

# STATE OF NEW YORK

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3527--A

2021-2022 Regular Sessions

## IN SENATE

January 30, 2021

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Introduced by Sens. BAILEY, BROUK, GAUGHRAN, MANNION, PALUMBO -- 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

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

17 (b) for representation of a person in all other cases governed by this  
18 article, including all representation in an appellate court, compen-  
19 sation at a rate of [~~seventy-five~~] one hundred fifty dollars per hour  
20 for time expended in court before a magistrate, judge or justice and  
21 [~~seventy-five~~] one hundred fifty dollars per hour for time reasonably

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

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1 expended out of court, and shall receive reimbursement for expenses  
2 reasonably incurred.

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

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

7 ~~(b) pursuant to paragraph (b) of subdivision one of this section shall~~  
8 ~~not exceed four thousand four hundred dollars]~~

9 Hourly compensation to be  
10 received pursuant to paragraphs (a) and (b) of subdivision one of this  
11 section shall be subject to an annual cost of living increase. Such cost  
12 of living increase shall be calculated as the current rate of inflation  
13 as determined by the consumer price index, as computed by the federal  
14 bureau of labor statistics.

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

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

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

31 § 722-e. Expenses. 1. All expenses for providing counsel and services  
32 other than counsel hereunder shall be a county charge or in the case of  
33 a county wholly located within a city a city charge to be paid out of an  
34 appropriation for such purposes. Provided, however, that any such addi-  
35 tional expenses incurred for the provision of counsel and services as a  
36 result of the implementation of a plan established pursuant to subdivi-  
37 sion four of section eight hundred thirty-two of the executive law,  
38 including any interim steps taken to implement such plan, shall be reim-  
39 bursed by the state to the county or city providing such services. Such  
40 plans shall be submitted by the office of indigent legal services to the  
41 director of the division of budget for review and approval. However,  
42 the director's approval shall be limited solely to the plan's projected  
43 fiscal impact of the required appropriation for the implementation of  
44 such plan, and his or her approval shall not be unreasonably withheld.  
45 The state shall appropriate funds sufficient to provide for the  
46 reimbursement required by this section.

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

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

55 3. No counsel assigned pursuant to this section shall seek or accept  
56 any fee for representing the person for whom he or she is assigned with-  
out approval of the court as herein provided. Whenever it appears that

1 such person is financially able to obtain counsel or make partial  
2 payment for the representation, counsel may report this fact to the  
3 court and the court may terminate the assignment or authorize payment,  
4 as the interests of justice may dictate, to such counsel. Counsel  
5 assigned hereunder shall at the conclusion of the representation receive  
6 compensation at a rate of [~~seventy-five~~] one hundred fifty dollars per  
7 hour for time expended in court, and [~~seventy-five~~] one hundred fifty  
8 dollars per hour for time reasonably expended out of court, and shall  
9 receive reimbursement for expenses reasonably incurred. For represen-  
10 tation upon a hearing, compensation and reimbursement shall be fixed by  
11 the court wherein the hearing was held [~~and such compensation shall not~~  
12 ~~exceed four thousand four hundred dollars. For representation in an~~  
13 ~~appellate court, compensation and reimbursement shall be fixed by such~~  
14 ~~court and such compensation shall not exceed four thousand four hundred~~  
15 ~~dollars. In extraordinary circumstances the court may provide for~~  
16 ~~compensation in excess of the foregoing limits~~].

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

19 9. Hourly compensation to be received pursuant to subdivision three of  
20 this section shall be subject to an annual cost of living increase. Such  
21 cost of living increase shall be calculated as the current rate of  
22 inflation as determined by the consumer price index, as computed by the  
23 federal bureau of labor statistics.

24 10. All expenses for providing counsel and services pursuant to subdi-  
25 vision three of this section shall be funded by the state.

26 § 5. This act shall take effect April 1, 2022. Effective immediately,  
27 the addition, amendment, and/or repeal of any rule or regulation neces-  
28 sary for the implementation of this act on its effective date are  
29 authorized to be made and completed on or before such effective date.