STATE OF NEW YORK

240--A

2023-2024 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 4, 2023

Introduced by M. of A. MAGNARELLI, LUNSFORD, THIELE, STERN, COLTON, EPSTEIN, SIMON, LAVINE, McMAHON, STECK, JACKSON, SAYEGH, CLARK, STIRPE, TAPIA, GUNTHER, DINOWITZ, CRUZ, MEEKS, BRONSON, DAVILA, COOK, HEVESI, WALKER, JEAN-PIERRE, JONES, BARRETT, LUPARDO, KELLES, SILLITTI, LEVENBERG -- read once and referred to the Committee on Ways and Means -- 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:

Section 1. Section 722-b of the county law, as amended by section 2 of part J of chapter 62 of the laws of 2003, is amended to read as follows:

§ 722-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-two 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 by law who is initially charged with a misdemeanor or lesser offense and no felony, compensation for such misdemeanor or lesser offense representation 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 in all [~~other~~] cases governed by this article, including all representation in an appellate court, compensation at a rate of [~~seventy-five~~] **one hundred sixty-four** dollars per hour for time expended in court before a magistrate, judge or

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

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justice and [~~seventy-five~~] **one hundred sixty-four** dollars per hour for time reasonably expended out of court, and shall receive reimbursement for expenses reasonably incurred.

2. [~~Except as 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 two thousand four hundred dollars; and~~

~~(b) pursuant to paragraph (b) of subdivision one of this section shall not exceed four thousand four hundred dollars~~] **Hourly compensation to be received pursuant to subdivision one of this section shall be subject to an annual cost of living increase as governed by the United States Criminal Justice Act and all hourly rates shall be increased automatically each year in accordance with any federal pay comparability adjustment. Such adjustment shall be effective on April first in the same year that the cost of living adjustment goes into effect for federal defenders**.

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.~~] **In extraordinary circumstances a trial or appellate court may provide for compensation in excess of the foregoing limits pursuant to subdivision one of this section 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 herein provided.

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

§ 722-e. Expenses. **1.** All expenses for providing counsel and services other than counsel hereunder shall be a county charge or in the case of a county wholly located within a city a city charge to be paid out of an appropriation for such purposes. Provided, however, that any such additional expenses incurred for the provision of counsel and services as a result of the implementation of a plan established pursuant to subdivision four of section eight hundred thirty-two of the executive law, including any interim steps taken to implement such plan, shall be reimbursed by the state to the county or city providing such services. Such plans shall be submitted by the office of indigent legal services to the director of the division of budget for review and approval. However, the director's approval shall be limited solely to the plan's projected fiscal impact of the required appropriation for the implementation of such plan, and his or her approval shall not be unreasonably withheld. The state shall appropriate funds sufficient to provide for the reimbursement required by this section**; provided further that counties have no authority to withhold payments approved by the appellate court or trial court judge**.

2. All expenses for providing counsel and services pursuant to subdivision one of section seven hundred twenty-two-b of this article in excess of seventy-five dollars per hour and in paragraph three of

section seven hundred twenty-two-b in excess of seventy-five dollars per hour shall be funded by the state.

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

3. No counsel assigned pursuant to this section shall seek or accept any fee for representing the person for whom he or she is assigned without approval of the court as herein provided. Whenever it appears that such person is financially able to obtain counsel or make partial payment for the representation, counsel may report this fact to the court and the court may terminate the assignment or authorize payment, as the interests of justice may dictate, to such counsel. Counsel assigned hereunder shall at the conclusion of the representation receive compensation at a rate of [~~seventy-five~~] one hundred sixty-four dollars per hour for time expended in court, and [~~seventy-five~~] one hundred sixty-four dollars per hour for time reasonably expended out of court, and shall receive reimbursement for expenses reasonably incurred. [~~For representation upon a hearing, compensation and reimbursement shall be fixed by the court wherein the hearing was held and such compensation shall not exceed four thousand four hundred dollars. For representation in an appellate court, compensation and reimbursement shall be fixed by such court and such compensation shall not exceed four thousand four hundred dollars.~~]In extraordinary circumstances the court may provide for compensation in excess of the foregoing limits.

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

9. Hourly compensation to be received pursuant to subdivision three of this section shall be subject to an annual cost of living increase as governed by the United States Criminal Justice Act and all hourly rates shall be increased automatically each year in accordance with any federal pay comparability adjustment. Such adjustment shall be effective on April first in the same year that the cost of living adjustment goes into effect for federal defenders.

10. All expenses for providing counsel and services pursuant to subdivision three of this section shall be funded by the state.

§ 5. This act shall take effect April 1, 2023. 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.