

STATE OF NEW YORK

3527--B

2021-2022 Regular Sessions

IN SENATE

January 30, 2021

Introduced by Sens. BAILEY, AKSHAR, BROUK, COMRIE, COONEY, GAUGHRAN, HARCKHAM, HOYLMAN, JACKSON, KAVANAGH, KRUEGER, LANZA, MANNION, MAY, MYRIE, PALUMBO, SALAZAR, SEPULVEDA, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government -- recommitted to the Committee on Local Government in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the county law and the judiciary law, in relation to entitled compensation for client representation

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

1 Section 1. Section 722-b of the county law, as amended by section 2 of
2 part J of chapter 62 of the laws of 2003, is amended to read as follows:
3 § 722-b. Compensation and reimbursement for representation. 1. All
4 counsel assigned in accordance with a plan of a bar association conform-
5 ing to the requirements of section seven hundred twenty-two of this
6 article whereby the services of private counsel are rotated and coordi-
7 nated by an administrator shall at the conclusion of the representation
8 receive:
9 (a) for representation of a person entitled to representation by law
10 who is initially charged with a misdemeanor or lesser offense and no
11 felony, compensation for such misdemeanor or lesser offense represen-
12 tation at a rate of [~~sixty~~] one hundred twenty dollars per hour for time
13 expended in court or before a magistrate, judge or justice, and [~~sixty~~]
14 one hundred twenty dollars per hour for time reasonably expended out of
15 court, and shall receive reimbursement for expenses reasonably incurred;
16 and

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

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1 (b) for representation of a person in all other cases governed by this
2 article, including all representation in an appellate court, compen-
3 sation at a rate of [~~seventy-five~~] one hundred fifty dollars per hour
4 for time expended in court before a magistrate, judge or justice and
5 [~~seventy-five~~] one hundred fifty dollars per hour for time reasonably
6 expended out of court, and shall receive reimbursement for expenses
7 reasonably incurred.

8 2. [~~Except as provided in this section, compensation for time expended~~
9 ~~in providing representation.~~

10 (~~a) pursuant to paragraph (a) of subdivision one of this section shall~~
11 ~~not exceed two thousand four hundred dollars, and~~

12 (~~b) pursuant to paragraph (b) of subdivision one of this section shall~~
13 ~~not exceed four thousand four hundred dollars]~~ Hourly compensation to be
14 received pursuant to paragraphs (a) and (b) of subdivision one of this
15 section shall be subject to an annual cost of living increase. Such cost
16 of living increase shall be calculated as the current rate of inflation
17 as determined by the consumer price index, as computed by the federal
18 bureau of labor statistics.

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

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

33 § 2. Section 722-e of the county law, as amended by section 11 of part
34 VVV of chapter 59 of the laws of 2017, is amended to read as follows:

35 § 722-e. Expenses. 1. All expenses for providing counsel and services
36 other than counsel hereunder shall be a county charge or in the case of
37 a county wholly located within a city a city charge to be paid out of an
38 appropriation for such purposes. Provided, however, that any such addi-
39 tional expenses incurred for the provision of counsel and services as a
40 result of the implementation of a plan established pursuant to subdivi-
41 sion four of section eight hundred thirty-two of the executive law,
42 including any interim steps taken to implement such plan, shall be reim-
43 bursed by the state to the county or city providing such services. Such
44 plans shall be submitted by the office of indigent legal services to the
45 director of the division of budget for review and approval. However,
46 the director's approval shall be limited solely to the plan's projected
47 fiscal impact of the required appropriation for the implementation of
48 such plan, and his or her approval shall not be unreasonably withheld.
49 The state shall appropriate funds sufficient to provide for the
50 reimbursement required by this section.

51 2. All expenses for providing counsel and services pursuant to para-
52 graph (a) of subdivision one of section seven hundred twenty-two-b of
53 this article in excess of sixty dollars per hour and paragraph (b) of
54 subdivision one of section seven hundred twenty-two-b of this article in
55 excess of seventy-five dollars per hour shall be funded by the state.

1 § 3. Subdivision 3 of section 35 of the judiciary law, as amended by
2 section 5 of part J of chapter 62 of the laws of 2003, is amended to
3 read as follows:

4 3. No counsel assigned pursuant to this section shall seek or accept
5 any fee for representing the person for whom he or she is assigned with-
6 out approval of the court as herein provided. Whenever it appears that
7 such person is financially able to obtain counsel or make partial
8 payment for the representation, counsel may report this fact to the
9 court and the court may terminate the assignment or authorize payment,
10 as the interests of justice may dictate, to such counsel. Counsel
11 assigned hereunder shall at the conclusion of the representation receive
12 compensation at a rate of [~~seventy-five~~] one hundred fifty dollars per
13 hour for time expended in court, and [~~seventy-five~~] one hundred fifty
14 dollars per hour for time reasonably expended out of court, and shall
15 receive reimbursement for expenses reasonably incurred. For represen-
16 tation upon a hearing, compensation and reimbursement shall be fixed by
17 the court wherein the hearing was held [~~and such compensation shall not~~
18 ~~exceed four thousand four hundred dollars. For representation in an~~
19 ~~appellate court, compensation and reimbursement shall be fixed by such~~
20 ~~court and such compensation shall not exceed four thousand four hundred~~
21 ~~dollars. In extraordinary circumstances the court may provide for~~
22 ~~compensation in excess of the foregoing limits~~].

23 § 4. Section 35 of the judiciary law is amended by adding two new
24 subdivisions 9 and 10 to read as follows:

25 9. Hourly compensation to be received pursuant to subdivision three of
26 this section shall be subject to an annual cost of living increase. Such
27 cost of living increase shall be calculated as the current rate of
28 inflation as determined by the consumer price index, as computed by the
29 federal bureau of labor statistics.

30 10. All expenses for providing counsel and services pursuant to subdivi-
31 vision three of this section shall be funded by the state.

32 § 5. This act shall take effect April 1, 2023. Effective immediately,
33 the addition, amendment, and/or repeal of any rule or regulation neces-
34 sary for the implementation of this act on its effective date are
35 authorized to be made and completed on or before such effective date.