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

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

§ 723-a. Plan for representation. 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 legal counsel to eligible persons who are defendants or respondents in a covered proceeding and who are financially unable to obtain counsel. Each plan shall also provide for investigative, expert and other services necessary, where appropriate. The plan shall conform to one of the following:

1. Representation by a public defender appointed pursuant to subdivision three of section seven hundred seventeen of this chapter.

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

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

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

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

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

§ 723-b. Compensation and reimbursement for representation. 1. All counsel assigned in accordance with a plan of a bar association conforming to the requirements of section seven hundred twenty-three-a 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 representation of a person entitled to representation pursuant to this article for an eviction or ejectment proceeding, compensation at a rate of sixty dollars per hour for time expended in court or before a

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

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

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

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

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

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

4. Each claim for compensation and reimbursement 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. No counsel assigned hereunder shall seek or accept any fee for representing the party for whom he or she is assigned without approval of the court as provided.

§ 723-c. Services other than counsel. 1. Upon a finding in an ex parte proceeding that investigative, expert or other services are necessary and that the eligible individual, 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 respondent. 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.

2. 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.

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

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

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

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

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

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

§ 2. Section 717 of the county law is amended by adding a new subdivision 3 to read as follows:

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

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

§ 4. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.