

# STATE OF NEW YORK

288

2019-2020 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 9, 2019

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

AN ACT to amend the county law, in relation to the provision of legal representation to certain persons in eviction, ejectment and foreclosure proceedings

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

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

### ARTICLE 18-C

### REPRESENTATION OF PERSONS IN EVICTION, EJECTMENT AND FORECLOSURE PROCEEDINGS

#### Section 723. Definitions.

723-a. Plan for representation.

723-b. Compensation and reimbursement for representation.

723-c. Services other than counsel.

723-d. Duration of assignment.

723-e. Expenses.

723-f. Annual reports.

§ 723. Definitions. For purposes of this article the following terms shall have the following meanings:

1. "Covered proceeding" means any action or special proceeding to evict an eligible individual, including those seeking possession for the non-payment of rent or holdover, or proceedings for ejectment or foreclosure.

2. "Eligible person" means an occupant of a rental dwelling unit, an owner of shares of a cooperative corporation who occupies the dwelling unit to which such shares are allocated, the owner and occupant of a dwelling unit owned as a condominium or the owner and occupant of a one-

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

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1 or two-family dwelling who is a defendant or respondent in a covered  
2 proceeding and whose gross individual income is not in excess of one  
3 hundred twenty-five percent of the federal income official poverty line.

4 3. "Counsel" means a lawyer or lawyers licensed to practice law in New  
5 York state.

6 § 723-a. Plan for representation. The governing body of each county  
7 and the governing body of the city in which a county is wholly contained  
8 shall place in operation throughout the county a plan for providing  
9 legal counsel to eligible persons who are defendants or respondents in a  
10 covered proceeding and who are financially unable to obtain counsel.  
11 Each plan shall also provide for investigative, expert and other  
12 services necessary, where appropriate. The plan shall conform to one of  
13 the following:

14 1. Representation by a public defender appointed pursuant to subdivi-  
15 sion three of section seven hundred seventeen of this chapter.

16 2. (a) Representation by counsel furnished pursuant to either or both  
17 of the following: a plan of a bar association in each county or the city  
18 in which a county is wholly contained whereby: (i) the services of  
19 private counsel are rotated and coordinated by an administrator, and  
20 such administrator may be compensated for such service; or (ii) such  
21 representation is provided by an office of conflict defender.

22 (b) Any plan of a bar association must receive the approval of the  
23 state administrator before the plan is placed in operation. When consid-  
24 ering approval of an office of conflict defender pursuant to this  
25 section, the state administrator shall employ the guidelines established  
26 by the office of indigent legal services pursuant to paragraph (d) of  
27 subdivision three of section eight hundred thirty-two of the executive  
28 law.

29 (c) Any county operating an office of conflict defender, as described  
30 in subparagraph (ii) of paragraph (a) of this subdivision, as of March  
31 thirty-first, two thousand ten may continue to utilize the services  
32 provided by such office provided that the county submits a plan to the  
33 state administrator within one hundred eighty days after the promulga-  
34 tion of criteria for the provision of conflict defender services by the  
35 office of indigent legal services. The authority to operate such an  
36 office pursuant to this paragraph shall expire when the state adminis-  
37 trator approves or disapproves such plan. Upon approval, the county is  
38 authorized to operate such office in accordance with paragraphs (a) and  
39 (b) of this subdivision.

40 3. When a county or city in which a county is wholly contained has not  
41 placed in operation any plan conforming to that prescribed in this  
42 section, a judge, justice or magistrate may assign any attorney in such  
43 county or city and, in such event, such attorney shall receive compen-  
44 sation and reimbursement from such county or city which shall be at the  
45 same rate as is prescribed in section seven hundred twenty-three-b of  
46 this article.

47 4. Representation according to a plan containing a combination of any  
48 of the foregoing.

49 § 723-b. Compensation and reimbursement for representation. 1. All  
50 counsel assigned in accordance with a plan of a bar association conform-  
51 ing to the requirements of section seven hundred twenty-three-a of this  
52 article whereby the services of private counsel are rotated and coordi-  
53 nated by an administrator shall at the conclusion of the representation  
54 receive:

55 (a) for representation of a person entitled to representation pursuant  
56 to this article for an eviction or ejectment proceeding, compensation at

1 a rate of sixty dollars per hour for time expended in court or before a  
2 magistrate, judge or justice, and sixty dollars per hour for time  
3 reasonably expended out of court, and shall receive reimbursement for  
4 expenses reasonably incurred; and

5 (b) for representation of a person entitled to representation pursuant  
6 to this article for a foreclosure proceeding, compensation at a rate of  
7 seventy-five dollars per hour for time expended in court before a magis-  
8 trate, judge or justice and seventy-five dollars per hour for time  
9 reasonably expended out of court, and shall receive reimbursement for  
10 expenses reasonably incurred.

11 2. Except as otherwise provided in this section, compensation for time  
12 expended in providing representation:

13 (a) pursuant to paragraph (a) of subdivision one of this section shall  
14 not exceed an amount established by the state administrator; and

15 (b) pursuant to paragraph (b) of subdivision one of this section shall  
16 not exceed four thousand four hundred dollars.

17 3. For representation on an appeal, compensation and reimbursement  
18 shall be fixed by the appellate court. For all other representation,  
19 compensation and reimbursement shall be fixed by the trial court judge.  
20 In extraordinary circumstances a trial or appellate court may provide  
21 for compensation in excess of the foregoing limits and for payment of  
22 compensation and reimbursement for expenses before the completion of the  
23 representation.

24 4. Each claim for compensation and reimbursement shall be supported by  
25 a sworn statement specifying the time expended, services rendered,  
26 expenses incurred and reimbursement or compensation applied for or  
27 received in the same case from any other source. No counsel assigned  
28 hereunder shall seek or accept any fee for representing the party for  
29 whom he or she is assigned without approval of the court as provided.

30 § 723-c. Services other than counsel. 1. Upon a finding in an ex parte  
31 proceeding that investigative, expert or other services are necessary  
32 and that the eligible individual, is financially unable to obtain them,  
33 the court shall authorize counsel, whether or not assigned in accordance  
34 with a plan, to obtain the services on behalf of the defendant or  
35 respondent. The court upon a finding that timely procurement of neces-  
36 sary services could not await prior authorization may authorize the  
37 services nunc pro tunc. The court shall determine reasonable compen-  
38 sation for the services and direct payment to the person who rendered  
39 them or to the person entitled to reimbursement. Only in extraordinary  
40 circumstances may the court provide for compensation in excess of one  
41 thousand dollars per investigative, expert or other service provider.

42 2. Each claim for compensation shall be supported by a sworn statement  
43 specifying the time expended, services rendered, expenses incurred and  
44 reimbursement or compensation applied for or received in the same case  
45 from any other source.

46 § 723-d. Duration of assignment. Whenever it appears that the defend-  
47 ant or respondent is financially able to obtain counsel or to make  
48 partial payment for the representation or other services, counsel may  
49 report this fact to the court and the court may terminate the assignment  
50 of counsel or authorize payment, as the interests of justice may  
51 dictate, to the public defender, private legal aid bureau or society,  
52 private attorney, or otherwise.

53 § 723-e. Expenses. All expenses for providing counsel and services  
54 under this article appropriated by a county or a city in which a county  
55 is wholly contained shall be matched dollar for dollar by the state.

1     § 723-f. Annual reports. 1. A public defender appointed pursuant to  
2 article eighteen-A of this chapter, a private legal aid bureau or socie-  
3 ty designated by a county or city pursuant to subdivision two of section  
4 seven hundred twenty-three-a of this article, and an administrator of a  
5 plan of a bar association appointed pursuant to subdivision two of  
6 section seven hundred twenty-three-a of this article shall file an annu-  
7 al report with the judicial conference at such times and in such detail  
8 and form as the judicial conference may direct.

9     2. (a) The county executive or chief executive officer of each county  
10 or, in the case of a county wholly contained within a city, such city  
11 shall file an annual report which specifies in detail and certifies to  
12 the state comptroller the total expenditures of such county or city,  
13 identifying "local funds", as defined in subdivision two of section  
14 ninety-eight-b of the state finance law, state funds, federal funds and  
15 funds received from a "private source" as described in subdivision two  
16 of section ninety-eight-b of the state finance law, for providing legal  
17 representation to persons who were financially unable to afford counsel,  
18 pursuant to this article. Such annual report shall be made on a form  
19 developed for such purpose by the state comptroller.

20     (b) Such annual report, detailing expenditures for the period January  
21 first through December thirty-first of the previous calendar year, shall  
22 be filed on or before the first day of March of each year, provided,  
23 however, that the first report required by this subdivision shall  
24 contain the required information, separately stated, for the two preced-  
25 ing calendar years.

26     § 2. Section 717 of the county law is amended by adding a new subdivi-  
27 sion 3 to read as follows:

28     3. The public defender shall also represent, without charge, in a  
29 proceeding in court in the county or counties where such public defender  
30 serves, any person entitled to counsel pursuant to article eighteen-C of  
31 this chapter, who is financially unable to obtain counsel. When repres-  
32 enting such person, the public defender shall counsel and represent him  
33 at every stage of the proceedings, shall initiate such proceedings as in  
34 the judgment of the public defender are necessary to protect the rights  
35 of such person, and may prosecute any appeal when, in his judgment the  
36 facts and circumstances warrant such appeal.

37     § 3. Severability. If any clause, sentence, paragraph, section or part  
38 of this act shall be adjudged by any court of competent jurisdiction to  
39 be invalid and after exhaustion of all further judicial review, the  
40 judgment shall not affect, impair or invalidate the remainder thereof,  
41 but shall be confined in its operation to the clause, sentence, para-  
42 graph, section or part of this act directly involved in the controversy  
43 in which the judgment shall have been rendered.

44     § 4. This act shall take effect on the one hundred eightieth day after  
45 it shall have become a law. Effective immediately, the addition, amend-  
46 ment and/or repeal of any rule or regulation necessary for the implemen-  
47 tation of this act on its effective date are authorized to be made and  
48 completed on or before such effective date.