

# 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  
4 Section 723. Lead agency for civil right to counsel.

5 723-a. Compensation and reimbursement.

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

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

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

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

24 2. Such representation shall be a partnership between the courts and  
25 all qualified legal services providers, bar associations and private  
26 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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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.