STATE OF NEW YORK

10093

IN ASSEMBLY

March 10, 2020

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

AN ACT to amend the county law and the real property actions and proceedings law, in relation to providing representation to veterans for certain civil matters

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

Section 1. The county law is amended by adding a new article 18-C to read as follows:

ARTICLE 18-C

REPRESENTATION OF VETERANS IN CIVIL MATTERS

Section 723. Lead agency for civil right to counsel.

723-a. Compensation and reimbursement.

§ 723. Lead agency for civil right to counsel. 1. Representation in civil matters shall be provided to veterans, regardless of discharge status, who are at or below four hundred percent of the federal poverty guidelines. For the purposes of this article, such representation shall include, but not be limited to:

a. real property proceedings including 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 sustenance including 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, section twenty-two of the social services law and rule three hundred five and article seventy-eight of the civil practice law and rules; and

c. cases involving children including article four of the family court act.

2. Such representation shall be a partnership between the courts and all qualified legal services providers, bar associations and private organizations. The legal services providers shall serve as the lead

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

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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. 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 meaningful access to justice and to guard against the involuntary waiver of rights, 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 judicial council, 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 judicial council on a quarterly basis.

§ 723-a. Compensation and reimbursement. 1. Compensation for legal services providers shall be based upon deliverables as described in the contracts with those providers. Compensation for 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 sustenance no less than sixty dollars per hour; and

c. for cases involving children no less than sixty dollars per hour.

2. For all representation, compensation and reimbursement shall include reimbursement for reasonably incurred expenses.

3. 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.

4. 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.

5. 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.

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

7. 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.

§ 2. 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 article eighteen-C of this chapter, 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. 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:

§ 3. 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 entitled to assigned counsel if you are a veteran who is financially unable to obtain representation.**

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.

§ 4. This act shall take effect immediately.