

STATE OF NEW YORK

9045

IN SENATE

October 13, 2020

Introduced by Sen. BROOKS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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:

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 VETERANS IN CIVIL MATTERS

3 Section 723. Lead agency for civil right to counsel.

4 723-a. Compensation and reimbursement.

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

10 a. real property proceedings including sections seven hundred eleven,
11 seven hundred thirteen, seven hundred thirteen-a, five hundred one, one
12 thousand ninety-three, thirteen hundred three and article thirteen of
13 the real property actions and proceedings law;

14 b. cases involving sustenance including sections one hundred ninety-
15 six-a, five hundred thirty-eight, six hundred twenty, six hundred twen-
16 ty-one, six hundred twenty-four, six hundred sixty-three and six hundred
17 eighty-one of the labor law, section twenty-two of the social services
18 law and rule three hundred five and article seventy-eight of the civil
19 practice law and rules; and

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

22 2. Such representation shall be a partnership between the courts and
23 all qualified legal services providers, bar associations and private
24 organizations. The legal services providers shall serve as the lead
25 agency for civil right to counsel.

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

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1 agency for case assessment and direction under this article and further-
2 more shall:

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

5 b. make determinations of eligibility based on uniform criteria;

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

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

12 3. The court partner shall, as a corollary to the services provided by
13 the lead legal services agency, be responsible for providing procedures,
14 personnel, training, and case management and administration practices
15 that reflect best practices to ensure meaningful access to justice and
16 to guard against the involuntary waiver of rights, consistent with prin-
17 ciples of judicial neutrality.

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

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

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

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

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

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

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

48 (iii) the nature and severity of potential consequences for the unrep-
49 resented party regarding the basic human need at stake if representation
50 is not provided;

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

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

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

3 e. Each applicant shall do the following:

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

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

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

19 5. To ensure the most effective use of the funding available, the lead
20 legal services agency shall serve as a hub for all referrals, and the
21 point at which decisions are made about which referrals will be served
22 and by whom. Referrals shall emanate from the court, as well as from the
23 other agencies providing services through the program and shall be
24 directed to the lead legal services agency for review. That agency, or
25 another agency or attorney in the event of conflict, shall collect the
26 information necessary to assess whether the case should be served. In
27 performing that case assessment, the agency shall determine the relative
28 need for representation of the litigant, including all of the following:

29 a. case complexity;

30 b. whether the opposing party is represented;

31 c. the adversarial nature of the proceeding;

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

35 e. barriers to access due to language;

36 f. barriers to access due to disability;

37 g. barriers to access due to literacy;

38 h. the merits of the case;

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

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

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

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

53 8. Each lead agency, organization, or attorney shall be responsible
54 for keeping records on the referrals accepted and those not accepted for
55 representation, and the reasons for each, in a manner that does not
56 violate any privileged communications between the agency and the

1 prospective client. Each lead agency, organization or attorney shall be
2 provided with standardized data collection tools to be determined by the
3 judicial council, and required to track case information for each refer-
4 ral to allow the evaluation to measure the number of cases served, the
5 level of service required, and the outcomes for the clients in each
6 case. In addition to this information on the effect of the represen-
7 tation on the clients, data shall be collected regarding the outcomes
8 for the trial courts. This data shall be compiled in a report to be
9 submitted to the judicial council on a quarterly basis.

10 § 723-a. Compensation and reimbursement. 1. Compensation for legal
11 services providers shall be based upon deliverables as described in the
12 contracts with those providers. Compensation for all counsel assigned
13 in accordance with a plan of the court, other organization, or a bar
14 association conforming to the requirements of this article whereby the
15 services of private counsel are rotated and coordinated by an adminis-
16 trator shall at the conclusion of the representation receive:

17 a. for real property proceedings no less than fifty dollars per hour;
18 b. for cases involving sustenance no less than sixty dollars per hour;
19 and

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

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

23 3. Compensation for representation in such cases shall be guided by
24 the minimum amounts set forth above. The compensation minimums are set
25 for counsel only, not support or administrative staff work. Work for
26 support or administrative staff should be set by individual counsel,
27 firm, or organization and should be set at a lower rate than compen-
28 sation for counsel.

29 4. There shall be no differential in compensation rate for out of
30 court time expended and in court time expended. Rates should be set at
31 the minimum stated above or higher based on the complexity of the case
32 and expertise of the attorney. Such rates shall be subject to the
33 approval of the court of jurisdiction based on the complexity of the
34 case, expertise of the attorney, the market, and any other factors the
35 court deems just and appropriate.

36 5. There should be no cap on the amount of compensation or reimburse-
37 ment received for representation. The amount of compensation and
38 reimbursement is subject to court approval as described above.

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

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

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

46 The governing body of each county and the governing body of the city
47 in which a county is wholly contained shall place in operation through-
48 out the county a plan for providing counsel to persons charged with a
49 crime or who are entitled to counsel pursuant to **article eighteen-C of**
50 **this chapter**, section two hundred sixty-two or section eleven hundred
51 twenty of the family court act, article six-C of the correction law,
52 section four hundred seven of the surrogate's court procedure act or
53 article ten of the mental hygiene law, who are financially unable to
54 obtain counsel. Each plan shall also provide for investigative, expert
55 and other services necessary for an adequate defense. The plan shall
56 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.