

# STATE OF NEW YORK

3418

2019-2020 Regular Sessions

## IN SENATE

February 6, 2019

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

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:

Section 1. The county law is amended by adding a new article 18-C to 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- or two-family dwelling who is a defendant or respondent in a covered

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

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1 proceeding and whose gross individual income is not in excess of one  
2 hundred twenty-five percent of the federal income official poverty line.

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

5 § 723-a. Plan for representation. The governing body of each county  
6 and the governing body of the city in which a county is wholly contained  
7 shall place in operation throughout the county a plan for providing  
8 legal counsel to eligible persons who are defendants or respondents in a  
9 covered proceeding and who are financially unable to obtain counsel.  
10 Each plan shall also provide for investigative, expert and other  
11 services necessary, where appropriate. The plan shall conform to one of  
12 the following:

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

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

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

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

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

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

48 § 723-b. Compensation and reimbursement for representation. 1. All  
49 counsel assigned in accordance with a plan of a bar association conform-  
50 ing to the requirements of section seven hundred twenty-three-a of this  
51 article whereby the services of private counsel are rotated and coordi-  
52 nated by an administrator shall at the conclusion of the representation  
53 receive:

54 (a) for representation of a person entitled to representation pursuant  
55 to this article for an eviction or ejectment proceeding, compensation at  
56 a rate of sixty dollars per hour for time expended in court or before a

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

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

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

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

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

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

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

29 § 723-c. Services other than counsel. 1. Upon a finding in an ex parte  
30 proceeding that investigative, expert or other services are necessary  
31 and that the eligible individual, is financially unable to obtain them,  
32 the court shall authorize counsel, whether or not assigned in accordance  
33 with a plan, to obtain the services on behalf of the defendant or  
34 respondent. The court upon a finding that timely procurement of neces-  
35 sary services could not await prior authorization may authorize the  
36 services nunc pro tunc. The court shall determine reasonable compen-  
37 sation for the services and direct payment to the person who rendered  
38 them or to the person entitled to reimbursement. Only in extraordinary  
39 circumstances may the court provide for compensation in excess of one  
40 thousand dollars per investigative, expert or other service provider.

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

45 § 723-d. Duration of assignment. Whenever it appears that the defend-  
46 ant or respondent is financially able to obtain counsel or to make  
47 partial payment for the representation or other services, counsel may  
48 report this fact to the court and the court may terminate the assignment  
49 of counsel or authorize payment, as the interests of justice may  
50 dictate, to the public defender, private legal aid bureau or society,  
51 private attorney, or otherwise.

52 § 723-e. Expenses. All expenses for providing counsel and services  
53 under this article appropriated by a county or a city in which a county  
54 is wholly contained shall be matched dollar for dollar by the state.

55 § 723-f. Annual reports. 1. A public defender appointed pursuant to  
56 article eighteen-A of this chapter, a private legal aid bureau or socie-

1 ty designated by a county or city pursuant to subdivision two of section  
2 seven hundred twenty-three-a of this article, and an administrator of a  
3 plan of a bar association appointed pursuant to subdivision two of  
4 section seven hundred twenty-three-a of this article shall file an annu-  
5 al report with the judicial conference at such times and in such detail  
6 and form as the judicial conference may direct.

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

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

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

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

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

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