the organizations or individual providers with whom the lead legal services agency contracts to provide the service; and

d. to the extent practical, identify and make use of pro bono services in order to maximize available services efficiently and economically.

3. Recognizing that not all indigent parties can be afforded representation, even when they have meritorious cases, the court partner shall, as a corollary to the services provided by the lead legal services agency, be responsible for providing procedures, personnel, training, and case management and administration practices that reflect best practices to ensure unrepresented parties meaningful access to justice and to guard against the involuntary waiver of rights, as well as to encourage fair and expeditious voluntary dispute resolution, consistent with principles of judicial neutrality.

4. The participating legal services agency shall be selected by the judicial council.

a. The judicial council shall be made up of one administrative judge from each judicial district. There shall be at least one legal services agency chosen for each judicial district.

b. The judicial council shall assess the applicants' capacity for success, innovation, and efficiency, including, but not limited to, the likelihood that the agency would deliver quality representation in an effective manner that would meet critical needs in the community and address the needs of the court with regard to access to justice and calendar management, and the unique local unmet needs for representation in the community.

c. Agencies approved pursuant to this section shall initially be authorized for a three-year period, commencing on the effective date of this section and subject to renewal for a period to be determined by the judicial council, in consultation with the participating agency in light of the agency's capacity and success. After the initial three-year period, the judicial council shall distribute any future funds available as the result of the termination or nonrenewal of an agency pursuant to the process set forth in this subdivision.

d. Agencies shall be selected on the basis of whether, in the cases proposed for service, the persons to be assisted are likely to be opposed by a party who is represented by counsel. The judicial council shall also consider the following factors in selecting the agencies:

(i) the likelihood that representation in the proposed case type tends to affect whether a party prevails or otherwise obtains a significantly more favorable outcome in a matter in which they would otherwise frequently have judgment entered against them or suffer the deprivation of the basic human need at issue;

(ii) the likelihood of reducing the risk of erroneous decisions;

(iii) the nature and severity of potential consequences for the unrepresented party regarding the basic human need at stake if representation is not provided;

(iv) whether the provision of legal services may eliminate or reduce the potential need for and cost of public social services regarding the basic human need at stake for the client and others in the client's household;

(v) the unmet need for legal services in the geographic area to be served; and

(vi) the availability and effectiveness of other types of court services, such as self-help.

e. Each applicant shall do the following:

(i) identify the nature of the partnership between the court and the other agencies or other providers that would work within the project;

(ii) describe the referral protocols to be used, the criteria that would be employed in case assessment, why those cases were selected, the manner to address conflicts without violating any attorney-client privilege when adverse parties are seeking representation through the project, and the means for serving potential clients who need language assistance within the court system; and

(iii) describe how the project would be administered, including how the data collection requirements would be met without causing an undue burden on the courts, clients, or the providers, the particular objectives of the project, strategies to evaluate their success in meeting those objectives, and the means by which the project would serve the particular needs of the community, such as by providing representation to limited-English-speaking clients, the elderly and the disabled.

5. To ensure the most effective use of the funding available, the lead legal services agency shall serve as a hub for all referrals, and the point at which decisions are made about which referrals will be served and by whom. Referrals shall emanate from the court, as well as from the

other agencies providing services through the program, and shall be directed to the lead legal services agency for review. That agency, or another agency or attorney in the event of conflict, shall collect the information necessary to assess whether the case should be served. In performing that case assessment, the agency shall determine the relative need for representation of the litigant, including all of the following:

a. case complexity;

b. whether the opposing party is represented;

c. the adversarial nature of the proceeding;

d. the availability and effectiveness of other types of services, such as self-help, in light of the potential client and the nature of the case;

e. barriers to access due to language;

f. barriers to access due to disability;

g. barriers to access due to literacy;

h. the merits of the case;

i. the nature and severity of potential consequences for the potential client if representation is not provided; and

j. whether the provision of legal services may eliminate or reduce the need for and cost of public social services for the potential client and others in the potential client's household.

6. The decision and level of representation should be made at the sole discretion of the lead agency, organization, or attorney based on the factors set forth above.

7. If both parties to a dispute are financially eligible for representation, each proposal shall ensure that representation for both sides is evaluated. In these and other cases in which conflict issues arise, the lead legal services agency shall have referral protocols with other agencies and providers, such as a private attorney panel, to address those conflicts.

8. Each lead agency, organization, or attorney shall be responsible for keeping records on the referrals accepted and those not accepted for representation, and the reasons for each, in a manner that does not violate any privileged communications between the agency and the prospective client. Each lead agency, organization or attorney shall be provided with standardized data collection tools to be determined by the commission, and required to track case information for each referral to allow the evaluation to measure the number of cases served, the level of service required, and the outcomes for the clients in each case. In addition to this information on the effect of the representation on the clients, data shall be collected regarding the outcomes for the trial courts. This data shall be compiled in a report to be submitted to the commission on a quarterly basis.

§ 723-c. Assigned counsel for civil matters review panel. 1. There is hereby established the assigned counsel for civil matters review panel.

2. a. The review panel shall be composed of at least sixteen members, to be appointed as follows:

(i) Attorney-in-Chief for the Legal Aid Society or his/her representative;

(ii) Chair of Legal Services NYC or his/her representative;

(iii) Executive Director of Legal Services of the Hudson Valley or his/her representative;

(iv) Executive Director of the Legal Aid Society of Northeastern NY or his/her representative;

(v) Executive Director of the Western NY Law Center or his/her representative;

(vi) President of the Empire Justice Center or his/her representative;
(vii) Executive Director of the New York Lawyers for the Public Interest or his/her representative;
(viii) The President of the New York legal assistance group or his/her representative;
(ix) Executive Director of Lambda Legal or his/her representative;
(x) The immediate past President of the New York State Bar Association or a representative appointed by the association;
(xi) The immediate past President of the Network of Bar Leaders or his/her representative;
(xii) The immediate past President of the Women's Bar Association of the State of New York or his/her representative;
(xiii) The immediate past President of the Metropolitan Black Bar Association or his/her representative;
(xiv) The immediate past President of the New York State Director of the Fund for Modern Courts or his/her representative;
(xv) Executive Director of the Iola Fund of the State of New York or his/her representative; and
(xvi) One representative from the National Coalition for a Civil Right to Counsel.
b. The members of the review panel shall serve terms of four years. All members shall serve until their successors are appointed. Vacancies on the review panel shall be filled for the remainder of the term in the manner provided for by the original appointment.
c. The members of the review panel shall receive no compensation for their services, but shall be allowed their actual and necessary expenses incurred in the performance of their duties.
d. Notwithstanding any inconsistent provisions of law, no officer or employee of the state or any civil division thereof shall be deemed to have forfeited or shall forfeit his or her office or employment by reason of his or her acceptance of membership on the review panel.
e. A majority of the members of the review panel shall constitute a quorum.
f. The members of the review panel may participate in a meeting of such review panel by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time; participation by such means shall constitute presence in person at such meeting.
3. The purpose of the panel is to ensure that quality representation is provided under this article. This includes processing complaints against attorneys assigned under this article, establishing the proper remedy for aggrieved parties, attorney admission as assigned counsel, attorney training, and all other procedures the review panel finds necessary to achieve its goal. Nothing in this article shall prevent any investigation under the New York state unified court system rules of professional conduct or otherwise.
4. The review panel may work together with the civil right to counsel commission to achieve the common goals of this article.
5. a. The chief judge of the court of appeals and the review panel appointees shall convene the review panel and create a plan outlining the procedure and guidelines to govern the panel and assigned counsel program in accordance with the goal of providing quality civil legal representation. The chief judge of the court of appeals shall consult with the administrative judges of each judicial district to receive guidance on the needs of each district.
b. The guidelines shall include but not be limited to:

(i) meeting requirements of the panel;
(ii) standards of quality representation;
(iii) training necessary to provide civil assigned counsel representation;
(iv) content for the complaint form for a grievance against an agency or attorney assigned as civil assigned counsel;
(v) a grievance procedure; and
(vi) establishing possible remedies for those found to be aggrieved.
§ 723-d. Compensation and reimbursement. 1. All counsel assigned in accordance with a plan of the court, other organization, or a bar association conforming to the requirements of this article whereby the services of private counsel are rotated and coordinated by an administrator shall at the conclusion of the representation receive:
a. for real property proceedings no less than fifty dollars per hour;
b. for cases involving health no less than fifty dollars per hour;
c. for cases involving license revocation or suspension no less than fifty dollars per hour;
d. for cases involving sustenance no less than sixty dollars per hour; and
e. for cases involving children no less than sixty dollars per hour.
2. For the purposes of this section:
a. real property proceedings shall include sections seven hundred eleven, seven hundred thirteen, seven hundred thirteen-a, five hundred one, one thousand ninety-three, thirteen hundred three and article thirteen of the real property actions and proceedings law;
b. cases involving health shall include article forty-nine of the public health law;
c. cases involving license revocation or suspension shall include sections two hundred twenty-seven, two hundred forty-two and two hundred sixty-one of the vehicle and traffic law;
d. cases involving sustenance shall include sections one hundred ninety-six-a, five hundred thirty-eight, six hundred twenty, six hundred twenty-one, six hundred twenty-four, six hundred sixty-three and six hundred eighty-one of the labor law, sections twenty-two and three hundred sixty-five of the social services law and rule three hundred five and article seventy-eight of the civil practice law and rules;
e. cases involving children shall include article four of the family court act.
3. For all representation, compensation and reimbursement shall include reimbursement for reasonably incurred expenses.
4. Compensation for representation in such cases shall be guided by the minimum amounts set forth above. The compensation minimums are set for counsel only, not support or administrative staff work. Work for support or administrative staff should be set by individual counsel, firm, or organization and should be set at a lower rate than compensation for counsel.
5. There shall be no differential in compensation rate for out of court time expended and in court time expended. Rates should be set at the minimum stated above or higher based on the complexity of the case and expertise of the attorney. Such rates shall be subject to the approval of the court of jurisdiction based on the complexity of the case, expertise of the attorney, the market, and any other factors the court deems just and appropriate.
6. There should be no cap on the amount of compensation or reimbursement received for representation. The amount of compensation and reimbursement is subject to court approval as described above.

7. Compensation and reimbursement for appeal shall be fixed by the appellate court not to be below the rates set forth in this section.

8. In extraordinary circumstances a trial or appellate court may provide for payment of compensation and reimbursement for expenses before the completion of the representation upon application.

§ 3. The opening paragraph of section 722 of the county law, as amended by chapter 7 of the laws of 2007, is amended to read as follows:

The governing body of each county and the governing body of the city in which a county is wholly contained shall place in operation throughout the county a plan for providing counsel to persons charged with a crime or who are entitled to counsel pursuant to section two hundred sixty-two or section eleven hundred twenty of the family court act, article six-C of the correction law, section four hundred seven of the surrogate's court procedure act or article ten of the mental hygiene law, who are financially unable to obtain counsel. **The governing body of each county and the governing body of the city in which a county is wholly contained shall also place in operation throughout the county a plan for providing counsel to financially unable persons in civil proceedings under this section, sections one hundred ninety-six-a, five hundred thirty-eight, six hundred twenty, six hundred twenty-one, six hundred twenty-four, six hundred sixty-three and six hundred eighty-one of the labor law, sections twenty-two and three hundred five of the social services law, where there is a revocation or suspension issued pursuant to sections two hundred twenty-seven, two hundred forty-two and two hundred sixty-one of the vehicle and traffic law, article forty-nine of the public health law, sections seven hundred eleven, seven hundred thirteen, seven hundred thirteen-a, five hundred one, one thousand nine-ty-three, section thirteen hundred three and article thirteen of the real property actions and proceedings law, rule three hundred five and article seventy-eight of the civil practice law and rules and article four of the family court act. For the purposes of this section the terms "financially unable" and "low income" shall mean an individual who is at or below two hundred percent of the federal poverty guidelines.** Each plan shall also provide for investigative, expert and other services necessary for an adequate defense. The plan shall conform to one of the following:

§ 4. Subdivision 3 of section 1303 of the real property actions and proceedings law, as amended by section 5 of part Q of chapter 73 of the laws of 2016, is amended to read as follows:

3. The notice to any mortgagor required by paragraph (a) of subdivision one of this section shall appear as follows:

Help for Homeowners in Foreclosure

New York State Law requires that we send you this notice about the foreclosure process. Please read it carefully.

Summons and Complaint

You are in danger of losing your home. If you fail to respond to the summons and complaint in this foreclosure action, you may lose your home. Please read the summons and complaint carefully. You should immediately contact an attorney or your local legal aid office to obtain advice on how to protect yourself.

Sources of Information and Assistance

The State encourages you to become informed about your options in foreclosure. In addition to seeking assistance from an attorney or legal aid office, there are government agencies and non-profit organizations that you may contact for information about possible options, including trying to work with your lender during this process. **You may be enti-**

tled to assigned counsel if you are financially unable to obtain repre-
sentation.

To locate an entity near you, you may call the toll-free helpline maintained by the New York State Department of Financial Services at (enter number) or visit the Department's website at (enter web address).

Rights and Obligations

YOU ARE NOT REQUIRED TO LEAVE YOUR HOME AT THIS TIME. You have the right to stay in your home during the foreclosure process. You are not required to leave your home unless and until your property is sold at auction pursuant to a judgment of foreclosure and sale.

Regardless of whether you choose to remain in your home, YOU ARE REQUIRED TO TAKE CARE OF YOUR PROPERTY and pay property taxes in accordance with state and local law.

Foreclosure rescue scams

Be careful of people who approach you with offers to "save" your home. There are individuals who watch for notices of foreclosure actions in order to unfairly profit from a homeowner's distress. You should be extremely careful about any such promises and any suggestions that you pay them a fee or sign over your deed. State law requires anyone offering such services for profit to enter into a contract which fully describes the services they will perform and fees they will charge, and which prohibits them from taking any money from you until they have completed all such promised services.

§ 5. Section 722-c of the county law, as amended by section 3 of part J of chapter 62 of the laws of 2003, is amended to read as follows:

§ 722-c. Services other than counsel. Upon a finding in an ex parte proceeding that investigative, expert or other services are necessary and that the defendant or other person described in section two hundred forty-nine or section two hundred sixty-two of the family court act, article six-C of the correction law [~~or~~], section four hundred seven of the surrogate's court procedure act, section seven hundred twenty-two of this article, sections one hundred ninety-six-a, five hundred thirty-eight, six hundred twenty, six hundred twenty-one, six hundred twenty-four, six hundred sixty-three and six hundred eighty-one of the labor law, sections twenty-two and three hundred five of the social services law, where there is a revocation or suspension issued pursuant to sections two hundred twenty-seven, two hundred forty-two and two hundred sixty-one of the vehicle and traffic law, article forty-nine of the public health law, sections seven hundred eleven, seven hundred thirteen, seven hundred thirteen-a, five hundred one, one thousand ninety-three, thirteen hundred three and article thirteen of the real property actions and proceedings law, rule three hundred five and article seventy-eight of the civil practice law and rules, and article four of the family court act, is financially unable to obtain them, the court shall authorize counsel, whether or not assigned in accordance with a plan, to obtain the services on behalf of the defendant or such other person. The court upon a finding that timely procurement of necessary services could not await prior authorization may authorize the services nunc pro tunc. The court shall determine reasonable compensation for the services and direct payment to the person who rendered them or to the person entitled to reimbursement. [~~Only in extraordinary circumstances may the court provide for compensation in excess of one thousand dollars per investigative, expert or other service provider.~~]

Each claim for compensation shall be supported by a sworn statement specifying the time expended, services rendered, expenses incurred and

reimbursement or compensation applied for or received in the same case from any other source.

§ 6. Section 227 of the vehicle and traffic law is amended by adding a new subdivision 7 to read as follows:

7. A financially unable person who is charged with an offense punishable by a revocation or suspension of his or her drivers' license where the person is dependent on driving for their employment or where there is a lack of public transportation in the person's surrounding area shall have a right to assigned counsel by the court. Assignment of counsel under this section shall be implemented as provided in article eighteen-B of the county law. For the purposes of this section the term "financially unable" shall mean an individual who is at or below two hundred percent of the federal poverty guidelines.

§ 7. Section 261 of the vehicle and traffic law is amended by adding a new subdivision 5 to read as follows:

5. Assignment of counsel. A financially unable person who is charged with an offense punishable by a revocation or suspension of his or her drivers' license where the person is dependent on driving for their employment or where there is a lack of public transportation in the person's surrounding area shall have a right to assigned counsel by the court. Assignment of counsel under this section shall be implemented as provided in article eighteen-B of the county law. For the purposes of this section the term "financially unable" shall mean an individual who is at or below two hundred percent of the federal poverty guidelines.

§ 8. The state finance law is amended by adding a new section 98-d to read as follows:

§ 98-d. Civil Gideon assistance fund. 1. There is hereby established in the joint custody of the comptroller, office of court administration and the commissioner of taxation and finance a special fund to be known as the civil Gideon assistance fund.

2. Such fund shall consist of all moneys appropriated for the purpose of such fund, all other moneys required to be paid into or credited to such fund, and all moneys received by the fund or donated to it.

3. A one-time surcharge of seventy-five dollars shall be added to the biennial attorney fees to be added to this fund, as set forth in section four hundred sixty-eight-a of the judicial law.

(a) The purpose of such fund shall be to: (i) assist counties and, in the case of a county wholly contained within a city, such city, in providing legal representation for persons who are financially unable to afford counsel pursuant to article eighteen-C of the county law; (ii) assist the state, in improving the quality of civil legal services addressing the essentials of life and funding representation provided by assigned counsel paid in accordance with section thirty-five of the judiciary law; (iii) provide support for the operations, duties, responsibilities and expenses for the right to civil representation commission and panel established, respectively, pursuant to this article; and (iv) provide funding for legal representation as described herein.

(b) State funds received by a county or city from such fund shall be used to supplement and not supplant any local funds which such county or city would otherwise have had to expend for the provision of counsel and expert, investigative and other services pursuant to article eighteen-C of the county law. All such state funds received by a county or city shall be used to improve the quality of services provided pursuant to article eighteen-C of the county law.

(c) As used in this section, "local funds" shall mean all funds appropriated or allocated by a county or, in the case of a county wholly

contained within a city, such city, for services and expenses in accordance with article eighteen-C of the county law, other than funds received from: (i) the federal government or the state; or (ii) a private source, where such city or county does not have authority or control over the payment of such funds by such private source.

3. Amounts distributed from such fund shall be limited to amounts deemed appropriate by the office of court administration and shall be distributed proportionately by level of need at the court's discretion.

(a) For all state fiscal years, each county and the city of New York, shall receive ninety percent of the amount paid to such county in the previous fiscal year.

(b) Remaining amounts within such fund, after accounting for annual payments required in this section shall be distributed in accordance with sections eight hundred thirty-two and eight hundred thirty-three of the executive law.

§ 9. Subdivision 5 of section 468-a of the judiciary law is renumbered subdivision 6 and a new subdivision 5 is added to read as follows:

5. A one-time surcharge of seventy-five dollars shall be added to the biennial attorney fees to be allocated to and be deposited into a fund established pursuant to the provisions of article eighteen-C of the county law. Such surcharge shall be assessed to every attorney in the same manner as the biennial fee described in subdivision one of this section.

§ 10. This act shall take effect immediately, and the appointment of members to the civil right to counsel commission and the assigned counsel for civil matters review panel shall be completed within 90 days of such effective date.